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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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration; Delegation of Authority, Other Financial and Guaranty Programs

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is amending its regulations delegating authority to approve or decline guarantees for Certified Development Company (CDC) Debentures. A Certified Development Company seeking to issue a debenture to finance small business fixed asset loans must first obtain approval from certain SBA field officials. Authority levels for these officials are contingent on the dollar amount of the debenture guaranteed and the overall cost of the project being financed. This amendment to the regulation sets the level of authority for which a Regional Administrator may approve or decline a guarantee of a CDC debenture for projects without regard to cost. In addition, this rule revises the level of authority for which a Branch Manager may approve or decline debenture guarantees with regard to projects not exceeding $3,000,000 in overall cost. This rule also modifies the overall project cost limit and the level of authority for which the Chief, Financing, District Office (D/O) and the Assistant Branch Manager for Finance and Investment (F&I) may approve or decline a debenture guarantee. Finally, this regulation corrects a typographical error in the delegation of authority for approval or decline of debenture guarantees for an Assistant District Director.

DATES: This rule is effective April 14, 1993.

FOR FURTHER INFORMATION CONTACT: William Hogbin, Deputy Assistant Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 (202) 205–6490.

SUPPLEMENTARY INFORMATION: The SBA is amending its regulation delegating the authority to approve or decline the guarantee of debentures issued by Certified Development Companies. In particular the amount for which Regional Administrators may approve or decline debenture guarantees, without regard to project cost, may not exceed one million dollars. In addition, a Branch Manager may approve or decline a debenture guarantee for up to eight-hundred-thousand dollars when the overall project cost does not exceed three million dollars. Similarly, approval for debenture guarantees by Chief, Financing, D/O and the Assistant Branch Manager/F&I is limited to eight-hundred-thousand dollars for projects where the overall cost does not exceed two million dollars. This regulation also corrects a typographical error in the present delegation. Specifically, the current delegation sets the level of authority for the ADA/F&I at one million dollars. However, no such position exists. Rather, this level of authority resides in the Assistant District Director/F&I on projects not exceeding three million dollars in overall cost.

Due to the fact that this rule governs matters of agency organization, management, and personnel and makes no substantive change to the current regulation, SBA is not required to determine if it constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to do a Federalism Assessment pursuant to Executive Order 12612, or to determine if this rule imposes an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35). For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

SBA is publishing this regulation government agency organization, practice, and procedure as a final rule without notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure, Authority delegation, Organization and function, Government agency, Reporting and recordkeeping requirement.

For the reasons set forth above, SBA is amending part 101 of title 13, Code of Federal Regulations, as follows:

PART 101—[AMENDED]

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5 of Public Law 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Public Law 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Public Law 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. The table in section A in part III of 13 CFR 101.3–2, *Delegation of authority to conduct program activities in field offices,* is revised to read as follows:

§ 101.3–2 Delegation of authority to conduct program activities in field offices.

* * * * *

Part III—Other Financial and Guaranty Programs

Section A—Section 503/504 Debenture Guaranty Approval Authority (Small Business Investment Act)

* * * * *

	Dollars
a. Unlimited project cost:	
(1) Regional administrator	1,000,000
b. Overall project cost not exceeding $3,000,000:	
(2) ARA/F&I	1,000,000
(3) District director	1,000,000
(4) Deputy district director	1,000,000
(5) Assistant district director/F&I	1,000,000
(6) Branch managers	800,000
c. Overall project cost not exceeding $2,000,000;	
(7) Chief, Financing, D/O	800,000
(8) Assistant Branch Managers/F&I	800,000

* * * * *

Dated: April 5, 1993.

Dayton J. Watkins,

Acting Administrator.

[FR Doc. 93–8636 Filed 4–13–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–93–AD; Amendment 39–8528; AD 93–06–03]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires inspections to detect cracks and corrosion of the portal latch pin support fittings of certain cargo doors, and rework or replacement of damaged parts; and eventual modification of certain latch pin support fitting installations. This AD also requires inspections to detect cracks and corrosion of the cam latch bellcranks and cam latches of certain cargo doors, and rework or replacement of damaged parts. This amendment is prompted by numerous reports of corroded or cracked fittings, cam latch bellcranks, and cam latches. The actions specified by this AD are intended to prevent reduced structural integrity of the latch system for the cargo doors, resulting in a door opening in flight and rapid depressurization of the airplane.

DATES: Effective May 14, 1993.

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

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2783; 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 certain Boeing Model 747 series airplanes was published in the **Federal Register** on July 10, 1992 (57 FR 30690). That action proposed to require inspections to detect cracks and corrosion of the portal latch pin support fittings of certain cargo doors, and rework or replacement of damaged parts; and eventual modification of certain latch pin support fitting installations. That action also proposed to require inspections to detect cracks and corrosion of the cam latch bellcranks and cam latches of certain cargo doors, and rework or replacement of damaged parts; and eventual replacement of the cam latches.

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

One commenter supports the proposed rule.

Two commenters request that the FAA delete the inspections proposed in paragraphs (a) and (b) of the notice. These inspections are described in Boeing Service Bulletin 747–52–2186. The commenters state that the same inspections are addressed in another proposed rule, Docket 92–NM–89–AD (57 FR 22445, May 28, 1992); therefore, inclusion of these inspections in this proposal would result in a duplication of rulemaking.

The FAA does not concur. Since receipt of the commenter's request, the FAA has issued a final rule, AD 92–27–04, Amendment 39–8437 (57 FR 59801, December 16, 1992). [A correction of that rule was published in the **Federal Register** on February 17, 1993 (58 FR 8693).] Paragraph (e) of AD 92–27–04 specifies that the inspections described in Boeing Service Bulletin 747–52–2186 are not required by that AD. Therefore, there is no duplication of rulemaking requirements.

One commenter believes that the level of inspections proposed in paragraphs (a), (b), (c), and (d) of the notice should be "close visual inspections," rather than the proposed "general visual inspections." The commenter states that the inspection level described in the referenced Boeing Service Bulletin 747–52–2186 is a close visual inspection.

The FAA concurs partially with the commenter's request. It was the FAA's intent to require the level of visual inspection technically known as a "detailed visual inspection." The FAA has changed paragraphs (a), (b), (c), and (d) of the final rule to clarify that detailed visual inspections are required.

Several commenters request that the proposed rule be revised to allow operators to perform indefinitely the repetitive inspections proposed in paragraphs (a), (b), (c), and (d), which do not require disassembly of parts, as an alternative to accomplishing the terminating action proposed in paragraph (e) of the notice, which does require the disassembly of parts. One commenter implies that the cost of accomplishing the terminating action would not justify the reliability benefit. Another commenter states that the Structures Working Group for Model 747 series airplanes (part of the Airworthiness Assurance Task Force) previously had recommended that repetitive inspections of the fittings, without disassembly of parts, be permitted, since such inspections adequately address the unsafe condition, and that "replacement of the portal latch pin support fittings was not required."

The FAA does not concur with the commenters' requests. The inspections performed without disassembly of parts are superficial examinations of the external surfaces of the fitting assembly to detect cracking. However, corrosion can occur within the fitting assemblies and installations, and may not be visible externally. Therefore, it is necessary to disassemble the parts in order to expose the interior nuts and bolts for inspection, and ensure that they are intact and free of corrosion. Additionally, in order to inhibit the propagation of corrosion within the fitting and attaching hardware, sealant must be applied to these components. (Service history has indicated that sealant has never been applied to the fitting and attaching hardware on many affected airplanes.) Mandatory replacement of the fitting would not be required unless a crack is detected or corrosion is found that exceeds the limits specified in Boeing Service Bulletin 747–52–2186; therefore, replacement costs would not be incurred unless defective parts were found.

Further, the one commenter correctly notes that the Structures Working Group for Model 747 series airplanes originally recommended that only the external inspections be mandated to address the unsafe condition. However, since that time, a "Cargo Door Task Force," comprised of representatives from operators, manufacturers, and the FAA, was formed to review the design, manufacture, maintenance, and operation of outward opening cargo doors on all transport category airplanes. One objective of the Task Force is to select service bulletins to be recommended for mandatory accomplishment in order to enhance

safety. This Task Force has recommended that the procedures described in Boeing Service Bulletin 747–52–2186, which pertain to the more comprehensive "internal" inspections of the fitting (entailing disassembly of parts) for cracks and corrosion and the application of sealant, should be accomplished in order to provide an adequate level of safety. The FAA has concurred with this recommendation, as indicated in the relevant requirement of this final rule.

The manufacturer requests that proposed paragraph (e)(2) be revised to delete the requirement to replace H–11 steel bolts, BACB30MT, and corresponding nuts, BACN10HR(), for the portal latch pin support fitting installations with superseding Inconel bolts, BACB3OUS, and corresponding nuts, BACN10HR()CD. The manufacturer recommends, instead, that the FAA should require that an inspection be conducted to verify that H–11 steel bolts, BACB30MT, and corresponding nuts, BACN10HR(), are intact and free of corrosion; and, if corrective action is necessary, that either the superseding bolts, BACB30US, and corresponding nuts, BACN10HR()CD, be installed, or new bolts, BACB30MT, and corresponding nuts, BACN10HR(), be installed, in accordance with Boeing Service Bulletin 747–52–2186. The manufacturer reasons that replacement of the bolts and nuts should not be required because the superseding Inconel fasteners are not critical to the structural integrity of the fitting installation. The manufacturer notes that Boeing Service Bulletins 747–51–2043 and 747–57–2235, which are addressed in AD 89–23–07 (54 FR 43801, October 27, 1989) and AD 86–23–01 (51 FR 37712, October 24, 1986), respectively, address H–11 steel bolts and corresponding nuts that are installed in critical structural locations. The FAA concurs and has revised paragraph (e)(2) of the final rule accordingly.

One commenter requests that the phrase "prior to the accumulation of" used to specify compliance times in the proposal, be changed to read "within the next." The commenter believes that the phrase "prior to the accumulation" should be used only when describing a threshold period that is measured from the time the airplane is delivered.

The FAA concurs that clarification is warranted to avoid confusion between total accumulation of flight hours (the commenter's interpretation of the compliance time measured from the time of airplane delivery) and accumulation of flight hours after the effective date of the AD (the compliance time as stated in the proposal measured from the effective date of the AD). In light of the long compliance times specified in proposed paragraphs (e) and (g), the possibility exists for those compliance times to be interpreted as total accumulation of flight hours, despite the fact that the proposal specified accumulation of flight hours after the effective date of the AD, which would be measured from the effective date of the AD. Therefore, the compliance times in paragraphs (a), (b), (e), and (g) of the final rule have been revised to read "within the next" to clarify that measurement of the compliance times are to start from the effective date of the AD.

Several commenters request that paragraph (g) of the notice be revised to allow operators to perform indefinitely the proposed repetitive inspections of the existing cross-bolt cam latches in lieu of mandatory replacement of those cam latches with improved cam latches. A number of these commenters base their request on the high cost to replace the cam latches. Another commenter, the airplane manufacturer, bases its request on the results of an analysis, which indicate that a lower lobe or main deck cargo door can support fail-safe loads even with a fractured cam latch. The manufacturer also states that there have been no reports of multiple cam latch fractures on the same cargo door, and that the possibility of multiple fractures remaining undetected is unlikely.

Upon review of the data submitted by the manufacturer and upon further consideration as to the need for mandatory replacement of the subject cam latches, the FAA concurs with the commenters' request. The FAA considers that the required inspections of the cam latches are comprehensive and, therefore, adequate to ensure that any fractures and corrosion are detected in a timely manner. The FAA has revised the final rule to provide affected operators with the option to (1) replace all bellcranks and cam latches; or (2) inspect the bellcranks and replace the cam latches; or (3) inspect the bellcranks and repetitively inspect the cam latches. The FAA has also revised the economic analysis information, below, to exclude the number of work hours and parts costs related to the previously proposed replacement action.

One commenter, a non-U.S. operator, requests that the initial inspection compliance time specified in paragraph (f) of the proposed rule [designated as paragraph (g) in the final rule] be extended to 35,000 flight hours or 7 years after the effective date of the AD, whichever occurs later. The commenter indicates that it has modified all of its bellcrank assemblies from the cross-bolt version to the axial-bolt version and has plugged the cross-bolt holes several years ago.

The commenter also asks that the FAA revise paragraph (f)(2)(ii) of the proposed AD [designated as paragraph (g)(2)(ii) in the final rule] to specify that cam latches with cross-bolt holes that have been inspected using magnetic particle techniques within the last 7 years prior to the effective date of the AD may be inspected 7 years after the immediately preceding inspection. The commenter has not discovered any cracked cam latches in the last 20 years.

The FAA does not concur that these compliance times should be extended. In developing appropriate compliance times for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the inspection. In consideration of these items, as well as the numerous reports of corroded cam latch bellcranks and cam latches, the FAA has determined that the proposed compliance times represent the maximum interval of time allowable wherein these inspections can reasonably be accomplished and an acceptable level of safety can be maintained.

Further, non-U.S. operators are not bound to the requirements of this rule. Under existing bilateral airworthiness agreements, the FAA is obligated, through the AD process, to advise non-U.S. airworthiness authorities of unsafe conditions relating to products produced in the United States, and to provide instructions necessary to correct the unsafe conditions addressed. Since the request discussed previously is made for a unique circumstance, the FAA advises that this non-U.S. operator seek approval for an extension of compliance time from its own airworthiness authority.

Another non-U.S. operator responds to the proposal by requesting that an alternative method of compliance to Boeing Alert Service Bulletin 747–52A2233 be included in the AD. The commenter suggests that this alternative method specify the process for stripping, inspecting, and refinishing the cam latches in order to expedite the inspection.

The FAA does not concur. The FAA recognizes that numerous alternative methods of compliance with the intent of this rule may exist; however, it would be impossible to include every conceivable alternative in the rule. As discussed in the preceding paragraph, this operator should also seek approval

of an alternative method of compliance from its own airworthiness authority.

The FAA has been advised that Boeing has amended Boeing Alert Service Bulletin 747–52A2233, by issuing Notice of Status Change (NSC) 747–52A2233 NSC 1, dated November 21, 1991. This NSC lists alternative part numbers to those specified in the original issue of that alert service bulletin. The FAA has revised the final rule to include this NSC as an alternative to the parts listed in the service bulletin.

Paragraph (e) of the final rule has been reformatted to clarify that the specified compliance times are applicable to paragraphs (e)(1), (e)(2), and (e)(3). As a result of this reformatting, proposed paragraph (f) has been designated as paragraph (g) in the final rule; proposed paragraph (g) has been designated as paragraph (h) in the final rule; proposed paragraph (h) has been designated as paragraph (i) in the final rule; and proposed paragraph (i) has been designated as paragraph (j) in the final rule. The requirements of these paragraphs remain unchanged.

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

The FAA estimates that 204 airplanes of U.S. registry will be affected by the requirement to inspect and modify the portal latch pin support fittings. It will take approximately 59 work hours per airplane to accomplish the required actions, and the average labor rate is $55 per work hour. Based on these figures, the total cost impact of these actions on U.S. operators is estimated to be $661,980, or $3,245 per airplane.

The FAA estimates that 134 airplanes of U.S. registry will be affected by the requirement to inspect the cam latch bellcranks and cam latches. It will take approximately 42 work hours per airplane to accomplish the required actions, and the average labor rate is $55 per work hour. Based on these figures, the total cost impact of these actions on U.S. operators is estimated to be $309,540, or $2,310 per airplane.

Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $971,520. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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:

93–06–03 Boeing: Amendment 39–8528. Docket 92–NM–93–AD.

Applicability: Model 747 series airplanes; as listed in Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991, and Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent in-flight opening of the lower lobe forward and aft cargo doors and the main deck side cargo door, if installed, accomplish the following:

(a) Within the next 1,800 flight hours after the effective date of this AD, or 600 flight cycles after the effective date of this AD, whichever occurs first: With no disassembly required, perform a detailed visual inspection to detect cracks in the portal latch pin support fittings on the lower lobe forward and aft cargo doors and on the main deck side cargo door, if installed and in the cargo configuration, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991.

(1) Repeat the inspection required by this paragraph at intervals not to exceed 1,800 flight hours or 600 flight cycles, whichever occurs first.

(2) If any cracked part is found as a result of the inspections required by this paragraph, prior to further flight, replace it and check the door rigging, in accordance with the service bulletin.

(b) Within the next 12,500 flight hours after the effective date of this AD, or 2,500 flight cycles after the effective date of this AD, or within 30 months after the effective date of this AD, whichever occurs first: With no disassembly required, perform a detailed visual inspection to detect cracks in the portal latch pin support fittings on the main deck side cargo door, if installed and in the passenger configuration, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991.

(1) Repeat the inspection required by this paragraph at intervals not to exceed 12,500 flight hours, 2,500 flight cycles, or 30 months after the immediately preceding inspection, whichever occurs first.

(2) If any cracked part is found as a result of the inspections required by this paragraph, prior to further flight, replace it and check the door rigging, in accordance with the service bulletin.

(c) When converting from the passenger configuration to the cargo configuration, prior to further flight; and thereafter at intervals not to exceed 1,800 flight hours or 600 flight cycles, whichever occurs first: With no disassembly required, perform a detailed visual inspection to detect cracks in the portal latch pin support fitting assemblies of the main deck side cargo door, if installed, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991. Prior to further flight, replace any cracked parts found, in accordance with the service bulletin.

(d) When converting from the cargo configuration to the passenger configuration, prior to further flight; and thereafter at intervals not to exceed 12,500 flight hours, 2,500 flight cycles, or 30 months after the immediately preceding inspection, whichever occurs first: With no disassembly required, perform a detailed visual inspection to detect cracks in the portal latch pin support fitting assemblies of the main deck side cargo door, if installed, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991. Prior to further flight, replace any cracked parts found, in accordance with the service bulletin.

(e) Within the next 25,000 flight hours after the effective date of this AD, or 5,000 flight cycles after the effective date of this AD, or within 5 years after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (e)(1), (e)(2), and (e)(3) of this AD, in accordance with Boeing

Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991.

(1) Disassemble parts and perform a detailed visual inspection to detect cracks and corrosion in the portal latch pin support fitting assemblies/installations on the lower lobe forward and aft cargo doors and on the main deck side cargo door, if installed, in accordance with the service bulletin. If cracks or corrosion are found, prior to further flight, repair or replace any damaged parts, and check the door rigging, in accordance with the service bulletin.

(2) Inspect to verify that all H–11 steel latch fitting-to-sill bolts, BACB30MT, and corresponding nuts, BACN10HR(), are intact and that unsealed bolts are free of corrosion, in accordance with the service bulletin. If not, prior to further flight, install new bolts, BACB30MT, and corresponding nuts, BACN10HR(); or install the superseding BACB3OUS bolts and BACN10HR()CD nuts, in accordance with the service bulletin.

(3) Apply sealant to the portal latch pin support fitting and attaching hardware, in accordance with the service bulletin. (Application of sealant to fittings and attaching hardware that previously have been sealed is not required by this paragraph.)

(f) Accomplishment of paragraphs (e)(1), (e)(2), and (e)(3) of this AD constitutes terminating action for the repetitive inspections required by paragraphs (a)(1), (b)(1), (c), and (d) of this AD.

(g) Within the next 6,000 flight hours after the effective date of this AD, or within 18 months after the effective date of this AD, whichever occurs first: Determine the configuration of the bellcrank/cam latch assembly of the lower lobe forward and aft cargo doors and of the main deck side cargo door, if installed; and prior to further flight, perform the procedures specified in either paragraph (g)(1) or (g)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991.

(1) For cargo doors with cam latches attached to the bellcrank by cross-bolts, accomplish one of the procedures specified in either paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD:

(i) Replace all bellcranks and cam latches with bellcranks and cam latches of the new part configuration in accordance with Section III., paragraph F., of the service bulletin; and perform an operational test of the door latch mechanism, in accordance with Section III., paragraph Y., of the service bulletin. Accomplishment of this paragraph constitutes terminating action for the requirements of paragraph (g) of this AD. Or

(ii) Inspect the bellcranks to detect corrosion, and repair or replace any corroded parts; and replace all cam latches with cam latches of the new part configuration; in accordance with Section III., paragraph G., of the service bulletin. Perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. Accomplishment of this paragraph constitutes terminating action for the requirements of paragraph (g) of this AD. Or

(iii) Inspect the bellcranks to detect corrosion, and repair or replace any corroded parts; and inspect the cam latches to detect cracks and corrosion and, prior to further flight, repair or replace any cracked or corroded parts; in accordance with Section III., paragraph H., of the service bulletin. Perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. If one or more of the cam latches are repaired and/or reinstalled as a result of the actions required by this paragraph, thereafter, repeat the inspections of the cam latches required by this paragraph at intervals not to exceed 25,000 flight hours after the effective date of this AD, or within 5 years after the effective date of this AD, whichever occurs first.

(2) For cargo doors with cam latches attached to the bellcrank by axial-bolts, accomplish one of the procedures specified in either paragraph (g)(2)(i) or (g)(2)(ii) of this AD:

(i) Replace all cam latches that have cross-bolt holes with cam latches of the new part configuration, in accordance with Section III., paragraph I., of the service bulletin. Perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. Accomplishment of this paragraph constitutes terminating action for the requirements of paragraphs (g)(1)(iii) and (g)(2)(ii) of this AD. Or

(ii) If the cam latches do not have cross-bolt holes, they may be reinstalled. If the cam latches have cross-bolt holes, inspect those latches to detect cracks; replace any cracked cam latches; and reinstall any cam latches that are not cracked; in accordance with Section III., paragraph J., of the service bulletin. Perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. If one or more of the cam latches that have cross-bolt holes is reinstalled as a result of the actions required by this paragraph, thereafter, repeat the inspections of the cam latches required by this paragraph at intervals not to exceed 25,000 flight hours after the effective date of this AD, or within 5 years after the effective date of this AD, whichever occurs first.

(h) Accomplishment of the procedures specified in either paragraph (h)(1) or (h)(2) of this AD, in accordance with Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991, constitutes terminating action for the requirements of paragraph (g) of this AD.

(1) If one or more of the cam latches on the lower lobe forward and aft cargo doors and main deck side cargo door was repaired and/or reinstalled in accordance with paragraph (g)(1)(iii) of this AD, replace those cam latches with cam latches of the new part configuration, in accordance with Section III. of the service bulletin. Prior to further flight, perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin. Or

(2) If one or more of the cam latches that have cross-bolt holes on the lower lobe forward and aft cargo doors and main deck side cargo doors was reinstalled in accordance with paragraph (g)(2)(ii) of this AD, replace those cam latches with cam latches of the new part configuration, in accordance with Section III. of the service bulletin. Prior to further flight, perform an operational test of the door latch mechanism in accordance with Section III., paragraph Y., of the service bulletin.

Note: Accomplishment of the requirements of paragraphs (g) and (h) of this AD in accordance with Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991, as amended by Notice of Status Change 747–52A2233 NSC 1, dated November 21, 1991; is equivalent to accomplishment of those requirements in accordance with Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991.

(i) 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.

(j) 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.

(k) The inspections, replacements, check, repairs, installation, operational tests, and sealant application shall be done in accordance with the following Boeing service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
747–52–2186, Revision 4	1–15, 19–50	4	Oct. 24, 1991.
Oct. 24, 1991	16–18	3	Jan. 25, 1990.
747–52A2233, Aug. 29, 1991	1–76	Original	Aug. 29, 1991.
Notice of Status Change	1	Original	Nov. 21, 1991.
747–52A2233 NSC 1, Nov. 21, 1991	2		(This page is not dated.)

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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on May 14, 1993.

Issued in Renton, Washington, on March 22, 1993.

Darrell M. Pederson,

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

[FR Doc. 93–8674 Filed 4–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–180–AD; Amendment 39–8522; AD 93–05–18]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires inspection of the end-cap of the horizontal stabilizer dual actuator servo valve manifold to detect moisture, and removal of moisture, if necessary; and modification of the end-cap of the servo valve of the horizontal stabilizer hydraulic actuator. This amendment is prompted by reports of water ingression in the end-cap of the dual actuator servo valve manifold. The actions specified by this AD are intended to prevent jamming of the servo and to ensure that the stabilizer can be repositioned after an uncommanded trim movement.

DATES: Effective May 14, 1993.

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

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on December 22, 1992 (57 FR 60747). That action proposed to require inspection of the end-cap of the horizontal stabilizer dual actuator servo valve manifold to detect moisture, and removal of moisture, if necessary; and modification of the end-cap of the servo valve of the horizontal stabilizer hydraulic actuator.

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

Both commenters support the proposed rule.

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 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 38 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $85,690, or $2,090 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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:

93–05–18 Fokker: Amendment 39–8522. Docket 92–NM–180–AD.

Applicability: Model F28 Mark 0100 airplanes, serial numbers 11244 through 11356, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the servo and to ensure that the stabilizer can be repositioned after an uncommanded trim movement, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, unless accomplished previously within the last 1,600 hours time-in-service, inspect the end-cap of the horizontal stabilizer dual actuator servo valve manifold to detect moisture in accordance with Fokker Service Bulletin SBF100–27–029, dated January 29, 1991. Prior to further flight, remove any moisture found in accordance with the service bulletin.

(b) Within 2,000 hours time-in-service or one year after the effective date of this AD, whichever occurs first, modify the end-cap of the servo valve of the horizontal stabilizer hydraulic actuator in accordance with Fokker Service Bulletin SBF100–27–032, dated September 20, 1991, as revised by Fokker Service Bulletin Change Notification SBF100–27–032/01, dated October 19, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) 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.

(e) The inspection shall be done in accordance with Fokker Service Bulletin SBF100–27–029, dated January 29, 1991. The modification shall be done in accordance with Fokker Service Bulletin SBF100–27–032, dated September 20, 1991; and Fokker Service Bulletin Change Notification SBF100–27–032/01, dated October 19, 1991 (for Fokker Service Bulletin SBF100–27–032, dated September 20, 1991). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 14, 1993.

Issued in Renton, Washington, on March 16, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–8671 Filed 4–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–04–AD; Amendment 39–8529; AD 93–06–04]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This action requires revising the Airplane Flight Manual (AFM) to prohibit use of autoland in known lightning conditions. This action also requires modifying the wire assembly breakouts located at the aft pressure bulkhead and at the aft spar of the horizontal stabilizer center box. This amendment is prompted by an analysis conducted by the manufacturer, which revealed that certain wire assembly breakouts have not been properly bonded to the couplers. The actions specified in this AD are intended to prevent electrical arcing in the fuel system components and/or flight control computers in the event of a lightning strike.

DATES: Effective April 29, 1993.

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

Comments for inclusion in the Rules Docket must be received on or before June 14, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD 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 (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Vakili, Aerospace Engineer, Los Angeles ACO, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Analysis conducted by the manufacturer revealed that all seventeen wire assembly breakouts located on the aft pressure bulkhead and the aft spar of the horizontal stabilizer center box of certain McDonnell Douglas Model MD–11 and MD–11F series airplanes have not been properly bonded during manufacture of the couplers. The overbraid wires must be bonded at the couplers in order to provide proper protection in the event of a lightning strike. The overbraid shields the wire assembly breakouts, thus preventing electrical arcing. If electrical arcing occurs in the flight control computers during utilization of autoland, a dual autoland disconnect may occur.

Improperly bonded wire assembly breakouts, if not corrected, could result in electrical arcing in the fuel system components and/or flight control computers in the event of a lightning strike.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A24–48, dated February 17, 1993, that describes procedures for modifying the wire assembly breakouts at station Y=2007.000 on the aft pressure bulkhead and at station Y=2122.881 on the aft spar of the horizontal stabilizer center box. This modification entails bonding the overbraid wires to the pressure feedthrough and coupler, thus protecting the wire assemblies in the event of a lightning strike.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 and MD–11F series airplanes of the same type design, this AD is being issued to prevent electrical arcing in the fuel system components and/or flight control computers in the event of a lightning strike. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit use of autoland in known lightning conditions. This action also requires modifying the wire assembly breakouts located at the aft pressure bulkhead and at the aft spar of the horizontal stabilizer center box. After the modification is accomplished, the AFM revision may be removed. The modification is required to be accomplished in accordance with the service bulletin described previously.

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

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–04–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 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:

93–06–04 McDonnell Douglas: Amendment 39–8529. Docket 93–NM–04–AD.

Applicability: Model MD–11 and MD–11F airplanes; as listed in McDonnell Douglas Alert Service Bulletin A24–48, dated February 17, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent electrical arcing in the fuel system components and/or flight control computers in the event of a lightning strike, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"*Autoland*

Do not conduct autoland in known lightning conditions. A dual autoland disconnect may occur."

(b) Within 60 days after the effective date of this AD, modify the seventeen wire assembly breakouts located at the aft pressure bulkhead and at the aft spar of the horizontal stabilizer center box, in accordance with McDonnell Douglas Alert Service Bulletin A24–48, dated February 17, 1993. Accomplishment of this modification constitutes terminating action for paragraph (a) of this AD; after the modification is accomplished, the AFM revision may be removed.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (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.

(d) 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.

(e) The modification shall be done in accordance with McDonnell Douglas Alert Service Bulletin A24–48, dated February 17, 1993. 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 29, 1993.

Issued in Renton, Washington, on March 26, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–8672 Filed 4–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–120–AD; Amendment 39–8538; AD 93–07–06]

Airworthiness Directives; de Havilland, Inc., Model DHC–8–100 and DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland, Inc., Model DHC–8–100 and –300 series airplanes, that requires inspection of the inboard flaps for free play and roller rattle; re-rigging of the inboard flap system; and, for certain airplanes, repetitive inspections of significant structural items in the vicinity of the re-rigged inner flap. This amendment is prompted by results of tests conducted by the manufacturer which revealed that flap loads may not be evenly distributed to the flap ballscrews. The actions specified by this AD are intended to prevent reduced controllability of the airplane.

DATES: Effective on May 14, 1993.

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

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland, Inc., Model DHC–8–100 and –300 series airplanes was published in the Federal Register on August 27, 1992 (57 FR 38793). That action proposed to require inspection of the inboard flaps for free play and roller rattle; re-rigging of the inboard flap system; and, for certain airplanes, repetitive inspections of significant structural items in the vicinity of the re-rigged inner flap.

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

One commenter requests that the threshold for flap re-rigging required by paragraph (b) of the notice be increased from the proposed 1,000 hours time-in-service to 3,000 hours time-in-service or one year after the effective date of the AD. The commenter states that, at the time the service information cited in the notice was released, the airplane maintenance manual was also revised to ensure equal loading of both inboard and outboard flap actuators. The commenter indicates that its entire fleet was inspected for roller rattle and free play on the inboard flaps, and that no discrepancies were found. The commenter notes that it initiated a campaign to re-rig the flaps, but discontinued its campaign after re-rigging eight airplanes, since the work being performed was redundant to that being accomplished during scheduled maintenance. The commenter states that the inboard flaps are removed to replace rollers and other components during "C-check" maintenance, and that those actions often result in rigging the flap actuator. The commenter asserts that, given the high likelihood that flap re-rigging has already been accomplished during regularly scheduled maintenance, a relaxed compliance interval for re-rigging would be justified. The commenter adds that the Canadian AD relative to this subject provided for a compliance interval of six months for re-rigging non-discrepant flap systems. The commenter notes that the compliance interval proposed in the notice is consistent with a four-month time period. The commenter does not believe that an increased compliance interval of 3,000 hours time-in-service or one year would have an adverse impact on the short- or long-term functioning of the system.

The FAA concurs with the commenter's request to extend the compliance interval for flap re-rigging to 3,000 hours time-in-service or one year after the effective date of the AD. Based on results of a safety assessment, the FAA finds that the compliance time proposed by the commenter would adequately ensure safety, provided that the inspection for free play and roller rattle required by paragraph (a) of this AD is accomplished and that no discrepancies are found. The FAA has revised paragraph (b) of the final rule accordingly.

One commenter implies that the FAA should delete the requirement for repetitive inspections of structurally significant items (SSI) proposed in paragraph (c)(1) of the notice. The commenter states that, although the inspection proposed in paragraph (a) of the notice would disclose evidence of free play and roller rattle, the inspection would not provide any information with regard to the life of the airplane. The commenter concludes that a requirement to inspect SSI's for the life of the airplane based upon the results of the inspection proposed in paragraph (a) is unreasonable and may not be realistic in light of the stress the structure has experienced.

The FAA does not concur. Inspections of SSI's were developed during certification of the type design of these airplanes, independent of any inspections contained in this AD action. This AD requires early commencement of inspections of SSI's for certain airplanes if the results of the inspection required by paragraph (a) of this AD disclose discrepancies. In this case, the FAA considers a reduced compliance threshold for inspections of SSI's to be prudent in order to address the possibility that cracks or other damage may begin sooner than anticipated originally. No additional inspections of SSI's have been imposed by this AD.

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

The FAA estimates that 80 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $44,000, or $550 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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:

93-07-06 De Havilland, Inc.: Amendment 39-8538. Docket 92-NM-120-AD.

Applicability: Model DHC-8-100 and DHC-8-300 series airplanes; serial numbers 3 through 216, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, inspect the inboard flaps for free play and roller rattle, in accordance with the Accomplishment Instructions, Paragraph A., of de Havilland Service Bulletin S.B. 8-27-53, dated May 11, 1990.

Note: Evidence of free play and roller rattle, as defined in the service bulletin, is a desirable condition.

(b) If free play and roller rattle are found as a result of the inspection required by paragraph (a) of this AD: Within 3,000 hours time-in-service or one year after the effective date of this AD, whichever occurs first, re-rig the flap system, in accordance with the Accomplishment Instructions, Paragraph B., of de Havilland Service Bulletin S.B. 8-27-53, dated May 11, 1990. After accomplishment of this procedure, no further action is required by this AD.

(c) If free play and roller rattle are not found as a result of the inspection required by paragraph (a) of this AD: Within 250 hours time-in-service after the effective date of this AD, re-rig the flap system, in accordance with the Accomplishment Instructions, Paragraph B., of de Havilland Service Bulletin S.B. 8-27-53, dated May 11, 1990.

(1) If the airplane has accumulated more than 5,000 landings when the flap system is re-rigged in accordance with this paragraph: Within 250 hours time-in-service after the effective date of this AD, begin repetitive inspections of the structurally significant items (SSI) in the vicinity of the re-rigged inner flap (identified in the following table) and repeat at the intervals specified in the applicable FAA-approved maintenance program.

Airplane	Maintenance program	DHC SSI task identification No.
DHC-8 Series 100, All Models.	DHC-8 Series 100 Maintenance Program PSM 1-8-7, Part 2, Airworthiness Limitations Listings.	WF01, WF02, WF03, WF05, WF06, WF07, WF08, WF09, WF10, WF28, WF29, WF30, and WF31.
DHC-8 Series 300, Model 301.	DHC-8 Series 300 Maintenance Program PSM 1-83-27, Part 2, Airworthiness Limitations Listings.	WF01, WF02, WF03, WF05, WF06, WF07, WF08, WF09, WF10, WF28, WF29, WF30, and WF31.

(2) If the airplane has accumulated 5,000 or fewer landings when the flap system is re-rigged in accordance with this paragraph, no further action is required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, 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.

(e) 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.

(f) The inspection and re-rig shall be done in accordance with de Havilland Service Bulletin S.B. 8-27-53, dated May 11, 1990. 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 de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 14, 1993.

Issued in Renton, Washington, on April 7, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-8673 Filed 4-13-93; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 270, and 274

[Release Nos. 33-6990, 34-32116, IC-19399, File No. S7-27-92]

RIN 3235-AF50

Repurchase Offers by Closed-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rules and amendments to rules.

SUMMARY: The Commission is adopting a new rule under the Investment Company Act of 1940 (the "Act"), a new form under the Act, and a new rule and related amendments to certain rules under the Securities Exchange Act of 1934. The Commission also is publishing a new staff guideline and amendments to an existing staff guideline for the preparation of Form N-2, the registration form used by closed-end management investment companies. Under the new rule, closed-end management investment companies may repurchase their common stock at periodic intervals at net asset value; and closed-end management investment companies, whether or not making periodic repurchase offers, may make discretionary repurchase offers at net asset value not more frequently than once every two years. The new staff guideline and guideline changes would provide specific guidance for investment companies making repurchase offers under the rule. The provisions for periodic repurchase offers are intended to allow certain closed-end companies to offer investors a limited ability to resell their shares in a manner that traditionally has been available only to open-end company shareholders. The provisions for discretionary repurchase offers are intended to permit closed-end funds to make repurchase offers for their shares with an exemption from some of the requirements of the rules under the Exchange Act.

EFFECTIVE DATE: May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Robert G. Bagnall, Special Counsel, (202) 272-3042, or Diane C. Blizzard,

Assistant Director, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting rule 23c–3 under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act"). The adoption of rule 23c–3 implements part of the recommendations made in Chapter 11 of the report published last year by the Division of Investment Management ("Division"), Protecting Investors: A Half Century of Investment Company Regulation.[1] The Commission also is adopting Form N–23c–3 under the Act to serve as a cover sheet for certain filings required by rule 23c–3. In addition, the Commission is adopting amendments to rules 10b–6 [17 CFR 240.10b–6] and 13e–4 [17 CFR 240.13e–4] under the Securities Exchange Act of 1934 [15 U.S.C. 78a–78*ll*] (the "Exchange Act") to provide exemptions from those rules for repurchase offers pursuant to rule 23c–3, and new rule 14e–6 thereunder, which would exempt repurchase offers pursuant to rule 23c–3 from rules 14e–1 and 14e–2 [17 CFR 240.14e–1 and .14e–2]. The Commission also is publishing a new staff guideline, and amendments to an existing staff guideline, for the preparation of Form N–2 [17 CFR 239.14 and 274.11a–1].

In a companion release, the Commission today is proposing a rule amendment and a new rule under the Securities Act of 1933 (the "Securities Act") to permit funds that make periodic repurchase offers under rule 23c–3 to offer their common stock on a continuous or delayed basis, and to obtain automatic effectiveness for post-effective amendments to their registration statements and for new registration statements filed to register additional securities.[2]

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EXECUTIVE SUMMARY

The Commission today is adopting rule 23c–3 with certain modifications from the rule as proposed in July 1992 and published in the **Federal Register** August 6, 1992 (57 FR 34701). Rule 23c–3 allows closed-end management investment companies (including business development companies) to make repurchase offers to shareholders at net asset value, either at periodic intervals pursuant to a fundamental policy, or on a discretionary basis not more frequently than once every two years. Funds could make periodic repurchase offers every three, six, or twelve months. Funds making such offers must send shareholders a notification containing specified information at least twenty-one, and no more than forty-two days before each periodic deadline for submitting repurchase requests. That deadline would occur up to fourteen days in advance of the date on which a fund would determine the applicable net asset value and repurchase the shares; payment of repurchase proceeds must occur within seven days after repurchase. The dates of the repurchase request deadlines and latest possible date for computing net asset value must be matters of fundamental policy, changeable only by shareholder vote.

Rule 14e–6 and new paragraph (h)(7) of rule 13e–4 exempt repurchase offers pursuant to rule 23c–3 from certain tender offer regulations, including the filing requirements of rule 13e–4. New paragraph (h) of rule 10b–6 exempts repurchases pursuant to rule 23c–3 from rule 10b–6.

I. Background

Traditionally, shareholders of closed-end management investment companies have resold their common stock in different ways than shareholders of open-end companies. Unlike open-end shares, shares of closed-end funds are not redeemable by the issuer at net asset value and usually are traded in secondary markets, either on exchanges or over the counter. The market price of closed-end shares often can be at a significant discount from the net asset value of the shares.

While most resales of closed-end shares have been conducted through secondary market trades, some closed-end funds have made repurchase offers directly to shareholders pursuant to section 23(c)(2).[3] These repurchase offers are issuer tender offers and currently must comply with the requirements of the tender offer rules under the Securities Exchange Act, including rules 13e–4 and 14e–1. To the extent that a closed-end company making a repurchase offer is engaged in an offering of its shares, it also must obtain relief from rule 10b–6 under the Exchange Act, which generally prohibits persons involved in a securities distribution from bidding for or purchasing those shares and certain related securities until after their participation in the distribution is complete.

Redemptions of open-end shares are subject to section 22(e) of the Act which provides, subject to certain exceptions, that registered open-end companies may not suspend the right of redemption, and must pay redemption proceeds

[1] Division of Investment Management, SEC, Repurchases and Redemptions of Investment Company Shares, Protecting Investors: A Half Century of Investment Company Regulation (1992) [hereinafter the Protecting Investors report].

[2] Continuous or Delayed Offerings by Certain Closed-End Management Investment Companies, Automatic Effectiveness of Certain Registration Statements and Post-Effective Amendments, Securities Act Release No. 6989 (Apr. 7, 1993).

[3] 15 U.S.C. 80a–23(c)(2). Section 23 imposes certain requirements on the pricing, sale, and repurchase of shares of closed-end investment companies.

within seven days.[4] Rule 22c–1 requires open-end companies to compute net asset value daily and requires shares to be redeemed at the net asset value computed after receipt of a redemption request or of an order to purchase or sell the shares.[5]

Because open-end securities are redeemable, and closed-end are not, section 18 of the Act limits the use of leverage by closed-end and open-end investment companies in different ways.[6] Because of the difference in redeemability, there also are different requirements for the liquidity of open-end and closed-end company assets. The Commission has stated that, to raise sufficient cash to meet redemptions in a timely manner, open-end companies should maintain a high degree of liquidity by holding no more than fifteen percent of their assets in assets that cannot be sold in seven days at approximately the price used in determining net asset value (the "seven day standard").[7] This requirement ensures that portfolio securities can be sold and the proceeds used to meet redemptions in a timely manner. Closed-end companies are not subject to a liquidity standard.

Some recent developments have indicated that investors may not be able to satisfy their investment objectives with funds employing the traditional procedures for redeeming open-end shares and reselling closed-end shares. The liquidity standards for open-end companies have the effect of requiring funds that invest substantially in less liquid assets to register as closed-end funds. Closed-end companies, however, attract much less investment than open-end companies, and their shares often trade at a discount to net asset value. Sponsors have considered and tried various techniques for responding to, or attempting to forestall, those discounts. Those techniques have included conversion to open-end status, and periodic tender offers at net asset value. Both techniques have had certain disadvantages.

On July 28, 1992, the Commission proposed rule 23c–3.[8] Proposed rule 23c–3 would have permitted closed-end management investment companies to make periodic repurchase offers to shareholders at net asset value. Funds could have made such offers every three, six, twelve, twenty-four, or thirty-six months. The proposed rule generally would have required funds making such offers to send shareholders a notification containing specified information at least twenty business days in advance of each periodic deadline for submitting repurchase requests. Funds would have paid repurchase proceeds using the net asset value computed on the next business day after a repurchase deadline and would have been required to make payment within seven days after the deadline. The dates of those deadlines and the frequency of such offers would have been matters of fundamental policy, changeable only by shareholder vote.

Proposed rule 14e–6 and the proposed amendment to Exchange Act rule 13e–4[9] would have exempted repurchase offers under rule 23c–3 from certain tender offer provisions, including the filing requirements of rule 13e–4. Another proposed amendment would have exempted such repurchase offers from rule 10b–6.[10]

At the same time, the Commission proposed rule 22e–3. Rule 22e–3 would provide an exemption from the prohibition in section 22(e) of the Act on suspending the right of redemption of redeemable securities or postponing the payment of redemption proceeds for more than seven days after the tender of securities for redemption. Under the proposed rule, open-end management investment companies and certain insurance company separate accounts would be able to take up to thirty-one days to pay redemption proceeds; the thirty-one day redemption period would begin with the date of tender for open-end funds making rolling redemptions ("extended payment funds"), and with specified redemption deadlines for open-end funds redeeming at periodic intervals ("interval funds"). Certain corresponding changes to the rules governing registered separate accounts would permit the use of rule 22e–3 by registered separate accounts, whether organized as open-end management companies or as unit investment trusts.[11]

In the proposing release, the Commission also published for comment new Guidelines to Forms N–1A, N–2, N–3, and N–4. These guides would indicate to registrants where specific disclosure may be needed concerning the proposed repurchase and redemption procedures.

II. Discussion

The Commission received nineteen comment letters addressing proposed rule 23c–3.[12] All but three supported the general goal of providing procedures for periodic repurchase offers. Most, however, suggested changes to specific aspects of the proposal. The Commission is adopting rule 23c–3 with the same general structure and requirements as proposed, but also with modifications to several specific provisions to reflect many of the comments received.

A. Terms of Repurchase Offers

Rule 23c–3 permits a closed-end fund to repurchase its common stock directly through repurchase offers to all security holders.[13] A fund making periodic repurchase offers pursuant to paragraph (b) (a "closed-end interval fund") would be required to make such offers pursuant to a fundamental policy specifying key terms of the fund's repurchase offers. Those terms include the intervals between repurchase request deadlines (which could be three, six, or twelve months); the scheduled repurchase request deadline dates; and the maximum lengths of time between a repurchase request deadline and the date on which the fund computes the net asset value applicable to the repurchase (repurchase pricing date). The repurchase pricing date could occur no more than fourteen days after the repurchase request deadline; the fund must make payment by seven days thereafter (the repurchase payment deadline). In effect, a fund would have up to fourteen days' advance notice of

[4] 15 U.S.C. 80a–22(e).

[5] 17 CFR 270.22c–1.

[6] In particular, open-end companies are subject to the requirements of Investment Company Act § 18(f)(1) [15 U.S.C. 80a–18(f)(1)].

[7] *See* Guide 4 to Form N–1A, Revision of Guidelines to Form N–1A, Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828.

[8] Periodic Repurchases by Closed-End Management Investment Companies; Redemptions by Open-End Management Investment Companies at Periodic Intervals or with Extended Payment, Securities Act Release No. 6948 (July 28, 1992), 57 FR 34701.

[9] 17 CFR 240.13e–4.

[10] 17 CFR 240.10b–6.

[11] The Commission is neither adopting nor withdrawing proposed rule 22e–3 at this time.

[12] The commenters were Alliance Capital Management Corporation; the Subcommittee on Investment Companies and Investment Advisers of American Bar Association's Section of Business Law ("ABA Subcommittee"); Brown & Wood; Davis Polk & Wardwell; Eaton Vance Management; Fidelity Investments; Hale and Dorr; the Investment Company Institute ("ICI"); Madeleine Johnson; Merril Lynch Asset Management, North American Securities Administrators Association, Inc. ("NASAA"); the Committee on Securities Regulation of the Association of the Bar of the City of New York ("New York Bar Committee"); Newgate Management Associates; Prudential Mutual Fund Management, Inc.; Quest Advisory Corp.; Ropes & Gray; Prof. William Ruckstuhl; David Schacher; and Phillip Smith.

[13] Paragraphs (b)(1) and (c) refer to repurchase offers for common stock. Proposed paragraph (b)(1) used the term "securities" but implicitly limited repurchase offers to common stock, as the limitations on senior securities in proposed paragraph (b)(9) made clear. The wording of paragraphs (b)(1) and (c) as adopted clarifies this limitation.

the amount shareholders wish repurchased; the fund would have up to seven days after that in which to pay repurchase proceeds—just as open-end companies or closed-end companies making issuer tender offers now have seven days in which to make payment. A repurchase offer could be made for any amount of shares that is at least five percent, but no more than twenty-five percent, of the amount outstanding on the repurchase request deadline. If an offer is oversubscribed, the fund must prorate the repurchase, subject to limited exceptions.

1. Fundamental Policy Regarding Repurchase Offers

Paragraph (b)(2)(i) requires a closed-end interval fund to make repurchases pursuant to a fundamental policy, changeable only by vote of a majority of the outstanding voting securities,[14] specifying that the fund will make repurchase offers, and certain terms of those offers. Those terms include the intervals between repurchase request deadlines, the schedule of the repurchase request deadline dates, and the timing of repurchase pricing dates.

Paragraph (b)(2)(i)(B) retains from the proposal the requirement that the frequency of periodic intervals be a matter of fundamental policy.[15] Many commenters suggested that funds should be free to make offers more frequently than at the intervals selected in their fundamental policies, if the funds disclose these policies and notify shareholders in advance of any changes. Permitting funds to adjust their request deadlines, however, would in effect allow funds to shorten or lengthen their interval without consulting shareholders. Moreover, since paragraph (c) of the rule permits closed-end interval funds to make limited discretionary repurchase offers in addition to periodic repurchase offers pursuant to paragraph (b), there does not appear to be a need for such flexibility.[16] Accordingly, this requirement is unchanged.

The requirement that the policy specify the dates of repurchase request deadlines also is unchanged from the proposed rule.[17] In the proposing release the Commission requested comment on whether the dates of repurchase request deadlines should be non-fundamental, thus allowing the board of directors to adjust the dates without obtaining a shareholder vote. Some commenters argued that matters such as repurchase request deadlines should be non-fundamental and that it would be sufficient to notify shareholders of changes by mail or newspaper publication; they argued that because these procedures are new, it can be expected that adjustments will be necessary, and it would be expensive to have shareholders meetings for each adjustment. The Commission has concluded, however, that the repurchase request deadline should remain a matter of fundamental policy in order to provide investors with predictability.

The final rule adds the requirement in subparagraph (D) that the policy specify the latest possible day on which it will determine the price for repurchases; because paragraph (a)(4) specifies that the repurchase payment deadline is seven days after the repurchase pricing date, this fundamental policy in effect sets the latest possible deadline for paying repurchase proceeds. These steps of the repurchase procedures are new with the modification of the rule to permit funds to take up to twenty-one days to pay repurchase proceeds.[18]

As proposed, rule 23c–3 would have required all funds relying on the rule to specify, as a matter of fundamental policy, their minimum and maximum repurchase amounts—the minimum and maximum amounts that they could offer to repurchase. These amounts could not be less than five or more than twenty-five percent of the outstanding securities. In light of the maximum and minimum limits on the size of repurchase offers, it does not appear necessary to require that a fund also specify such limits in its repurchase policy; and this requirement has been deleted. Accordingly, the minimum and maximum limits have been moved to paragraph (a)(3), the definition of "repurchase offer amount."

a. *Suspending or postponing offers.* Paragraph (b)(3)(i) provides that a fund may suspend or postpone a scheduled repurchase offer in certain limited circumstances when repurchases would have severe consequences for shareholders or the fund. A fund may rely upon these exceptions with a vote of a majority of directors, including a majority of the independent directors. Subparagraph (A) provides an exception if a repurchase could affect a fund's tax status as a regulated investment company under Subchapter M of the Internal Revenue Code; and subparagraph (B) provides an exception if a repurchase would cause the fund's shares to be delisted from a national securities exchange. Subparagraphs (C) through (E) are based upon the clauses in section 22(e) of the Act providing when issuers of redeemable securities may suspend redemptions or postpone payment upon redemption; accordingly, these provisions are to be construed in conformity with interpretations of section 22(e).

This provision includes only one additional exception to those provided in the proposal: the exception in subparagraph (B) for circumstances that otherwise would cause the delisting of a fund's shares. Several commenters suggested that, given the importance of a secondary market to many investors, a fund should be able to suspend or postpone a repurchase offer if it would cause the fund's shares to be delisted.[19] This exception applies if a repurchase would cause a fund's shares to be delisted from an exchange or to cease to be quoted on NASDAQ.

Subparagraph (C) provides an exception for any period when the market where a fund's assets principally are traded is closed, or trading on such market is restricted. A commenter suggested that the exception in proposed subparagraph (b)(3)(ii) [subparagraph (b)(3)(i)(C) in the final rule] should be revised to replace the word "exchange" with the word "market."[20] This change accommodates funds investing primarily in securities traded over-the-counter, including on NASDAQ.

Commenters suggested that the rule also should provide for suspension or postponement when there is a premium or no or little discount in the secondary market price, or in the event of substantial adverse market developments.[21] An exception for a

[14] See section 2(a)(42) of the Act, 15 U.S.C. 80a–2(a)(42) (definition of the term "voting security").

[15] Paragraph (b)(2)(i)(B) requires that the policy specify the periodic intervals between repurchase request deadlines, while the proposal required that it specify the intervals between repurchase offers. This change recognizes that rule 23c–3 allows funds some leeway in the timing of sending out notifications of repurchase offers, while requiring predictability in the timing of the repurchase request deadlines.

[16] *See infra* section II.I.

[17] The term "repurchase deadline" in the proposed rule has been changed to "repurchase request deadline" in order to distinguish it from the "repurchase payment deadline," now defined in paragraph (a)(4).

[18] *See infra* section II.A.5.a for further discussion of these modifications.

[19] *See, e.g.*, Letter from Brown & Wood to Jonathan G. Katz, Secretary, SEC 7 (Nov. 3, 1992), File No. S7–27–92 [hereinafter Brown & Wood Comment Letter]; Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC 6 (Nov. 4, 1992), File No. S7–27–92 [hereinafter ICI Comment Letter].

[20] Letter from Ropes & Gray to Jonathan G. Katz, Secretary, SEC 8 (Nov. 4, 1992), File No. S7–27–92 [hereinafter Ropes & Gray Comment Letter]

[21] Letter from Davis Polk & Wardwell to Jonathan G. Katz, Secretary, SEC 3 (Nov. 4, 1992), File No.

Continued

premium or small discount would not be appropriate; the potential for repurchase offers may be the cause of that premium or small discount. Moreover, even if there were little or no discount at the time when a fund otherwise would make an offer, there is no assurance that the market price otherwise would not decline by the repurchase request deadline. An exception for substantial adverse market developments does not appear necessary; to the extent they materially impair a fund's ability to conduct a repurchase offer, to determine net asset value, or to pay repurchase proceeds, such exceptional events may justify suspension or postponement under subparagraph (D) or (E) and may be addressed on a case-by-case basis through Commission orders or Division no-action or interpretive positions under standards comparable to those under section 22(e).

New subparagraph (ii) of paragraph (b)(3) prescribes procedures to be followed when an offer is suspended or postponed under paragraph (b)(3)(i). If an offer is suspended or postponed, the fund must notify shareholders promptly. If the fund renews the offer, the fund must send a new notification of the offer as postponed to shareholders pursuant to the requirements of paragraph (b)(4).

b. *Funds currently making periodic repurchase offers.* New paragraph (b)(2)(iii) permits funds that already make periodic repurchase offers for their shares to treat their existing repurchase practices as a fundamental policy for purposes of paragraph (b)(2)(i). Thus, these funds should be able to make periodic repurchase offers under rule 23c–3 without a shareholder vote. Commenters had suggested that the rule include such a grandparent clause.[22] They argued that these funds' shareholders already are aware of the funds' repurchase policies, and that the expense of a shareholder vote would serve no interest of the shareholders. To make clear that a fund is electing to treat its prior repurchase offers as part of a policy within paragraph (b)(2)(i) of rule 23c–3, a fund's board of directors must adopt a resolution so stating and specifying the fund's policies pursuant to paragraphs (b)(2)(i) (A) through (D); the interval specified in the policy must conform to the actual frequency of the fund's prior repurchase offers. After the adoption of that resolution, pursuant to paragraph (b)(2)(i) the fund may not change its policy without a majority vote of the outstanding voting securities.

2. Repurchase Offers to All Security Holders

Paragraphs (b) and (c) require that repurchase offers be made to all holders of the security that is the subject of a repurchase offer.[23] This requirement, which is unchanged from the proposal, is intended to protect against unfair discrimination. It also requires that an offer be open to all holders of the security, even those who purchase after the fund transmits the offer to security holders.

3. Amount of Repurchase Offers

a. *Maximum and minimum size of repurchase offers.* Paragraph (a)(3), the definition of "repurchase offer amount," provides that a repurchase offer amount may not be less than five percent, and may not exceed twenty-five percent, of the amount of common stock outstanding on the repurchase request deadline. The definition retains the five and twenty-five percent limits from the proposal, but the limits apply to the size of each repurchase offer, rather than to maximum and minimum repurchase amounts, which the proposal would have required funds to specify by fundamental policy.

One commenter thought that the twenty-five percent maximum limit provided a reasonable way to distinguish funds operating under rule 23c–3 from open-end funds.[24] Most commenters, however, criticized the proposed maximum limit as restrictive or unnecessary and argued that such a ceiling is not needed to preserve a distinction between open-end and closed-end funds.[25] Some commenters argued that investors would not be hurt by repurchases of a higher amount. The commenters did not, however, suggest any other percentages that would distinguish closed-end interval funds from issuers of redeemable securities within section 2(a)(32) of the Act.[26] Accordingly, the Commission has retained the twenty-five percent maximum limit. To the extent that a fund determines it is appropriate to make an offer to repurchase a higher amount, it may do so through a discretionary repurchase offer pursuant to paragraph (c). The potential for discretionary repurchase offers pursuant to paragraph (c) for up to 100 percent of a fund's common stock, especially in combination with periodic repurchase offers pursuant to paragraph (b), might under some circumstances raise a question whether a fund making repurchase offers under rule 23c–3 is an issuer of redeemable securities within section 2(a)(32). To resolve any ambiguity on that point, new paragraph (d) provides that funds making repurchase offers pursuant to rule 23c–3 shall not thereby deemed to be issuers of redeemable securities.

The five percent minimum limit is unchanged from the proposal. Commenters generally agreed that the five percent minimum is appropriate and is unlikely to prejudice any fund; some supported the five percent minimum but stated that it need not be stated as a fundamental policy. In the proposed rule, the five percent minimum appeared in the definition of "minimum repurchase offer amount;" like the maximum limit, it has been moved because the rule as adopted does not require that each fund specify a minimum or maximum repurchase offer amount in its repurchase policy under paragraph (b)(2).

b. *Repurchase offer amount.* The definition of "repurchase offer amount" in paragraph (a)(3) also provides that a fund's directors shall determine the amount of each repurchase offer. As proposed, this definition provided that a fund could delegate to its adviser the determination of the amount of each repurchase offer. Some commenters stated that delegation of this determination to the adviser is appropriate because the board of directors would retain supervision.[27] Other commenters, however, stated that delegation to the adviser is not appropriate because of the potential conflict between the adviser's and the

S7–27–92 (the board should be authorized to suspend offers if there is a substantial adverse development such as the October 1987 market crash or if there is a premium or little discount in the market price) [hereinafter Davis Polk Comment Letter]; Letter from the Committee on Securities Regulation of the Association of the Bar of the City of New York to Jonathan G. Katz, Secretary, SEC 7 (Nov. 30, 1992), File No. S7–27–92 (the board should be able to terminate a repurchase offer if, as a result of market declines such as the October 1987 market declines, it would not be in the best interest of shareholders to complete an offer) [hereinafter New York Bar Committee Comment Letter].

[22] *See, e.g.*, Brown & Wood Comment Letter, *supra* note 19, at 6–7; letter from Merrill Lynch Asset Management to Jonathan G. Katz, Secretary, SEC 4 (Nov. 30, 1992), File No. S7–27–92 [hereinafter Merrill Lynch Comment Letter].

[23] The one commenter to address this requirement supported it. Brown & Wood Comment Letter, *supra* note 19, at 7–8.

[24] Letter from Hale and Dorr to Jonathan G. Katz, Secretary, SEC 4 (Nov. 4, 1992), File No. S7–27–92 [hereinafter Hale and Dorr Comment Letter].

[25] *See, e.g.*, Letter from the Subcommittee on Investment Companies and Investment Advisers of the American Bar Association's Section on Business Law to Jonathan G. Katz, Secretary, SEC 9 (Nov. 2, 1992), File No. S7–27–92 [hereinafter ABA Subcommittee Comment Letter]; ICI Comment Letter, *supra* note 19, at 7–8.

[26] 15 U.S.C. 80a–2(a)(32).

[27] *See, e.g.*, Brown & Wood Comment Letter, *supra* note 19, at 9; Hale and Dorr Comment Letter, *supra* note 24, at 5.

shareholders' potentially differing interests in the amount to be repurchased.[28] In addition, rule 23c–3 as adopted would not require funds to adopt fundamental policies specifying maximum and minimum repurchase offer amounts; this change decreases the advance certainty that investors would have concerning the size of repurchase offers. Accordingly, the Commission has revised this provision to require that the board of directors determine the repurchase offer amount in all repurchase offers under rule 23c–3.[29]

c. *Amount of securities repurchased.* Under rule 23c–3, a fund may take certain actions if security holders tender more than the repurchase offer amount. Paragraph (b)(5) requires a fund to repurchase pro rata if the amount tendered exceeds the repurchase offer amount. Paragraph (b)(5) also allows the fund to repurchase additional securities not exceeding two percent of the amount outstanding on the repurchase request deadline; beyond that two percent margin, the fund must repurchase pro rata. Paragraphs (b)(5) (i) and (ii), however, give the fund two optional exceptions to a strict pro rata repurchase: the fund may accept odd lot tenders of below 100 shares; and the fund may accept all-or-nothing tenders.[30]

The proposal would have limited the use of the two percent oversubscription allowance by providing that the total amount repurchased could not in any event exceed the maximum repurchase amount, which could not exceed twenty-five percent. As adopted, rule 23c–3 does not require funds to adopt maximum repurchase offer amounts as fundamental policy. In light of this change, paragraph (b)(5), as adopted here, does not limit the use of the oversubscription allowance.

Paragraph (b)(1) provides that a fund may not condition its obligation to repurchase shares upon the tender of any minimum amount of shares. One commenter suggested that rule 23c–3 should clarify that if shareholders tender less than the minimum percentage specified in a repurchase offer, the fund still is obligated to repurchase the shares tendered.[31] While it seems unlikely that a fund would set a floor for tenders in a repurchase offer intended to provide shareholder liquidity (rather than to gain control), rule 23c–3 as adopted clarifies that a fund is obligated to repurchase any amount of shares that may be tendered up to the repurchase offer amount.

4. Periodic Intervals

Paragraph (a)(1) defines the term "periodic interval" as an interval of three, six, or twelve months. As proposed, the definition also would have included intervals of twenty-four and thirty-six months. Some commenters suggested that the rule should limit the maximum interval to twelve months. For example, one commenter said that intervals over twelve months are confusing and produce minimal benefits.[32] Another commenter suggested that the rule should delete the 24 and 36 month intervals and instead allow discretionary repurchase offers.[33] The Commission agrees that longer intervals are likely to produce minimal benefits, especially since paragraph (c) of the rule as adopted permits closed-end funds to make discretionary repurchase offers. Accordingly, paragraph (a)(1) as revised omits the intervals of twenty-four and thirty-six months.

Some commenters suggested other changes. Several commenters said that the rule should incorporate the one and two month intervals from proposed rule 22e–3 instead of adopting that rule.[34] Another commenter proposed that the rule should permit other intervals (as long as in monthly increments, *e.g.* nine or fifteen months) as well as intervals greater than three years.[35] Two commenters suggested that the rule should permit any interval of three months or longer.[36] The rule as revised does not incorporate those suggestions. Longer monthly intervals would not be evenly divisible into one year and would not provide investors with any predictability. Shorter intervals such as one or two months are not compatible with the notification requirement in paragraph (b)(4); with shorter intervals, a fund would need to send out a notification for a repurchase offer before it had completed the previous offer.

a. *Timing of initial repurchase offer.* Paragraph (a)(7) prescribes a period in which a fund's initial repurchase offer must occur. The initial repurchase request deadline must occur no later than two intervals after the effective date of the fund's registration statement or the date of the shareholder vote adopting the fundamental policy prescribing the fund's intervals. Thus, for example, a new fund with a three month interval could schedule its initial repurchase request deadline as much as, but no later than, six months after the effective date of the registration statement; the same would be true for an existing closed-end fund that adopted a fundamental policy of quarterly repurchase offers, which could schedule its initial repurchase request deadline up to six months after the shareholder vote.[37]

The proposal contained no provision regarding the timing of a fund's initial repurchase offer. Some commenters, however, stated that a fund should be able to delay its initial offer for a specified period following the initial public offering; they argued that this delay would allow funds to implement investment programs fully before repurchasing securities.[38] In addition, this provision allows an existing fund to conduct a shareholder vote to adopt a fundamental repurchase policy without the constraint of being required to schedule the shareholder vote to occur one interval before the initial repurchase request date. Guide 10, as revised, requires prospectus disclosure, where applicable, of a fund's initial scheduled repurchase request deadline as part of the fund's disclosure concerning the timing of repurchase offers.

5. Timing of Repurchase Offers

a. *Repurchase pricing date and repurchase payment deadline.* Rule 23c–3 would give funds up to fourteen days' advance notice of the amount shareholders wish to have repurchased. Specifically, the "repurchase pricing

[28] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 9; letter from North American Securities Administrators Association, Inc. to Jonathan G. Katz, Secretary, SEC 4–5 (Nov. 18, 1992), File No. S7–27–92 [hereinafter NASAA Comment Letter].

[29] *See also infra* paragraph II.D for a discussion of the requirements concerning the independence of the board of directors.

[30] The pro rata provision, including the exceptions, is based upon paragraph (f)(3) of rule 13e–4.

[31] Ropes & Gray Comment Letter *supra* note 20, at 4.

[32] ICI Comment Letter, *supra* note 19, at 10–11.

[33] ABA Subcommittee Comment Letter, *supra* note 25, at 10.

[34] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25, at 5; Merrill Lynch Comment Letter, *supra* note 22, at 5.

[35] Davis Polk Comment Letter, *supra* note 21, at 5.

[36] Ropes & Gray Comment Letter, *supra* note 20, at 4; New York Bar Committee Comment Letter, *supra* note 21, at 5–6.

[37] This provision would not permit a fund relying on the grandparent clause in paragraph (b)(2)(iii) to delay its first repurchase offer after the board vote adopting a repurchase policy. The provision for initial repurchase offers in paragraph (a)(7) refers to the first repurchase request deadline after the effective date of the fund's registration statement or a shareholder vote adopting the fundamental policy specifying the fund's periodic interval, whichever is later. The first repurchase request deadline after the effective date would already have occurred; and there would be no shareholder vote on the periodic interval at the time of the board resolution.

[38] *See, e.g.* ABA Subcommittee Comment Letter, *supra* note 25, at 10 (proposing that funds should be able to delay initial repurchase offer for up to two years); Ropes & Gray Comment Letter, *supra* note 20, at 4.

date," which is defined in paragraph (a)(5), normally could occur up to fourteen days after the repurchase request deadline (it could occur later than the fourteenth day if the fourteenth day were not a business day). A fund relying on rule 23c–3 must pay repurchase proceeds to shareholders within seven days after the repurchase occurs; the definition of repurchase payment deadline in paragraph (a)(4) of the final rule requires that payment occur within seven days after the repurchase pricing date.

Those definitions and their content represent a significant change from the proposal.[39] Paragraph (b)(1) of the proposed rule required payment within seven days after the repurchase request deadline; the applicable price for repurchases was the net asset value computed on the next business day after the repurchase request deadline. With one exception,[40] however, all commenters suggested that funds should have up to a month to pay repurchase proceeds, as under proposed rule 22e–3.[41] They argued that this longer period would allow funds to invest in less liquid securities and that the proposed liquidity standard, which was keyed to the seven day payment period, was too restrictive and would disrupt portfolio management.

The revised pricing and payment provisions respond to those concerns by allowing funds a period of up to three weeks to pay repurchase proceeds and by requiring pricing seven days before that payment deadline. The longer period for repayment, while not as long as the thirty-one days provided in proposed rule 22e–3, would allow funds greater flexibility to manage portfolio assets after receiving repurchase requests. For that reason also, the liquidity standards in paragraph (b)(10) as adopted reflect the longer period that a fund could use to come up with the money to pay repurchase proceeds.[42]

Shareholders who tender their shares for repurchase will bear the risk or receive the benefit of any market changes during the period between the repurchase request deadline and the repurchase pricing date. Investment companies relying on rule 23c–3 will be expected to disclose this risk clearly in their prospectuses. Accordingly, Guide 10 as published here provides guidance to registrants concerning the disclosure of this risk.

The delay between the repurchase request deadline and the repurchase pricing date may require funds to consider carefully the proper accounting treatment of repurchase requests. The current accounting for a redemption by an open-end company is clear. Because a redemption meets the accounting definition of a liability,[43] the fund accounts for a redemption as a liability on the day the redemption is received. This is accounted for by transferring the redemption amount from capital in its books and records to a liability account. When to account for a repurchase request as a liability of a closed-end interval fund may be determined differently. Until the date that a shareholder may no longer rescind or modify the right to redeem (the repurchase request deadline), it is unlikely that a repurchase request should be treated as a liability. When, however, the payment by the fund is probable and reasonably estimable, the repurchase amount should be accounted for as a liability. This may be as of a date prior to the repurchase pricing date.

b. *Optional Earlier Repurchase Pricing and Payment.* Under paragraph (b)(2)(i)(D), a closed-end interval fund must specify in its fundamental repurchase policy the latest repurchase pricing date that the fund may use. The definition of repurchase pricing date in paragraph (a)(5) gives funds the option of pricing and paying repurchase proceeds earlier without a shareholder vote. A fund may use this option if the fund pays repurchase proceeds within seven days after the earlier repurchase pricing date, and using the earlier repurchase pricing date is not likely to result in significant dilution of either the shares that are tendered or those that are not.

This provision allows funds to determine net asset value earlier and pay repurchase proceeds promptly thereafter when the amount of a fund's liquid assets in relation to the amount of repurchase requests permits prompt payment. For example, if shareholders were to tender four percent of the outstanding shares as of the repurchase request deadline, while the fund had six percent of assets in cash, cash equivalents, or other assets that readily could be converted to cash, a fund could determine net asset value on the next business day and pay shareholders within seven days thereafter; there would be no need to sell less liquid assets and no dilution of the remaining shareholders. The combination of the option for early pricing with the ability to take up to fourteen days to price gives funds the flexibility to respond to a variety of portfolio conditions and accommodates two competing concerns: the desirability of determining net asset value and paying repurchase proceeds as soon as possible after the repurchase request deadline; and the mandate in section 23(c)(3) to avoid unfair discrimination against any shareholders, such as dilution of the interests of non-tendering shareholders.

This provision was not part of the proposed rule, which required pricing on the next business day after the repurchase request deadline and hence had no room to move the pricing date earlier. Several comments on rule 22e–3, however, which did allow pricing up to twenty-four days after the deadline for redemption requests, urged the Commission to allow funds to adjust the pricing date as long as they gave notice to shareholders of the date to be used.[44] One suggested that the fundamental policy should specify a maximum payment period and that funds should have the option of paying earlier.[45]

c. *Permissible Dates of Repurchase Deadlines.* The definition of "repurchase request deadline" in paragraph (a)(7) does not restrict the days of the month when a fund could schedule repurchase request deadlines. As proposed, the definition would have restricted those deadlines to the first or last calendar or business day, or the fifteenth calendar day or the next business day, of the month. The proposing release stated that the restrictions were intended to provide some consistency among the practices of different funds making periodic repurchase offers; upon further consideration, it does not appear that this requirement is necessary. Moreover, commenters uniformly expressed the view that the repurchase request deadlines should not be limited to three possible days a month. Some argued that concentrating all repurchases on

[39] The definitions and their wording are based upon the definitions of "redemption pricing date" and "redemption payment date" in proposed rule 22e–3.

[40] New York Bar Committee Comment Letter, *supra* note 21, at 10.

[41] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25, at 10–12, 17–18; ICI Comment Letter, *supra* note 19, at 10.

[42] *See infra* section II.C for a discussion of the liquidity standard.

[43] Statement of Financial Accounting Concepts No. 6 ("CON6") published by the Financial Accounting Standards Board defines certain elements of financial statements, including liabilities. CON6, at paragraph 35, defines liabilities as: "* * * probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of a past transaction" (footnote omitted).

[44] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 23; letter from Fidelity Investments to Jonathan G. Katz, Secretary, SEC 6–7 (Nov. 3, 1992), File No. S7–27–92 [hereinafter Fidelity Comment Letter].

[45] *See* letter from Prudential Mutual Fund Management to Jonathan G. Katz, Secretary, SEC 13–14 (Nov. 2, 1992), File No. S7–27–92 [hereinafter Prudential Comment Letter].

the same dates runs the risk of disrupting the market for the assets in which a fund invests.[46] One commenter argued that such calendar limitations restrict a fund's ability to purchase assets synchronized with the fund's repurchase schedule.[47] In light of the concerns over market disruption and scheduling, paragraph (a)(7) has been modified to remove the limitation on the permissible dates.

d. *Withdrawal and modification of repurchase requests.*—Paragraph (b)(6) requires funds to permit shareholders to withdraw or modify their repurchase requests until the repurchase request deadline and prohibits withdrawal or modification thereafter. Some commenters argued that this provision is restrictive because funds might sell portfolio assets in reliance upon repurchase requests received before the repurchase request deadline. Because, under rule 23c–3 as adopted, funds would have up to twenty-one days after the repurchase request deadline to pay repurchase proceeds, withdrawal or modification should not pose a problem. Accordingly, paragraph (b)(6) remains substantially as proposed.[48]

6. Notification to Shareholders

a. *Notification requirement.* Paragraph (b)(4)(i) requires a fund making a repurchase offer under rule 23c–3 to send shareholders a notification containing specified information at least twenty-one days, and no more than forty-two days, before the repurchase request deadline. This provision is modified only slightly from the proposal.

Some commenters supported the proposed notification requirement, or a stronger requirement.[49] Several other commenters, on the other hand, criticized the notification requirement as costly. They suggested that in many cases other forms of disclosure should be sufficient, including prospectus disclosure, disclosure in a fund's annual report, or advertising in a newspaper of general circulation such as the *Wall Street Journal.*[50]

Paragraph (b)(4)(i) retains the requirement of direct notification of shareholders essentially as proposed. Newspaper publication may be adequate in general corporate tender offers for cash, because the tight schedules under which such offers often take place would not allow for direct shareholder communications, especially where it was necessary for an intermediary to relay such communications to shareholders. For repurchase offers under rule 23c–3, however, especially periodic repurchase offers whose schedule is known well in advance, there is no comparable time pressure. Moreover, commenters did not provide any substantiation of any significant cost advantage favoring newspaper advertisements over direct communications; and the cost of transmitting such notifications can be reduced if funds send them to shareholders together with other communications such as periodic reports and use other means of economizing on costs of shareholder communications.[51] The flexibility funds have under the rule to adjust the timing of the notification and the freedom to select repurchase request deadlines on any day of the month should allow funds to coordinate the timing of notifications with the schedule of other mailings to shareholders such as semiannual reports, proxies, and other account mailings.

Paragraph (b)(4)(iii) is essentially unchanged from the proposal. It requires a fund to take certain steps to transmit a notification to the beneficial owners of the fund's securities.

b. *Required information.* Paragraph (b)(4)(i) requires that the notification disclose the basic terms of the repurchase offer. Those terms include: the existence of the repurchase offer; any repurchase fees; the repurchase offer amount; the dates of the repurchase request deadline, repurchase pricing date, and repurchase payment deadline, and the possibility of use of an earlier repurchase pricing date; the risk of fluctuation in net asset value between the repurchase request deadline and the repurchase pricing date; the procedures for requesting repurchase and the right to withdraw or modify repurchase requests until the repurchase request deadline; the procedures for pro rata repurchases; the circumstances in which a fund might suspend or postpone a repurchase offer; net asset value within the preceding seven days and information about means for shareholders to learn net asset value thereafter; and market price information, if the fund's shares are traded in a secondary market.

Most of those terms are retained from the proposed rule, but final paragraph (b)(4)(i) adds the requirement of information about withdrawal or modification under subparagraph (E), and of information about the fund's rights of suspension or postponement or a repurchase offer under subparagraph (G). In addition, the final rule modifies the requirement for the date on which the net asset value included in the notification is computed: the proposal specified the net asset value on the date of the notification; as modified, subparagraph (H) requires only net asset value computed within the preceding seven days. Since rule 23c–3 requires funds to compute net asset value at least weekly, in effect this provision would permit a fund to include the most recent regularly computed net asset value. These modifications are based upon the suggestions of commenters.[52]

c. *Exception from notification requirement.* Paragraph (b)(4)(i) as adopted requires that a fund send notifications to shareholders in all repurchase offers pursuant to rule 23c–3. The final rule eliminates one exception in proposed rule 23c–3 providing that no notification need be sent if a fund has a fundamental policy of making all repurchase offers in the same amount.[53] Several commenters criticized the proposed exception. One commenter stated that the proposed exception is "unfair" because it assumes

[46] *See, e.g.* Brown & Wood Comment Letter, *supra* note 19, at 12; Fidelity Comment Letter, *supra* note 44, at 3.

[47] *See* Davis Polk Comment Letter, *supra* note 21, at 3 (the payment dates of some securities such as GNMA certificates may not be synchronized with the three dates in the proposed rule).

[48] Paragraph (b)(10) as adopted does add the words "or modified." This change clarifies (as was implicit in the proposal) that a shareholder may withdraw one tender and submit another tender in a different amount.

[49] *See, e.g.* NASAA Comment Letter, *supra* note 28, at 5; New York Bar Committee Comment Letter, *supra* note 21, at 10. *See also* Letter from Prof. William Ruckstuhl to Jonathan G. Katz, Secretary, SEC 2 (Aug. 28, 1992), File No. S7–27–92 [hereinafter Ruckstuhl Comment Letter] (questioning whether brokers will cooperate in passing on notifications to shareholders, and stating that the rule should ensure actual notification, and should contain specific requirements to ensure that beneficial owners receive actual notification and can sue for damages if they have not received such notice in a prompt manner and have "suffered economic loss due to the lack of opportunity to sell back their shares").

[50] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 10–12; Merrill Lynch Comment Letter, *supra* note 22, at 5.

[51] *See* Fidelity Comment Letter, *supra* note 44, at 5.

[52] *See* Ropes & Gray Comment Letter, *supra* note 20, at 5 (the rule should require net asset value and market prices only within five days of the mailing date; information as of the mailing date is not practicable); New York Bar Committee Comment Letter, *supra* note 21, at 10 (the notification should also disclose the circumstances that could lead to suspension, postponement, or termination of a repurchase offer, and should include a statement regarding the shareholders' right to withdraw tenders before the deadline); NASAA Comment Letter, *supra* note 28, at 5 (the notification should also disclose the total value of the fund's portfolio and should be coordinated with the dissemination of shareholder reports).

[53] The text of the proposed rule did not contain this exception, which was stated only in the text of the release. Thus, the final rule text does not differ in this respect from the text in the proposing release.

that shareholders will remember prospectus disclosure; the commenter argued investors cannot remember that disclosure and should receive information.[54] Another commenter argued that the exception might encourage fund managers to fix their repurchase policies even if fixed repurchase amounts would not be in the interests of shareholders.[55] Another stated that this exception would deny shareholders important information needed to decide whether to tender.[56] The final rule eliminates that proposed exception in order to ensure that all funds relying on rule 23c–3 provide information to shareholders that is pertinent to their decision whether or not to tender, and that the funds provide shareholders with any written materials that shareholders must complete or execute to effect a repurchase request.

d. *Length of notice period.* Paragraph (b)(4)(i) requires that the fund send the notification to shareholders at least twenty-one, but no more than forty-two, days before the repurchase request deadline. The twenty-one day minimum requirement is intended to ensure that shareholders receive notice far enough in advance to decide whether they want to tender their shares and to return their repurchase requests by the repurchase request deadline. The forty-two day maximum is intended to ensure that shareholders do not receive the notice so far in advance that they forget about the offer. Commenters generally supported the twenty business day minimum in the proposal as reasonable.[57] The proposing release requested comment whether the rule should add a maximum such as thirty business days; several commenters endorsed that idea.[58]

e. *Filing.* Paragraph (b)(4)(ii) requires funds to file three copies of the notification with the Commission. As adopted, paragraph (b)(4)(ii) adds the requirement that the copies of the notification filed with the Commission be accompanied by new Form N–23c–3, "Notification of Repurchase Offer." The Commission also is adopting Form N–23c–3. The form would apply to both periodic and discretionary repurchase offers and would require registrants to indicate the category of offer to which their notification pertains. In the rule as proposed, the information required to be provided on Form N–23c–3 would have been required to be provided on the copies of the notification.

7. Net Asset Value

a. *Net asset value as the repurchase price.* Rule 23c–3 requires all repurchases to be made at net asset value, subject to the imposition of a repurchase fee not exceeding two percent. This requirement is not modified from the proposal. Some commenters suggested that a fund's board of directors should have the authority to set a repurchase price at a level above the market price but below net asset value; they argued that the requirement to use net asset value unduly limits a fund's ability to respond to market conditions.[59] They noted also that section 23(c)(2) of the Act does not prohibit tender offers at prices below net asset value. Use of net asset value, however, is intended to preclude the recurrence of the abuses that were noted in the study conducted by the Commission that preceded the adoption of the Act.[60] The use of net asset value avoids the dilution to either the tendering or the remaining shareholders that would occur under the commenters' suggestion. Accordingly, paragraph (b)(1) of the rule as adopted retains the requirement to use net asset value. Paragraph (b)(1) also retains the two percent repurchase fee limit, which commenters supported.[61]

b. *Frequency and timing of computation.* Under paragraph (b)(7)(i) as under the proposal, closed-end interval funds generally must compute net asset value at least weekly, on such day and at such times as determined by the board of directors. One commenter stated that there is no reason to require weekly pricing other than to include the information in notifications to shareholders and to price repurchases; it suggested that the requirement should have exceptions (as under rule 22c–1) for weeks or days when the funds receive no orders to purchase or tender.[62] Several others, however, commented that weekly computations of net asset value generally should be sufficient and should not be burdensome.[63] Accordingly, paragraph (b)(7)(i), as adopted, retains the requirement of weekly computation of net asset value.

In addition, paragraph (b)(7)(ii) requires funds to compute net asset value daily during the five business days preceding the repurchase request deadline. This requirement was not in the proposed rule. Some commenters, however, stated that more frequent pricing should be required after the beginning of a repurchase offer.[64]

For funds that are making an offering of their shares, paragraph (b)(7)(iii) requires daily forward pricing, subject to certain exceptions based on those in rule 22c–1. Many commenters recommended that more frequent computation should be required for funds that offer their shares continuously.[65]

c. *Distribution financing.* The requirement that repurchases take place at net asset value and the limitation of repurchase fees to two percent implicitly preclude the imposition of contingent deferred sales loads (CDSLs). At present, several funds that consider repurchase offers periodically impose early withdrawal charges comparable to CDSLs. Several commenters suggested that closed-end funds should not be limited to front-end loads; they argued that closed-end interval funds should be able to impose CDSLs, as well as asset-based sales charges (ABSCs) comparable to rule 12b–1 fees. One commenter further suggested that if funds may charge CDSLs, they should be permitted to waive or reduce charges in a manner consistent with rule 22d–1 and should be required to include disclosure concerning CDSLs in notifications to shareholders.[66] Another commenter suggested that any CDSLs should be subject to limitations similar to those under the sales charge rule of the National Association of Securities Dealers, Inc. (NASD).[67]

The Commission is not proposing any rule provisions regarding the use of CDSLs or ABSCs by closed-end interval funds at present. Such consideration may be appropriate after the Commission considers whether to adopt proposed rule 6c–10, which would

[54] Ruckstuhl Comment Letter, *supra* note 49, at 1.

[55] Prudential Comment Letter, *supra* note 45, at 7.

[56] Ropes & Gray Comment Letter, *supra* note 20, at 7.

[57] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 13.

[58] *See, e.g.*, New York Bar Committee Letter, *supra* note 21, at 6 (suggesting a thirty business day maximum; Ropes & Gray Comment Letter, *supra* note 20, at 5 (suggesting a forty-five business day maximum).

[59] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25, at 6–7; Letter from Rosenman & Colin, on behalf of Quest Advisory Corp., to Jonathan G. Katz, Secretary, SEC (Oct. 8, 1992) [hereinafter Quest Comment Letter].

[60] *See* Sec. Act Rel. 6948, *supra* note 8, at nn. 12–30 and accompanying text.

[61] *See, e.g.*, Brown & Wood Comment Letter, *supra* note 19, at 15; ICI Comment Letter, *supra* note 19, at 14.

[62] Ropes & Gray Comment Letter, *supra* note 20, at 6.

[63] *See, e.g.*, New York Bar Committee Comment Letter, *supra* note 21, at 10–11; Hale and Dorr Comment Letter, *supra* note 24, at 7.

[64] *See, e.g.*, Fidelity Comment Letter, *supra* note 44, at 4; Prudential Comment Letter, *supra* note 45, at 9.

[65] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25, at 18; Fidelity Comment Letter, *supra* note 44, at 4; ICI Comment Letter, *supra* note 19, at 14.

[66] Hale and Dorr Comment Letter, *supra* note 24, at 4.

[67] ICI Comment Letter, *supra* note 19, at 14 n.26.

permit the imposition of CDSLs by open-end companies, and has the opportunity to monitor the effects of the NASD sales charge rule upon distribution charges of open-end companies, which goes into effect in July of this year.[68]

B. Issuance of Senior Securities

Paragraph (b)(9) provides that closed-end interval funds may issue two categories of senior securities or other indebtedness. First, they may issue senior securities or other indebtedness maturing by the next repurchase pricing date. Because such senior securities or indebtedness would no longer be outstanding when the repurchase occurs, they should not trigger certain requirements of section 18 that otherwise might prevent a repurchase.[69] Second, funds may issue senior securities or other indebtedness whose terms provide for redemption or call of the securities, or repayment of the indebtedness, by the repurchase pricing date as necessary to permit repurchase. For example, a fund could issue callable preferred stock with mandatory partial or total redemption [70] when necessary to permit a fund to repurchase any amount of common stock that the board of directors may determine to repurchase. This provision is intended to provide shareholders with assurance that outstanding senior securities or other indebtedness will not prevent a fund from carrying out a scheduled repurchase offer.[71]

As proposed, paragraph (b)(9) would have limited funds relying on rule 23c–3 to borrowing with asset coverage of 300 percent; this requirement was the same as the open-end fund senior security standard, with the difference that eligible lenders were not limited to banks. One commenter supported the proposed restrictions on senior securities.[72] Otherwise, commenters criticized the proposed restrictions. One commented that if a one month payment period were permitted, funds would have greater ability to reduce senior securities if necessary to meet asset coverage requirements.[73] Another commenter stated that the rule should impose no restrictions on the issuance of senior securities by closed-end interval funds.[74] Several commenters suggested that funds should be able to issue senior securities, pursuant to the standard in section 18(a), so long as some amount of those senior securities is callable or will mature within the time period by which a fund must pay repurchase proceeds.[75] They argued that such senior securities would give funds the ability to reduce their outstanding senior securities or other indebtedness enough that asset coverage requirements would not preclude repurchases. Paragraph (b)(9) as adopted responds to those suggestions.

C. Liquidity

Paragraph (b)(10) imposes a liquidity standard on closed-end interval funds to ensure that funds can complete repurchase offers. Rule 23c–3 as proposed would have required certain percentages of a fund's assets to consist of assets that could be sold or disposed of in the ordinary course of business in seven days at approximately the price at which the fund valued the assets; this was derived from the seven-day standard applicable to open-end companies.[76] Instead of that standard, paragraph (b)(10) as adopted requires that a specified percentage of the portfolio consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the fund has valued the investment, within the period within which the fund pays repurchase proceeds.[77] This modification corresponds to the changes in rule 23c–3 permitting funds operating under the rule to take up to twenty-one days to pay repurchase proceeds. In addition, paragraph (b)(10) as adopted counts as satisfying the liquidity requirement any asset that matures by the repurchase payment deadline. This latter category of assets is derived from a provision in the liquidity standard of proposed rule 22e–3.[78]

The standard requires that, from the time of the repurchase offer until the repurchase pricing date, a fund making a repurchase offer under rule 23c–3 must have assets satisfying the liquidity standard equal to at least 100 percent of the repurchase offer amount. The standard has been modified from the proposal in three respects. First, the rule eliminates the part of the proposed liquidity standard that would have required a closed-end interval fund to maintain at all times a certain percentage of its portfolio in assets satisfying the liquidity standard. Commenters criticized this provision as requiring a level of liquidity even when a repurchase offer was months away and there was no need for such liquidity. Second, the standard applies from the time a fund sends out the repurchase offer notification until the repurchase pricing date, while under the proposed rule the comparable part of the standard literally applied only when the fund sends out the notification. This application of the standard continuously during the repurchase offer, rather than just at one time, better effects the stated purpose of ensuring that the fund is in a position to carry out the repurchase offer. Third, the percentage has been reduced from the proposal: from 150 percent of the repurchase offer amount to 100 percent. The 100 percent requirement should still assure that a fund that makes a repurchase offer is in a position to carry out that offer.

Virtually all commenters criticized the proposed liquidity standard as overly restrictive. Some commented that the standard would deter funds from relying on rule 23c–3, since other closed-end funds are subject to no liquidity requirement.[79] Some questioned whether any liquidity standard is needed and that an adviser's ability to determine whether a fund's

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[68] See Exemptions for Certain Registered Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 (proposing rule 6c–10); Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985 (approving changes to NASD sales charge rule to address asset-based sales charges).

[69] Under section 18, senior securities representing indebtedness and issued by a closed-end fund must have asset coverage of at least 300% after the issuance of such securities; and senior securities in the form of stock must have asset coverage of at least 200%. Asset coverage is defined in section 18(h). Section 18(a) requires that the terms of senior securities issued by closed-end funds prohibit repurchases of common stock if the repurchases would reduce asset coverage below the required levels.

[70] For other requirements applicable to the call or redemption of securities by a closed-end fund, see rule 23c–2 [17 CFR 270.23c–2].

[71] The senior security limitations of paragraph (b)(9) depend on whether the senior security matures or is callable by the latest possible repurchase pricing date set in the fundamental policy under paragraph (b)(2). Funds that consider using an earlier repurchase pricing date pursuant to paragraph (a)(5)(iii) may need to confirm that early repurchase will comply with the asset coverage requirements of section 18 even if no senior securities mature or are called. If early repurchase under those conditions did not comply with the asset coverage requirements, repurchase would be prohibited by section 18(a).

[72] New York Bar Committee Comment Letter, *supra* note 21, at 12.

[73] Davis Polk Comment Letter, *supra* note 21, at 7.

[74] Ropes & Gray Comment Letter, *supra* note 20, at 6.

[75] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 15–16 (suggesting that an amount of senior securities equal to the maximum repurchase amount should be callable); Prudential Comment Letter, *supra* note 45, at 10–11.

[76] Sec. Act Rel. No. 6948, *supra* note 8, 57 FR 34712. *See supra* note 7 and accompanying text on the seven-day standard for open-end companies.

[77] This requirement means that individual assets must be saleable under those circumstances, and not necessarily that the entire specified percentage of a fund's portfolio be saleable within that period.

[78] Paragraph (c)(1)(ii).

[79] *See, e.g.*, Prudential Comment Letter, *supra* note 45, at 12.

assets are sufficiently liquid, together with a longer payment period should provide sufficient protections.[80] Another argued that review by directors should take the place of any liquidity standard.[81] Several commenters proposed alternative liquidity requirements, including suggestions that a liquidity standard should apply at different times,[82] as well as that the rule should impose lower percentages.[83] Commenters suggested that closed-end funds should have same ability as under 22e–3 to count maturing debt securities as liquid.[84] The liquidity standard as proposed would have limited a fund's ability to invest in less liquid securities. The modification of the period for paying repurchase proceeds, and hence of the liquidity requirement would permit funds to rely on rule 23c–3 while holding a less liquid portfolio than a conventional mutual fund or than many conventional closed-end funds.

As under the proposal, subparagraphs (ii) and (iii) of paragraph (b)(10) impose certain duties on the board of directors. Subparagraph (iii) as adopted requires the board of directors to review the liquidity of a fund's portfolio as the board deems necessary. As proposed, this provision would have required the board to conduct that review at least annually. The annual review requirement, however, appears inconsistent with the Commission's recent proposal to delete annual review requirements in certain other rules under the Act.[85] Accordingly, that requirement has been deleted.

D. Independent Directors

Paragraph (b)(8) requires that a fund making repurchase offers under rule 23c–3 have a board with a majority of directors who are not interested persons of the fund and who are self-nominating. This requirement is intended to ensure that the board of directors provides independent decisions or scrutiny for actions or decisions that may involve a conflict of interest between the adviser and shareholders. This requirement is not changed from the rule as proposed. Certain commenters questioned the appropriateness of this requirement and the extent of any potential conflict between the fund and the adviser.[86] Some commenters implied that the proposed requirement was simply the implementation of the recommendation in the Protecting Investors report that investment company boards of directors include a majority of independent directors and that the independent directors be self-nominating.[87] As stated in the proposing release, however, the determination of the amount of each repurchase offer presents a potential conflict of interest between the investment adviser and shareholders: the investment adviser may be interested in making a small repurchase offer in order to retain maximum assets under management, while the shareholders may be interested in having a large repurchase offer made so that the fund will repurchase all shares that are tendered. This potential conflict is not present with other investment companies; for example, no such conflict exists for open-end companies, and proposed rule 22e–3 contains no comparable requirement. Under rule 23c–3 as adopted, the fund has greater latitude than under the proposal to set the repurchase offer amount. Accordingly, the independent director requirements of paragraph (b)(8) have been retained as proposed.

E. Offerings of Securities by Companies Making Periodic Repurchase Offers

Closed-end interval funds may offer additional shares in order to counter reductions in net assets caused by repurchases or in order to increase assets under management. In the proposing release, the Commission did not propose any new rules or rule changes to accommodate such offerings but requested comment whether it should amend rule 415 under the Securities Act or adopt a post-effective amendment procedure comparable to rule 485 under the Securities Act.[88] All commenters that addressed the topic agreed that the Commission should amend the rules governing offerings by closed-end funds. They noted that exemption from rule 10b–6 does not obviate the need for changes to permit continuous or delayed offerings (including intermittent offerings). Accordingly, the Commission today is proposing a new rule and rule amendments to modify the offering and registration procedures available to closed-end interval funds.[89]

F. Disclosure Regarding Repurchase Offers

1. Staff Guide

When the Commission proposed rule 23c–3 regarding periodic repurchase offers by closed-end investment companies, it also published for comment a new staff Guide for Form N-2 (Guide 10), which is intended to assist registrants and their counsel in the preparation of registration statements for closed-end investment companies intending to make such repurchase offers. Several comments were received on the Guide, and, as a result, the Guide has been revised to reflect these comments as well as changes in the rule as adopted. In particular, changes have been made to reflect (1) the fact that the rule as adopted does not require the maximum and minimum amount of each repurchase offer to be specified as matters of fundamental policy, (2) the additional risks redeeming shareholders may face as a result of the extension of the maximum permissible repurchase period from seven days to twenty-one days, and (3) the requirement for disclosure of total return based upon net asset value as well as current market price for registrants making periodic repurchase offers for their shares.[90] In

[80] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25; Merrill Lynch Comment Letter, *supra* note 22, at 7.

[81] Brown & Wood Comment Letter, *supra* note 19, at 20.

[82] *See, e.g.*, Ropes & Gray Comment Letter, *supra* note 20, at 7 (the 150% requirement should apply only during the period between the notification and the repurchase deadline; and any continuous liquidity requirement should not apply during any period during which a fund could delay its first repurchase offer after the initial public offering); ICI Comment Letter, *supra* note 19, at 16–19 (any liquidity requirement should apply only at each repurchase deadline and should be a 31 day standard, applied to 85% of repurchase offer amount; if repurchase offers are fully subscribed, funds can borrow); Fidelity Comment Letter, *supra* note 44, at 5–6 (the standard should require (1) that a fund, at beginning of a repurchase offer, have potential to have sufficient cash by payment deadline to satisfy a reasonable estimate of the amount likely to be tendered; and (2) that the fund, seven days after the repurchase request deadline, must have liquid assets equal in value to the shares actually tendered; that a "reasonable estimate" would be based on the greater of the amount tendered in the most recent offer and the average number of shares tendered in the four preceding repurchase offers).

[83] *See Prudential Comment Letter*, supra note 45, at 12 (funds should be required to maintain assets equal to 85% of the repurchase offer amount in assets that are liquid by 7 day standard (or by 31 day standard if longer repayment permitted), or in assets that mature by the repurchase payment deadline).

[84] *See, e.g.*, Davis Polk Comment Letter, *supra* note 21, at 7; Ropes & Gray Comment Letter, *supra* note 20, at 7.

[85] Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Securities Act Release No. 6971 (Dec. 30, 1992), 58 FR 2999.

[86] *See, e.g.*, New York Bar Committee Comment Letter, *supra* note 21, at 8–9; Ropes & Gray Comment Letter, *supra* note 20, at 3–4, 8.

[87] *E.g.*, ICI Comment Letter, *supra* note 19, at 19. *See* Protecting Investors, *supra* note 1, Chapter 7, *Investment Company Governance*.

[88] 17 CFR 230.415, .485.

[89] Sec. Act Rel. 6989, *supra* note 2.

[90] One commenter recommended additional disclosure with respect to the illiquid nature of a closed-end interval fund's portfolio and the increased risk associated with an investment in such a fund. The Commission does not believe that

addition, several changes have been made in Guide 2 ("Issuer Repurchase of Securities") to reflect the adoption of procedures for discretionary repurchase offers by closed-end investment companies.

Guide 10 also provides instructions for the disclosure of "total investment return" as part of the Financial Highlights section in response to Item 4 of Form N–2. Guide 10 clarifies that a closed-end interval fund whose shares are publicly traded should calculate and disclose total investment return based on both the current market price of the fund's common stock and the net asset value thereof; a fund whose shares are not publicly traded should calculate total return only on the basis of its net asset value. The proposing release, which was published before the adoption of the amendments to Form N–2 requiring total investment return, requested comment on whether funds should be either permitted or required to provide total return information in their financial highlights based only on net asset values rather than on market price of the fund's shares. Commenters suggested various options permitting or requiring total return based on net asset value.[91] Guide 10, as published here, responds to those comments.

2. Terminology for Funds Operating Under Rule 23c–3

Rule 23c–3 does not include any requirement that funds operating under rule 23c–3 use any descriptive term to distinguish themselves from other investment companies. Some commenters suggested that closed-end funds operating under rule 23c–3 should be required to use a descriptive term (*e.g.* "periodic repurchase", "interval", or "closed-end interval") on prospectus cover, and in advertisements and sales literature.[92] Such terminology may not provide accurate information to the public about a new type of fund since the rule would encompass two types of funds that may operate differently: Funds that are exchange traded and use repurchase procedures as an incidental mechanism to enhance market price; and funds that are not exchange traded and whose repurchase offers provide the sole source of liquidity for shareholders. Therefore, the rule as adopted does not require the use of any specific term. The Commission, however, while not requiring the use of any specific term, believes that it would be deceptive and misleading for a closed-end fund to use any term or name implying that its securities are redeemable or that the fund is a mutual fund.[93]

3. Disclosure in the Annual Report

Paragraph (b)(2)(ii) requires a closed-end interval fund to include in its annual report to shareholders certain information about its repurchase offers. Subparagraph (A) requires the fund to disclose its fundamental repurchase policy under paragraph (b)(2)(i). Under subparagraph (B), the fund must include information about the repurchase offers during the year covered by the annual report, including the number of repurchase offers, the repurchase offer amount in each repurchase offer, the amount tendered in each repurchase offer, and the extent to which the fund relied upon the oversubscription allowance, prorated repurchases, or relied upon the exceptions to proration under paragraph (b)(5). This requirement, which was not included in the proposal, is intended to ensure that investors who purchase shares in a secondary market can have access to relatively current disclosure about a fund's repurchase procedures. Several commenters suggested that rule 23c–3 should ensure that information reaches investors who purchase in the secondary market through such means as requirements for filing documents with the Commission containing disclosure of changes in funds' procedures,[94] or through inclusion of a copy of a fund's repurchase policy in its annual report to shareholders.[95] Another commenter suggested that Form N–2 should require disclosure concerning a fund's experience with repurchase offers (including frequency, amount offered to repurchase, and the amount tendered); and that this disclosure should allow investors to assess the likelihood that their shares would be repurchased.[96] Paragraph (b)(2)(ii) as adopted requires such disclosure in the annual report.[97]

G. Amendment to Rule 10b–6

Rule 10b–6 under the Securities Exchange Act [17 CFR 240.10b–6] generally prohibits persons involved in a distribution of securities from bidding for or purchasing those securities and certain related securities until after their participation in the distribution is complete. New paragraph (h) of rule 10b–6 exempts repurchases pursuant to rule 23c–3 from that prohibition. The scope of the exemption would be broader than under the proposal because of the adoption of paragraph (c) of rule 23c–3, which provides for limited discretionary repurchase offers. Commenters on the proposal unanimously endorsed the proposed exemption from rule 10b–6, and several commenters specifically suggested that discretionary repurchase offers should come under the same exemption. They argued that investment company repurchases at net asset value do not involve the abuses that rule 10b–6 was intended to prevent. Accordingly, new paragraph (h) of rule 10b–6 continues to exempt repurchase offers pursuant to rule 23c–3.

H. Amendments to Tender Offer Rules

New paragraph (h)(7) of Exchange Act rule 13e–4 exempts repurchase offers pursuant to rule 23c–3 from the requirements of rule 13e–4 for issuer tender offers. In addition, new Exchange Act rule 14e–6 exempts such repurchase offers from rules 14e–1 and 14e–2. The scope of these exemptions would be broader than under the proposal because of the adoption of paragraph (c) of rule 23c–3, which provides for limited discretionary repurchase offers.[98] Commenters on the proposal

such additional disclosure is required. Unlike open-end funds, closed-end funds are not required to meet any liquidity requirement with respect to their portfolio investments. Closed-end interval funds, however, must comply with the minimum liquidity requirements of rule 23c–3(b)(10) and, as a result, may be *more*, rather than less, liquid than their non-repurchasing counterparts.

[91] ICI Comment Letter, *supra* note 19, at 20–21 (all closed-end funds, including funds under rule 23c–3, should be required to reflect total return using net asset values); Fidelity Comment Letter, *supra* note 44, at 10; NASAA Comment Letter, *supra* note 28, at 5–6 (total return should be calculated using both market and net asset values). Other commenters stated that funds should have the flexibility to use either kind of total return information. Brown & Wood Comment Letter, *supra* note 19, at 23 (stating that the Commission should require "appropriate disclosure regarding the limitations of the reliability of such [total return] information"); Merrill Lynch Comment Letter, *supra* note 22, at 7.

[92] ICI Comment Letter, *supra* note 19, at 10; Fidelity Comment Letter, *supra* note 44, at 20 (suggesting the term "closed-end interval fund").

[93] *See* Fidelity Comment Letter, *supra* note 44, at 10 (recommending that, under section 35 of the Act, the Commission should prohibit closed-end funds from using a name implying that securities are redeemable or that a closed-end fund is a mutual fund).

[94] Fidelity Comment Letter, *supra* note 44, at 3–4 (noting that there is no required disclosure document comparable to a Form 8–K or 10–Q).

[95] *See, e.g.*, Brown & Wood Comment Letter, *supra* note 19, at 22; Prudential Comment Letter, *supra* note 45, at 8.

[96] New York Bar Committee Comment Letter, *supra* note 21, at 12.

[97] *Cf.* paragraph (b) of rule 8b–16, which exempts closed-end funds from that rule's requirements to update their registration statements annually if the funds disclose certain information in their annual reports. 17 CFR 270.8b–16(b).

[98] Repurchase offers pursuant to rule 23c–3 are not, however, exempted herein from other tender

Continued

stated that discretionary repurchase offers complying with 23c–3, if permitted, should also be exempt from the tender offer rules to the same extent as funds making periodic repurchase offers.[99] Accordingly, new paragraph (h)(7) of rule 13e–4 and new rule 14e–6, as adopted, respond to those suggestions.

I. Discretionary Repurchase Offers

Paragraph (c) of rule 23c–3 establishes requirements for closed-end fund repurchase offers that are made, not periodically, but at such time as a fund may determine in its discretion. These discretionary offers would be available both to funds making periodic repurchase offers pursuant to paragraph (b), and to other closed-end funds or business development companies that do not make periodic repurchase offers. Funds could make discretionary offers not more frequently than once every two years. This limitation is intended in part to ensure that funds do not make discretionary offers more frequently as a means of circumventing the fundamental policy requirements in paragraph (b)(2) concerning the frequency of repurchase offers.

The proposing release requested comment whether rule 23c–3 should permit repurchase offers that are not made on a periodic basis as a matter of fundamental policy. Several commenters argued that rule 23c–3 should permit funds, including funds that do not make periodic repurchase offers pursuant to rule 23c–3, to make discretionary, non-periodic repurchase offers. Some commenters suggested that such offers, if permitted, should be limited to not more than one in a specified period such as two or three years.[100] They argued that such offers do not present a potential conflict of interest; rather, any potential conflict lies in the likelihood that an adviser would restrict offers, not make too many offers.[101]

Such offers must comply with several of the requirements that apply to periodic repurchase offers under paragraph (b). The fund must pay repurchase proceeds within twenty-one days after the repurchase request deadline and must determine the applicable net asset value seven days before the payment deadline. Because these offers would be discretionary, a fund making such offers would not be required to adopt a fundamental policy specifying the terms of such offers; thus, discretionary repurchase offers would require only a vote of the directors, and not a vote of shareholders. Discretionary repurchase offers would be subject to the provisions regarding suspension or postponement of repurchase offers in paragraph (b)(3). A fund must send shareholders a notification pursuant to paragraph (b)(4).[102] The fund would be required to prorate repurchases and would have the options of the oversubscription allowance and proration exceptions under paragraph (b)(5). As with periodic repurchase offers, under paragraph (b)(6) a fund must permit the withdrawal or modification of repurchase requests under the repurchase request deadline, and may not do so thereafter. Under paragraph (b)(7)(ii), the fund must compute net asset value on each of the five business days preceding the repurchase request deadline. The fund must satisfy the independent director requirements of paragraph (b)(8). Finally, the fund must satisfy the liquidity standard of paragraph (b)(10)(i), as well as the cure provision of paragraph (b)(10)(ii).

Paragraph (c) does not require discretionary repurchase offers to comply with the net asset value computation requirement of paragraphs (b)(7) (i) and (iii), or the senior security provisions of paragraph (b)(9).

J. Other Issues

1. Warrants and Similar Rights

One commenter suggested that funds should be permitted to issue long-term warrants.[103] Another commenter suggested that closed-end funds should be able to sell shares as units, comprising common and convertible preferred shares (or other possibilities like warrants or convertible bonds).[104] Section 18 prohibits such practices. Moreover, the issuance of warrants or units is outside the scope of the Commission's proposal. Accordingly, rule 23c–3 as adopted does not include any exemption from section 18 to accommodate the issuance of such securities.

2. Market Transactions

Rule 23c–3 applies only to repurchase offers to all shareholders at net asset value. Thus, it does not include any repurchases, including repurchases made in the secondary market, at prices other than a price based on net asset value. Two commenters argued that closed-end funds should be able to buy shares in the market at a discount, and to sell new shares above net asset value when the market is trading at a premium. One of those commenters argued that permitting market purchases should increase demand and raise prices and should not involve the expenses of notifying shareholders or any repurchase fees.[105] Such transactions, however, because they would not occur at net asset value, would dilute the interests of either shares that are tendered or those that are not. Accordingly, rule 23c–3 as adopted does not provide for such transactions.

III. Cost/Benefit Analysis

Rule 23c–3 should facilitate periodic repurchases by closed-end investment companies and thus should attract greater investment in closed-end companies, which may invest in less liquid assets, including venture capital and small business investments. Repurchase offers under the rule are exempted from certain tender offer rules under the Exchange Act and thus are not subject to the filing fees imposed on issuer tender offers under rule 13e–4; this exemption should reduce the filing costs, as well as legal costs, currently incurred by closed-end funds making issuer tender offers. Closed-end funds making repurchase offers under rule 23c–3 are exempted from the requirements to provide certain disclosure to shareholders and to the Commission pursuant to rule 13e–4. The rule replaces that requirement with a requirement to provide certain information to shareholders and to file copies of that disclosure with the Commission; the Commission believes that the disclosure and filing required under rule 23c–3 should be less burdensome than the requirements under rule 13e–4.

offer rules, including rule 13e–3, which applies to certain going private transactions. 17 CFR 240.13e–3.

[99] ABA Subcommittee Comment Letter, *supra* note 25, at 6; Brown & Wood Comment Letter, *supra* note 19, at 23–24.

[100] ABA Subcommittee Comment Letter, *supra* note 25, at 6.

[101] *See* Davis Polk Comment Letter, *supra* note 21, at 5.

[102] ABA Subcommittee Comment Letter, *supra* note 25, at 13 (suggesting that notification be required if discretionary offers are included in the rule).

[103] Davis Polk Comment Letter, *supra* note 21, at 9–10 (noting that such warrants are permitted in the U.K.). With limited exceptions, section 18(d) of the Act [15 U.S.C. 80a–18(d)] prohibits management investment companies from issuing warrants or rights except warrants or rights that expire within 120 days after issuance and that are issued exclusively and ratably to a class or class of the companies' security holders.

[104] Letter from Newgate Management Associates to Jonathan G. Katz, Secretary, SEC 4 (Oct. 30, 1992), File No. S7–27–92 (hereinafter Newgate Comment Letter).

[105] Newgate Comment Letter, *supra* note 104, at 3; Ruckstuhl Comment Letter, *supra* note 49, at 1.

IV. Summary of the Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Securities Act Release No. 6948. No comments were received on this analysis. Some commenters on rule 23c–3, however, questioned whether the rule as proposed could result in additional costs for funds that might be passed on to investors. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 and has clarified in this release the interpretation of certain aspects of rule 23c–3 to respond to commenters' questions. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Robert G. Bagnall, Mail Stop 10–6, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 239, 240, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Adopted Rules and Rule Amendments

For the reasons set out in the preamble, the Commission is amending Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. Section 240.10b–6 is amended by redesignating paragraph (h) as paragraph (i) and adding new paragraph (h) to read as follows:

§ 240.10b–6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(h) The provisions of this section shall not apply to repurchases of equity securities pursuant to § 270.23c–3 of this chapter by a closed-end management investment company. Any terms used in this paragraph (h) which are defined in the Investment Company Act of 1940 [15 U.S.C. 80a] shall have the meanings specified in such Act.

* * * * *

3. Section 240.13e–4 is amended by removing the word "or" following the semicolon at the end of paragraph (h)(6), redesignating paragraph (h)(7) as paragraph (h)(8), and adding new paragraph (h)(7) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(h) * * *

(7) Offers by closed-end management investment companies to repurchase equity securities pursuant to § 270.23c–3 of this chapter; or

* * * * *

4. By adding § 240.14e–6 to read as follows:

§ 240.14e–6 Repurchase offers by certain closed-end registered investment companies.

Sections 240.14e–1 and 240.14e–2 shall not apply to any offer by a closed-end management investment company to repurchase equity securities of which it is the issuer pursuant to § 270.23c–3 of this chapter.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for part 270 is amended by adding the following citation:

Authority: 15 U.S.C. 80a–1 et seq., 80a–37, 80a–39, unless otherwise noted;

* * * * *

Section 270.23c–3 also issued under 15 U.S.C. 80a–23(c).

6. By adding § 270.23c–3 to read as follows:

§ 270.23c–3 Repurchase offers by closed-end companies.

(a) *Definitions.* For purposes of this section:

(1) *Periodic interval* shall mean an interval of three, six, or twelve months.

(2) *Repurchase offer* shall mean an offer pursuant to this section by an investment company to repurchase common stock of which it is the issuer.

(3) *Repurchase offer amount* shall mean the amount of common stock that is the subject of a repurchase offer, expressed as a percentage of such stock outstanding on the repurchase request deadline, that an investment company offers to repurchase in a repurchase offer. The repurchase offer amount shall not be less than five percent nor more than twenty-five percent of the common stock outstanding on a repurchase request deadline. Before each repurchase offer, the repurchase offer amount for that repurchase offer shall be determined by the directors of the company.

(4) *Repurchase payment deadline* with respect to a tender of common stock shall mean the date by which an investment company must pay securities holders for any stock repurchased. A repurchase payment deadline shall occur seven days after the repurchase pricing date applicable to such tender.

(5) *Repurchase pricing date* with respect to a tender of common stock shall mean the date on which an investment company determines the net asset value applicable to the repurchase of the securities. A repurchase pricing date shall occur no later than the fourteenth day after a repurchase request deadline, or the next business day if the fourteenth day is not a business day. In no event shall an investment company determine the net asset value applicable to the repurchase of the stock before the close of business on the repurchase request deadline.

(i) For an investment company making a repurchase offer pursuant to paragraph (b) of this section, the number of days between the repurchase request deadline and the repurchase pricing date for a repurchase offer shall be the maximum number specified by the company pursuant to paragraph (b)(2)(i)(D) of this section.

(ii) For an investment company making a repurchase offer pursuant to paragraph (c) of this section, the repurchase pricing date shall be such date as the company shall disclose to security holders in the notification pursuant to paragraph (b)(4) of this section with respect to such offer.

(iii) For purposes of paragraph (b)(1) of this section, a repurchase pricing date may be a date earlier than the date determined pursuant to paragraph (a)(5)(i) or (ii) of this section if, on or immediately following the repurchase request deadline, it appears that the use of an earlier repurchase pricing date is not likely to result in significant dilution of the net asset value of either stock that is tendered for repurchase or stock that is not tendered.

(6) *Repurchase request* shall mean the tender of common stock in response to a repurchase offer.

(7) *Repurchase request deadline* with respect to a repurchase offer shall mean the date by which an investment company must receive repurchase requests submitted by security holders in response to that offer or withdrawals or modifications of previously submitted repurchase requests. The first repurchase request deadline after the effective date of the registration statement for the common stock that is the subject of a repurchase offer, or after a shareholder vote adopting the fundamental policy specifying a company's periodic interval, whichever

is later, shall occur no later than two periodic intervals thereafter.

(b) *Periodic repurchase offers.* A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock at periodic intervals, pursuant to repurchase offers made to all holders of the stock, *Provided* that:

(1) The company shall repurchase the stock for cash at the net asset value determined on the repurchase pricing date and shall pay the holders of the stock by the repurchase payment deadline except as provided in paragraph (b)(3) of this section. The company may deduct from the repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the company and is reasonably intended to compensate the company for expenses directly related to the repurchase. A company may not condition a repurchase offer upon the tender of any minimum amount of shares.

(2)(i) The company shall repurchase the security pursuant to a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company, stating:

(A) That the company will make repurchase offers at periodic intervals pursuant to this section, as this section may be amended from time to time;

(B) The periodic intervals between repurchase request deadlines;

(C) The dates of repurchase request deadlines or the means of determining the repurchase request deadlines; and

(D) The maximum number of days between each repurchase request deadline and the next repurchase pricing date.

(ii) The company shall include a statement in its annual report to shareholders of the following:

(A) Its policy under paragraph (b)(2)(i) of this section; and

(B) With respect to repurchase offers by the company during the period covered by the annual report, the number of repurchase offers, the repurchase offer amount and the amount tendered in each repurchase offer, and the extent to which in any repurchase offer the company repurchased stock pursuant to the procedures in paragraph (b)(5) of this section.

(iii) A company shall be deemed to be making repurchase offers pursuant to a policy of paragraph (b)(2)(i) of this section if:

(A) The company makes repurchase offers to its security holders at periodic intervals and, before May 14, 1993, has disclosed in its registration statement its intention to make or consider making such repurchase offers; and

(B) The company's board of directors adopts a policy specifying the matters required by paragraph (b)(2)(i) of this section, and the periodic interval specified therein conforms generally to the frequency of the company's prior repurchase offers.

(3)(i) The company shall not suspend or postpone a repurchase offer except pursuant to a vote of a majority of the directors, including a majority of the directors who are not interested persons of the company, and only:

(A) If the repurchase would cause the company to lose its status as a regulated investment company under Subchapter M of the Internal Revenue Code [26 U.S.C. 851–860];

(B) If the repurchase would cause the stock that is the subject of the offer that is either listed on a national securities exchange or quoted in an inter-dealer quotation system of a national securities association to be neither listed on any national securities exchange nor quoted on any inter-dealer quotation system of a national securities association;

(C) For any period during which the New York Stock Exchange or any other market in which the securities owned by the company are principally traded is closed, other than customary week-end and holiday closings, or during which trading in such market is restricted;

(D) For any period during which an emergency exists as a result of which disposal by the company of securities owned by it is not reasonably practicable, or during which it is not reasonably practicable for the company fairly to determine the value of its net assets; or

(E) For such other periods as the Commission may by order permit for the protection of security holders of the company.

(ii) If a repurchase offer is suspended or postponed, the company shall provide notice to security holders of such suspension or postponement. If the company renews the repurchase offer, the company shall send a new notification to security holders satisfying the requirements of paragraph (b)(4) of this section.

(4)(i) No less than twenty-one and no more than forty-two days before each repurchase request deadline, the company shall send to each holder of record and to each beneficial owner of the stock that is the subject of the repurchase offer a notification providing the following information:

(A) A statement that the company is offering to repurchase its securities from security holders at net asset value;

(B) Any fees applicable to such repurchase;

(C) The repurchase offer amount;

(D) The dates of the repurchase request deadline, repurchase pricing date, and repurchase payment deadline, the risk of fluctuation in net asset value between the repurchase request deadline and the repurchase pricing date, and the possibility that the company may use an earlier repurchase pricing date pursuant to paragraph (a)(5)(iii) of this section;

(E) The procedures for security holders to tender their shares and the right of the security holders to withdraw or modify their tenders until the repurchase request deadline;

(F) The procedures under which the company may repurchase such shares on a pro rata basis pursuant to paragraph (b)(5) of this section;

(G) The circumstances in which the company may suspend or postpone a repurchase offer pursuant to paragraph (b)(3) of this section;

(H) The net asset value of the common stock computed no more than seven days before the date of the notification and the means by which security holders may ascertain the net asset value thereafter; and

(I) The market price, if any, of the common stock on the date on which such net asset value was computed, and the means by which security holders may ascertain the market price thereafter.

(ii) The company shall file three copies of the notification with the Commission within three business days after sending the notification to security holders. Those copies shall be accompanied by copies of Form N–23c–3 (§ 274.221 of this chapter) ("Notification of Repurchase Offer"). The format of the copies shall comply with the requirements for registration statements and reports under § 270.8b–12 of this chapter.

(iii) For purposes of sending a notification to a beneficial owner pursuant to paragraph (b)(4)(i) of this section, where the company knows that shares of common stock that is the subject of a repurchase offer are held of record by a broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers in nominee name or otherwise, the company shall follow the procedures for transmitting materials to beneficial owners of securities that are set forth in § 240.14a–13 of this chapter.

(5) If security holders tender more than the repurchase offer amount, the company may repurchase an additional amount of stock not to exceed two percent of the common stock

outstanding on the repurchase request deadline. If the company determines not to repurchase more than the repurchase offer amount, or if security holders tender stock in an amount exceeding the repurchase offer amount plus two percent of the common stock outstanding on the repurchase request deadline, the company shall repurchase the shares tendered on a pro rata basis; *Provided, however,* That this provision shall not prohibit the company from:

(i) Accepting all stock tendered by persons who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred shares and who tender all of their stock, before prorating stock tendered by others; or

(ii) Accepting by lot stock tendered by security holders who tender all stock held by them and who, when tendering their stock, elect to have either all or none or at least a minimum amount or none accepted, if the company first accepts all stock tendered by security holders who do not so elect.

(6) The company shall permit tenders of stock for repurchase to be withdrawn or modified at any time until the repurchase request deadline but shall not permit tenders to be withdrawn or modified thereafter.

(7)(i) The current net asset value of the company's common stock shall be computed no less frequently than weekly on such day and at such specific time or times during the day that the board of directors of the company shall set.

(ii) The current net asset value of the company's common stock shall be computed daily on the five business days preceding a repurchase request deadline at such specific time or times during the day that the board of directors of the company shall set.

(iii) For purposes of section 23(b) [15 U.S.C. 80a–23(b)], the current net asset value applicable to a sale of common stock by the company shall be the net asset value next determined after receipt of an order to purchase such stock. During any period when the company is offering its common stock, the current net asset value of the common stock shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of directors of the company shall set, except on:

(A) Days on which changes in the value of the company's portfolio securities will not materially affect the current net asset value of the common stock;

(B) Days during which no order to purchase its common stock is received, other than days when the net asset value would otherwise be computed pursuant to paragraph (b)(7)(i) of this section; or

(C) Customary national, local, and regional business holidays described or listed in the prospectus.

(8) A majority of the directors of the company shall be directors who are not interested persons of the company, and the selection and nomination of those directors shall be committed to the discretion of those directors.

(9) Any senior security issued by the company or other indebtedness contracted by the company either shall mature by the next repurchase pricing date or shall provide for the redemption or call of such security or the repayment of such indebtedness by the company by the next repurchase pricing date, either in whole or in part, without penalty or premium, as necessary to permit the company to repurchase securities in such repurchase offer amount as the directors of the company shall determine in compliance with the asset coverage requirements of section 18 [15 U.S.C. 80a–18] or 61 [15 U.S.C. 80a–60], as applicable.

(10)(i) From the time a company sends a notification to shareholders pursuant to paragraph (b)(4) of this section until the repurchase pricing date, a percentage of the company's assets equal to at least 100 percent of the repurchase offer amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment, within a period equal to the period between a repurchase request deadline and the repurchase payment deadline, or of assets that mature by the next repurchase payment deadline.

(ii) In the event that the company's assets fail to comply with the requirements in paragraph (b)(10)(i) of this section, the board of directors shall cause the company to take such action as it deems appropriate to ensure compliance.

(iii) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall adopt written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on repurchases, and comply with the liquidity requirements of paragraph (b)(10)(i) of this section. The board of directors shall review the overall composition of the portfolio and make and approve such changes to the procedures as the board deems necessary.

(11) The company, or any underwriter for the company, shall comply, as if the company were an open-end company, with the provisions of section 24(b) [15 U.S.C. 80a–24(b)] and rules issued thereunder with respect to any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors.

(c) *Discretionary repurchase offers.* A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock pursuant to a repurchase offer that is not made pursuant to a fundamental policy and that is made to all holders of the stock not earlier than two years after another offer pursuant to this paragraph (c) if the company complies with the requirements of paragraphs (b) (1), (3), (4), (5), (6), (7)(ii), (8), (10)(i), and (10)(ii) of this section.

(d) *Exemption from the definition of redeemable security.* A company that makes repurchase offers pursuant to paragraph (b) or (c) of this section shall not be deemed thereby to be an issuer of redeemable securities within section 2(a)(32) [15 U.S.C. 80a–2(a)(32)].

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

7. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

8. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

* * * * *

8a. By adding § 274.221 to read as follows:

§ 274.221 Form N–23c–3, Notification of repurchase offer.

Note: Form N–23c–3 is not codified in the Code of Federal Regulations.

Form N–23c–3 shall be filed with copies of notifications of repurchase offers submitted to the Commission as required under rule 23c–3 (§ 270.23c–3 of this chapter).

Note: The Guides to Form N–2 are not codified in the Code of Federal Regulations.

9. Guide 2 to Form N–2 (§ 239.14 and § 274.11a–1) is amended by revising the first three paragraphs to read as follows:

Guide 2. Issuer Repurchase of Shares

Issuer repurchases of shares in the secondary market or through tender offers (collectively "share repurchases") are limited by section 23 of the 1940 Act [15 U.S.C. 80a–23] and Rules 23c–1 and 23c–3 [17 CFR 270.23c–1 and 270.23c–3] thereunder and are subject to sections 10(b), 13(e), and 14(e) [15 U.S.C. 78j(b), 78m(e), and 78n(e)] of the Securities Exchange Act of 1934 (the "1934 Act") and the rules thereunder, particularly (i) Rule 10b–5 [17 CFR 240.10b–5]; (ii) Rule 10b–13 [17 CFR 240.10b–13] (with respect to tender offers); (iii) Rule 10b–18 [17 CFR 240.10b–18], Rule 13e–1 [17 CFR 240.13e–1], and Rule 13e–3 [17 CFR 240.13e–3] (with respect to the types of share repurchases specified in those rules); and (iv) Rule 13e–4 [17 CFR 240.13e–4] and Regulation 14E [17 CFR 240.14e–1 *et seq.*] (with respect to tender offers). Registrants are urged to raise any questions with respect to the applicability of provisions of the 1934 Act and the rules thereunder and related disclosure issues with the staffs of the Office of Trading Practices of the Division of Market Regulation and the Office of Tender Offers of the Division of Corporation Finance prior to committing to make or commencing any share repurchases, whether by secondary market purchases or through tender offers.

In response to Item 8.5.d, Registrants contemplating making share repurchases should disclose the expected timing of and procedures associated with such repurchases, including, in the case of a tender offer, when the purchase price will be determined and how shareholders may readily ascertain the net asset value per share during the period that the tender offer is open.[1] If tender offers are contemplated, the prospectus should disclose that, when a tender offer is made, notice will be provided to shareholders describing the terms of the tender offer. The prospectus also should disclose that the notice will contain information shareholders should consider in deciding whether or not to participate in the tender offer (including the existence and amount of any repurchase fee that may be charged) and detailed instructions on how to tender shares.[2]

The prospectus of a Registrant that intends to repurchase its shares periodically should disclose the factors that the board, in the exercise of its fiduciary duty, will consider in determining when and if to make such repurchases, including how frequently the board will consider making repurchases.[3] In addition, while the disclosure need not be as detailed as that which would appear in an offer to purchase delivered to shareholders in connection with a tender offer, it should disclose the types of factors that would preclude a share repurchase.

* * * * *

10. By adding Guide 10 to Form N–2 (§§ 239.14 and 274.11a–1) to read as follows:

Guide 10. Periodic Repurchase Offers by Closed-End Funds

If a registrant intends to make periodic repurchase offers for its securities in accordance with the provisions of Rule 23c–3 [17 CFR 270.23c–3],[1] the registrant should make full disclosure of this policy in its prospectus. In response to Item 1.1.b, the cover page of the prospectus should state that the registrant is a closed-end investment company that will make periodic repurchase offers for its securities, subject to certain conditions. This cover page disclosure also should specify the anticipated frequency of such offers, the intervals between deadlines for repurchase requests, pricing and repayment and, if applicable, the anticipated timing of the registrant's initial repurchase offer. This response should include a cross-reference to those sections of the prospectus that discuss the registrant's repurchase policies and the risks attendant thereto.

The fee table required by Item 3.1 should state, as a specific caption under shareholder transaction expenses, the amount of any fees to be charged to shareholders in connection with the repurchase of their shares by the registrant.

A registrant whose shares are publicly traded in the secondary market and that makes periodic repurchase offers should calculate and disclose total investment return (Item 4.13) based on both the current market price of its common stock and the net asset value thereof. A registrant whose shares are not publicly traded should calculate total return only on the basis of its net asset value.

In response to Item 8.2.c, the registrant should provide a detailed description of its fundamental policy related to share repurchase offers. The description of the repurchase policy should be distinct from the registrant's description of its other fundamental policies so that investors appreciate its significance. The description of the registrant's fundamental repurchase policy should include the following:

a. That it is a fundamental policy that can be changed only by majority vote;

b. The intervals between, and the scheduled dates of, the repurchase request deadlines (*i.e.*, whether repurchase offers will be made every three, six or twelve months); and

c. Any circumstances in which the fund may postpone or fail to make a repurchase offer.

The registrant should provide a detailed description of the procedures that will be used in connection with periodic repurchase offers. This description should include the mechanics of the repurchase offer (*i.e.*, the anticipated timing of the registrant's initial repurchase offer, time periods between offer and repurchase, pricing mechanics and other matters related to the expected timing of and procedures associated with such repurchases); the

[1] The price at which a Registrant may repurchase its shares from shareholders generally is expressed in terms of their net asset value of its shares at a given point in time. Thus, the net asset value of a Registrant's shares during a tender offer will be material information to investors in determining whether or not to participate in the tender offer.

[2] Rule 13e–4(f)(8)(i) [17 CFR 240.13e–4(f)(8)(i)] requires a tender offer to be open to all security holders of the class of securities subject to the tender offer. Therefore, no record dates may be specified with respect to the eligibility of a shareholder to participate in any tender offer that may be made, since all shareholders must be able to participate in the offer until the close of the offering period. In addition, Rule 13e–4(f)(8)(ii) [17 CFR 240.13e–4(f)(8)(ii)] requires that the consideration paid to any holder during the tender offer be the highest paid to any other security holder during the tender offer. Therefore, an issuer may not deduct a service fee from consideration paid to shareholders because the effect would be to lower the price paid to those shareholders tendering a small amount of shares relative to the price paid to shareholders tendering a large number of shares. However, an "early withdrawal charge" (a deduction from the price paid where a tendering shareholder has not held the shares for a specified period of time) has been permitted where it is uniformly applied in accordance with a schedule included in the fund's prospectus. A "repurchase fee" of up to 2% of proceeds may be charged in connection with a discretionary repurchase offer pursuant to Rule 23c–3(c). See Rule 23c–3(b)(1) [17 CFR 270.23c–3(b)(1)].

[3] Disclosure as to the factors to be considered by the fund's board and the frequency, terms and manner of financing of any future share repurchases is required only to the extent that such information is known or has been determined at the time the registration statement becomes effective. It is the view of the Division that fund directors have a fiduciary duty to consider the appropriateness of share repurchases, but that this fiduciary duty does not preclude a Registrant from having a policy, or making a commitment, to conduct periodic share repurchases subject to the applicable laws and regulations relating to share repurchases discussed above. *See* Guide 10 to Form N–2 for a discussion of the disclosure required with respect to periodic repurchases pursuant to Rule 23c–3(b) [17 CFR 270.23c–3(b)].

[1] *See* Guide 2 for a discussion of regulatory and disclosure issues related to share repurchases by closed-end funds that do not make periodic repurchases under paragraph (b) of rule 23c–3.

possibility of additional discretionary repurchase offers; the way in which shareholders will be notified of repurchase offers; the tender procedures (including any special procedures that may be required where shares are held in street name); the ability to withdraw or modify repurchase requests; the means of determining the number of shares to be repurchased; the procedures to be followed in the event a repurchase offer is oversubscribed; the procedures for calculating the repurchase price; and whether and how shareholders may readily ascertain the net asset value per share during the period preceding the "repurchase request deadline" (the date by which investors must submit shares or withdraw or modify tenders previously made).[2] Registrants are encouraged to use graphic presentations (such as a time line or calendar) so that investors can readily understand the time periods used by the funds and the significance of the repurchase request deadline, the repurchase pricing date and the repurchase payment deadline.

In response to Item 8.3.a, the registrant should fully disclose all risks associated with the registrant's intention to make periodic repurchases of its securities, including:

—The risk that, in the event of the oversubscription of a repurchase offer, shareholders may be unable to liquidate all or a given percentage of their investment in the registrant at net asset value during that repurchase offer;
—The risk that, because of the potential for proration, some investors might tender more shares than they wish to have repurchased in order to ensure the repurchase of a specific number of shares;
—The possibility that periodic repurchase offers may not eliminate any discount at which the registrant's shares trade;
—The effect of repurchase offers and related liquidity requirements on portfolio management and on the ability of the registrant to achieve its investment objectives, including the possibility that diminution in the size of the fund could result from repurchases in the absence of sufficient new sales of the fund's shares, and that this may decrease the fund's investment opportunities;
—The effect that share repurchase offers and related financings might have on expense ratios and on portfolio turnover;
—If the repurchase payment deadline is more than seven days after the repurchase request deadline, the market risk to which an investor may be subject as a result of the delay between the tender of shares and their pricing; and
—The possible decrease in share value as a result of currency fluctuations between the date of tender and the repurchase pricing date if the registrant has invested all or a portion of its portfolio in foreign markets.

The means by which share repurchases will be funded generally would be material, and thus these means and any risks inherent in the policies relating to funding should be disclosed. If the registrant intends to incur debt to finance a share repurchase, the registrant should disclose the maximum amount of debt that may be incurred for that purpose, the restrictions imposed by the Investment Company Act and by rule 23c–3 on leverage, the attendant risks of leveraging, and the extent to which the financing costs of borrowing may be borne by shareholders who do not tender.[3] If the registrant believes that share repurchases will be funded with the proceeds of sales of portfolio securities, it should disclose that fact and the risk that the need to sell securities to fund repurchase offers may affect the market for the portfolio securities being sold, which may, in turn, diminish the value of an investment in the fund.

The effect that repurchases may have on the ability of the registrant to qualify as a regulated investment company under the Internal Revenue Code in the event that share repurchases have to be funded with proceeds from the liquidation of portfolio securities should also be discussed. Finally, registrants should discuss the potential tax consequences to investors and the registrant of share repurchases and related portfolio security sales in response to Items 10.4 or 22, as appropriate.

Dated: April 7, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A will not appear in the Code of Federal Regulations.

Appendix A—Form N–23c–3 Notification of Repurchase Offer Pursuant to Rule 23c–3 [17 CFR 270.23c–3]

1. Investment Company Act File Number 811–

Date of Notification

2. Exact name of investment company as specified in registration statement:

3. Address of principal executive office: (number, street, city, state, zip code)

4. Check one of the following:

A. [ ] The notification pertains to a periodic repurchase offer under paragraph (b) of rule 23c–3.

B. [ ] The notification pertains to a discretionary repurchase offer under paragraph (c) of rule 23c–3.

C. [ ] The notification pertains to a periodic repurchase offer under paragraph (b) of rule 23c–3 and a discretionary repurchase offer under paragraph (c) of rule 23c–3.

By:

(Name)

(Title)

Instructions

1. This Form must be completed by registered closed-end investment companies or business development companies that make repurchase offers pursuant to rule 23c–3. The form shall be attached to a notification to shareholders under paragraph (b)(4) of rule 23c–3.

2. Submissions using this form shall be filed in triplicate with the Commission within three business days after a notification is sent to shareholders. One copy shall be manually signed; the other copies may have facsimile or typed signatures.

[FR Doc. 93–8639 Filed 4–13–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 93–27]

Country of Origin of Textile Products From U.S. Insular Possessions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to provide that textiles and textile products produced or manufactured in an insular possession of the United States, if subsequently assembled, advanced in value or improved in condition in a foreign country, will not be treated as having their origin in that insular possession for purposes of the U.S. textile import program. The amendment is intended to ensure that such products will be subject to the same rules of origin as products of the United States for quota, visa and other textile restraint purposes.

DATES: This interim rule is effective May 14, 1993. This interim regulation is applicable to all textiles and textile products exported from their country of origin on or after May 14, 1993. Comments must be received on or before June 14, 1993.

[2] Since all repurchases under rule 23c–3 will be made at net asset value, the net asset value of a registrant's shares prior to the repurchase deadline will be material information to investors in determining whether or not to tender shares.

[3] See paragraph (b)(9) of rule 23c–3 and Guide 6 to Form N–2. Guide 6 contains a detailed discussion of the Division's views on the risks associated with leverage.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at Franklin Square, 1099 14th Street NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Office of Regulations and Rulings (202–482–7050).

SUPPLEMENTARY INFORMATION:

Background

In order to implement import policies with respect to textiles and textile products, section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), authorizes the President to negotiate textile restraint agreements with foreign governments and to carry out such agreements by issuing regulations governing the entry into the United States of merchandise covered by those agreements. The Committee for the Implementation of Textile Agreements (CITA) was established by Executive Order 11651 on March 3, 1972, to supervise the implementation of textile agreements. Section 2(a) of that Executive Order requires the Commissioner of Customs to take such actions as CITA, through its Chairman, shall recommend to carry out agreements and arrangements entered into by the United States pursuant to section 204.

In December 1973 representatives of 50 nations concluded negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) which resulted in the Multi-Fiber Arrangement Regarding International Trade in Textiles, commonly referred to as the Multi-Fiber Arrangement or MFA. The United States has negotiated a number of bilateral and multilateral textile agreements with foreign government signatories to the MFA, and additional agreements have been negotiated with foreign governments outside the MFA framework. For U.S. import purposes, each agreement generally incorporates a consultative procedure and provides for the imposition of quantitative limits (quotas) and documentary controls (such as visas or export licenses) in order to ensure that textiles and textile products produced in the foreign country enter the U.S. market in an orderly fashion and in a manner which is consistent with overall policy objectives under the U.S. textile import program.

On May 9, 1984, the President issued Executive Order 12475 to address a number of problems which had arisen in the context of the U.S. textile import program. These problems included (1) the absence of specific regulatory standards for determining the origin of imported textiles and textile products for purposes of textile agreements and (2) an ever increasing number and variety of instances in which attempts were made to circumvent and frustrate the objectives of the U.S. textile import program and the bilateral and multilateral textile agreements negotiated thereunder. Section 1(a) of that Executive Order instructed the Secretary of the Treasury, in accordance with policy guidance provided by CITA through its Chairman, to issue regulations governing the entry of textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended.

Interim Customs Regulations amendments implementing section 1(a) of Executive Order 12474 were published in the **Federal Register** on August 3, 1984, as T.D. 84–171 (49 FR 31248). Although T.D. 84–171 invited public comments on the regulatory changes, the interim regulations took effect for all textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended, exported from the country of origin (as defined in those regulations) on or after September 7, 1984. The legality of these interim regulations, including the effective date provision, was upheld in *Mast Industries, Inc.* v. *Regan*, 596 F.Supp. 1567 (CIT 1984). Following the close of the public comment period on the interim regulations and after an analysis of the comments submitted, the interim regulations, with certain changes, were published as a final rule on March 5, 1985, as T.D. 85–38 (50 FR 8710).

The main body of the regulations discussed above is contained in § 12.130 (19 CFR 12.130) which sets forth general and specific rules for determining the country of origin of imported textiles and textile products for purposes of textile agreements entered into by the United States pursuant to section 204 of the Agricultural Act of 1956, as amended. The general country of origin rules are set forth in paragraph (b) of § 12.130 and incorporate, among other things, the following principles: (1) Except as provided in paragraph (c), a textile or textile product which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or U.S. insular possession, shall be a product of that foreign territory or country, or insular possession, where it last underwent a substantial transformation; and (2) a textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

Paragraph (c) of § 12.130 operates as an exception to the basic country of origin rule set forth in paragraph (b) and specifically applies to products of the United States which, under Note 2 to Subchapter II of Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), are treated as foreign articles for purposes of the Tariff Act of 1930, as amended. In this regard paragraph (c) provides that, in order to have a single country of origin for a textile or textile product and notwithstanding paragraph (b), any product of the United States which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, may not be considered a product of the United States upon such return. Thus, for example, garment parts which are cut in the United States and sent abroad for assembly into completed garments are always considered to have their origin in the assembling country and to be subject to all quota and visa requirements applicable to products of that country upon return to the United States (even if the foreign assembly operation would not result in the merchandise being a product of that foreign country under the general and specific rules set forth elsewhere in § 12.130).

CITA has determined that the overall policy objectives of the U.S. textile import program, as well as the specific textile agreements thereunder, are still being circumvented and frustrated because of the use of various manufacturing operations involving U.S. insular possessions which afford textiles and textile products produced in U.S. insular possessions more favorable quota and visa treatment than textile and textile products produced in the United States. It has been noted in this regard that paragraph (c) of § 12.130 does not apply to products of U.S. insular possessions. As a result, garment parts which are cut in a U.S. insular possession and sent to a foreign country for assembly into completed garments would remain products of the insular possession upon importation into the United States so long as the foreign assembly operation did not result in a product of the foreign country under the general and specific rules set forth in § 12.130. Since quota and visa requirements do not apply to textiles and textile products which are products of a U.S. insular possession under the

§ 12.130 rules, such garment parts would thus receive import treatment clearly more favorable than that accorded to U.S.-produced garment parts subjected to the same assembly operation in a foreign country to which quota and visa requirements apply.

The Chairman of CITA has specifically recommended to Customs that § 12.130 be amended at the earliest practicable date to ensure that textiles and textile products produced in U.S. insular possessions do not continue to receive the preferential treatment described above in contravention of the overall goals of the U.S. textile import program. Accordingly, this document amends paragraph (c) of § 12.130 on an interim basis to provide that the same origin principle applicable to products of the United States under that paragraph will apply to products of U.S. insular possessions.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Franklin Square, 1099 14th Street NW., suite 4000, Washington, DC.

Inapplicability of Public Notice Procedures

Pursuant to the provisions of 5 U.S.C. 553(a) public notice is inapplicable to this regulation because it is promulgated pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and is thus within the foreign affairs function of the United States and the foreign affairs exemption of 5 U.S.C. 553(a)(1). This regulation is necessary in order to prevent circumvention or frustration of bilateral and multilateral agreements to which the United States is a party and to facilitate efficient and equitable administration of the U.S. textile import program as authorized in section 204. The authority to promulgate this regulation was delegated by the President to the Secretary of the Treasury by Executive Order 12475.

Executive Order 12291

Because this document concerns a foreign affairs function of the United States it is not subject to E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

For the reasons set forth above and because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations Branch, U.S. Customs Service. However, personnel from other Customs offices and the Department of Commerce participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports, Textile products and apparel.

Amendment to the Regulations

For the reasons set forth above, Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues to read, and a specific authority citation for §§ 12.130 and 12.131 is added to read, as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.130 through 12.131 also issued under 7 U.S.C. 1854;

* * * * *

2. Section 12.130 is amended by revising the heading of paragraph (e), redesignating paragraph (c) as paragraph (c)(1), adding a new heading to paragraph (c), designated and adding paragraph (c)(2) to read as follows:

§ 12.130 Textiles and textile products country of origin.

* * * * *

(c) *Articles exported for processing and returned.*

(1) * * *

(2) *Applicability to U.S. insular possession products processed outside the insular possession.* Unless otherwise required by law, the rules of origin applicable to products of the U.S. shall also apply to products of insular possessions of the U.S. Accordingly, notwithstanding paragraph (b) of this section, for purposes of section 204, Agricultural Act of 1956, as amended, products of insular possessions of the U.S., if imported into the U.S. after having been advanced in value, improved in condition, or assembled, outside the insular possessions shall not be treated as products of those insular possessions.

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: February 25, 1993.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–8705 Filed 4–13–93; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. R–93–1619; FR–3228–F–02]

RIN 2577–AB11

Indian Housing: Revisions to Lease and Grievance Procedures

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the Indian housing regulations concerning required lease provisions and grievance procedures for residents of Indian housing. The changes will facilitate eviction of tenants who are involved in criminal activity that threatens the health, safety, or right to peaceful enjoyment of other tenants or who are involved in drug-related criminal activity, by permitting use of an expedited grievance procedure or reliance upon court actions without first conducting a grievance procedure. These changes were required by statutory revisions.

EFFECTIVE DATE: May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Programs, room 4140, Department of Housing and Urban Development, Washington, DC 20410–5000; telephone (202) 708–1015 (voice) or (202) 708–0850 (TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in § 905.340 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned approval number 2577–0171.

II. Background

Changes were made to the statutory provisions governing lease and grievance procedures in Indian housing by sections 503, 504 and 505 of the Cranston-Gonzalez National Affordable Housing Act (NAHA), 42 U.S.C. 1437d note, which require notice and comment rulemaking. A proposed rule was published on December 15, 1992 (57 FR 59316), covering these changes with respect to the Indian housing program.

The public comment period ended on February 16, 1993. The Department received no public comments. Consequently, the proposed rule is being published as a final rule, with the addition of the reference to OMB approval of the information collection requirements contained in § 905.340.

III. Findings and Certifications

A. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Review

A Finding of No Significant Impact with respect to the environment was made with respect to the proposed rule in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on distribution of power and responsibilities among the various levels of government. This rule merely conforms the existing rule on the subject of Indian housing leases and grievance procedures to the governing statute, as amended. As a result, the rule is not subject to review under the order.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The rule will simply buttress the efforts of Indian Housing Authorities to keep their housing free of criminal activity by enforcing provisions of the law making drug-related and other serious criminal activity on or near the premises clearly actionable.

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to specifying the procedures for enforcing lease provisions concerning criminal activity.

F. "Takings" Assessment

The General Counsel, as the Designated Official under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, has determined that this rule does not have "takings implications" as defined in HUD's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." The Department does not regard the effects of this rule on private property rights as "effectively denying economically viable use of any distinct legally protected property interest of [a property owner], or result in a permanent or temporary physical occupation, invasion, or deprivation." The proposed rule would merely prescribe, pursuant to statute, the changes in lease provisions and grievance procedures to be used by Indian housing authorities that receive assistance from HUD under the United States Housing Act of 1937.

G. Regulatory Agenda

This rule was listed as item 1497 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392, 51435) in accordance with Executive order 12291 and the Regulatory Flexibility Act.

H. Catalog

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.850 and 14.851.

List of Subjects in 24 CFR Part 905

Grant programs: Indians, Low and moderate income housing, Homeownership, Public housing.

Accordingly, part 905 of title 24 of the Code of Federal Regulations is amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee and 3535(d).

2. Section 905.340 is revised to read as follows:

§ 905.340 Grievance procedure and leases.

(a) *Grievance procedures.* (1) *General.* Each IHA shall adopt and promulgate grievance procedures that are appropriate to local circumstances. These procedures shall comply with the Indian Civil Rights Act, if applicable, and section 6(k) of the Act, as applicable, and shall assure that tenants and homebuyers will:

(i) Be advised of the specific grounds of any proposed adverse action by the IHA;

(ii) Have an opportunity for a hearing before an impartial party upon timely request;

(iii) Have a reasonable opportunity to examine any documents, records, or regulations related to the proposed action before the hearing (or trial in court);

(iv) Be entitled to be represented by another person of their choice at any hearing;

(v) Be entitled to ask questions of witnesses and have others make statements on their behalf; and

(vi) Be entitled to receive a written decision by the IHA on the proposed action.

(2) *Expedited grievance procedure.* An IHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

(i) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Indian housing development by other residents or employees of the IHA, or

(ii) Any drug-related criminal activity on or near the premises.

(3) *Exclusion of certain grievances.* (i) *General.* An IHA may pursue termination of tenancy or eviction without offering a grievance procedure where the termination or eviction is based on one of the grounds stated in paragraph (a)(2) of this section if applicable Tribal or State law requires that, before eviction, a tenant (including a homebuyer under a homeownership agreement) be given a hearing in court, if HUD has determined that the Tribal or State procedures provide the basic elements of due process.

(ii) *Basic elements of due process.* The elements of due process against which the jurisdiction's procedures are measured by HUD are the following:

(A) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;

(B) Right of the tenant to be represented by counsel;

(C) Opportunity for the tenant to refute the evidence presented by the IHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant might have; and

(D) A decision on the merits.

(4) *Notice to post office of certain evictions.* When an IHA evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the IHA shall notify the local post office serving that dwelling unit that the evicted individual or family is no longer residing in the dwelling unit (so that the post office will terminate delivery of mail for such persons at the unit, and that such persons will not return to the unit to pick up mail).

(5) *Notice of procedures.* A copy of the grievance procedures shall be posted prominently in the IHA office, and shall be provided to any tenant, homebuyer, or applicant upon request.

(b) *Leases.* Each IHA shall use leases that:

(1) Do not contain unreasonable terms and conditions;

(2) Obligate the IHA to maintain the project in a decent, safe, and sanitary condition;

(3) Require the IHA to give adequate written notice of termination of the lease which shall not be less than—

(i) A reasonable time, but not to exceed 30 days, when the health or safety of other tenants or IHA employees is threatened;

(ii) Fourteen days in the case of nonpayment of rent; and

(iii) Thirty days in any other case;

(4) Require that the IHA may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause;

(5) Provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near the premises, engaged in by an Indian housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy. For purposes of this section, the term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); and

(6) specify that with respect to any notice of termination of tenancy or eviction, notwithstanding any applicable Tribal or State law, an Indian housing tenant shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, records, or regulations directly related to the termination or eviction.

(Approved by the Office of Management and Budget under control number 2577–0171)

Dated: April 2, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–8582 Filed 4–13–93; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–93–14]

Special Local Regulations for Marine Events; Blue Angels Airshow; Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Blue Angels airshow and practice sessions to be held on May 22, 23, and 24, 1993, over the Severn River, Annapolis, Maryland. The effect of these regulations will be to restrict general navigation in the regulated area for the safety of spectators and participants. These regulations are needed to provide for the safety of life, limb, and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations are effective for the following periods: 1:30 p.m. to 6:30 p.m., May 22, 1993; 12 noon to 5 p.m., May 23, 1993; 12 noon to 5 p.m., May 24, 1993.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Baltimore (410) 576–2516.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LCDR Keith B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The U.S. Naval Academy submitted an application to hold the Blue Angels Airshow on May 22, 23, and 24, 1993. As part of the application, the Naval Academy requested that the Coast Guard provide control of spectator and commercial traffic within the regulated area.

Discussion of Regulations

The U.S. Naval Academy is sponsoring this event, which will consist of 6 high performance jet aircraft flying at low altitudes in various formations over the Severn River. Federal Aviation Administraiton regulations require closing the waterway to vessel traffic as a prerequisite to issuing a permit for this event. A meeting at the Naval Academy was held on April 18, 1991, and was attended by several organizations directly involved in the Airshow. The Federal Aviation Administration (FAA) meticulously reviewed all aspects of the Airshow for safety purposes and concluded that the regulated area used in past Airshows allowed small boats to approach too close to center point and the flight path of maneuvering aircraft. Therefore, the westward boundary of the regulated area was moved upriver from Horseshoe Point and Manresa Point to the U.S. Route 50/301 fixed highway bridge (New Severn River Bridge) to ensure the safety of spectator craft. Accordingly, the Commander, Fifth Coast Guard District, is issuing these regulations to close a portion of the Severn River to vessel traffic during the airshow and practice sessions. Closure of the waterway for any extended period is not anticipated, and commercial traffic should not be severely disrupted.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours each day, and the impacts on routine navigation are expected to be minimal.

Small entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), The Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation, will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

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

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0511 is added to read as follows:

§ 100.35–T0511 Severn River, Annapolis, Maryland

(a) Definitions: (1) *Regulated area.* The Severn River, shore to shore, bounded on the southeast by a line drawn from the quick flashing privately maintained light on the U.S. Naval Academy in position latitude 38°58'40.0" North, longitude 76°28'49.0" West, east to latitude 38°58'33.0" North, longitude 76°28'05.0" West, thence northeast to Carr Point, and bounded on the northwest by the U.S. Route 50/301 fixed highway bridge (New Severn River Bridge) centerpoint at latitude 39°00'23.0" North, longitude 76°30'15.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special local regulations.* (1) Except for vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel which enters or operates within the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor outside the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) Effective periods: The regulations are effective for the following periods: 1:30 p.m. to 6:30 p.m., May 22, 1993; 12 noon to 5 p.m., May 23, 1993; 12 noon to 5 p.m., May 24, 1993.

Dated: 2 April 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–8621 Filed 4–14–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 180

[PP 6F3420/R1188; FRL–4577–8]

RIN No. 2072–AB78

Pesticide Tolerance for Aluminum Tris(O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in or on the raw agricultural commodity (RAC) avocados at 25 parts per million (ppm). This regulation to establish the maximum permissible level for residues of the fungicide in or on this commodity was requested in a petition submitted by Rhone-Poulenc Ag Co.

EFFECTIVE DATE: This regulation becomes effective April 14, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP6F3420/R1188], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 23, 1986 (51 FR 26465), which announced that Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition (PP 6F3420) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for the fungicide fosetyl-Al, aluminum tris(O-ethylphosphonate), in or on the raw agricultural commodity avocados at 10 ppm.

EPA issued a notice, published in the **Federal Register** of November 18, 1992 (57 FR 54402), that Rhone-Poulenc had amended PP 6F3420 to establish a tolerance of 25 ppm for residues of the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in or on the raw agricultural commodity avocados.

There were no comments received in response to the notices of filing.

The data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerance include the following:

1. A rat acute oral study with an LD_{50} of 5.4 grams (g)/kilogram (kg).

2. A mouse acute oral study with an LD_{50} of 3.4 gm/kg.

3. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 5,000 ppm (500 milligrams (mg)/kg/day).

4. A 90-day dog feeding study with a NOEL of 10,000 ppm (250 mg/kg/day).

5. A 21-day rabbit dermal study with a NOEL of 1.5 g/kg/day [the highest dose tested (HDT)].

6. A carcinogenicity study in mice with no carcinogenic effects observed at any dose level under the conditions of the study (the highest dose tested was 2,857/4,286 mg/kg body weight (bwt)/day).

7. A rat chronic feeding/carcinogenicity study with a NOEL of 8,000 ppm (400 mg/kg bwt/day) for systemic effects (carcinogenic effects observed are discussed below).

8. A 2-year dog feeding study with a NOEL of 10,000 ppm (250 mg/kg bwt/day) and a lowest effect level (LEL) of 20,000 ppm (500 mg/kg bwt/day) based on a slight degenerative effects on the testes.

9. A reproduction study in rats with a NOEL of 300 mg/kg bwt/day and an LEL of 600 mg/kg bwt/day based on effects on animal weights in some groups and urinary tract changes in some groups.

10. Teratology studies in rabbits and rats with teratogenic NOELs of 500 mg/kg/day and 1,000 mg/kg/day, respectively.

11. Ames mutagenicity assays, E. coli phage induction tests, micronucleus tests in mice, DNA repair tests using E. coli, and *Saccharomyces cervisiae* yeast assay that were negative.

As stated in a notice published in the Federal Register of November 2, 1983 (48 FR 50532), carcinogenic effects were noted in the rat chronic feeding/carcinogenicity study. In this study, Charles River CD rats were dosed with aluminum tris(*O*-ethylphosphonate) at levels of 0, 2,000, 8,000, and 40,000/30,000 ppm (0, 100, 400, and 2,000/1,500 mg/kg bwt/day). The 40,000-ppm dose was reduced to 30,000 ppm after 2 weeks following observations of staining of the abdominal fur and red coloration of the urine at 40,000 ppm (2,000 mg/kg bwt/day).

The highest dose level of the chemical tested in the male Charles River CD-1 rats (2,000/1,500 mg/kg bwt/day) in this study appears to approximate a maximum tolerated dose (MTD) based on the finding of urinary bladder hyperplasia at this dose. Similarly, an MTD level appeared to be satisfied in the female Charles River CD-1 rats at the high-dose level of 2,000 mg/kg bwt/day, during the first 2 weeks of the carcinogenicity/chronic feeding study, before the dose level was reduced to 1,500 mg/kg bwt/day.

The study demonstrated a significantly elevated incidence of urinary bladder tumors (adenomas and carcinomas combined) at the highest dose level tested (2,000/1,500 mg/kg) in male Charles River CD-1 rats. The tumors were mainly seen in surviving males at the time of terminal sacrifice. The original pathological diagnosis of these tumors was independently confirmed by another consulting pathologist, who also reported an elevated incidence of urinary bladder hyperplasia in high-dose male rats. No increase in the incidence of urinary bladder tumors was observed in female rats.

The Agency has concluded that the available data provide limited evidence of the carcinogenicity of fosetyl-Al in male rats and has classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with proposed Agency guidelines, published in the **Federal Register** of November 23, 1984 (49 FR 46294). Based on a review of the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs, the Agency has determined that a quantitative risk assessment is not appropriate for the following reasons:

1. The carcinogenic response observed with this chemical was confined solely to the high-dose males at one site (urinary bladder) in rats. The recent data of a 90-day feeding study of fosetyl-Al in rats also showed a strong association between the presence of uroliths in the urinary bladder and the incidence of urinary bladder hyperplasia in treated rats.

2. The tumor response was primarily due to an increase in benign tumors.

3. The tumors were seen only in surviving animals at the time of terminal sacrifice.

4. The carcinogenic effects were observed only at unusually high doses which exceed the commonly used limit dose of 1,000 mg/kg/day recommended as an upper-limiting dose for bioassays.

5. The chemical was not carcinogenic when administered in the diet to Charles River CD-1 mice at dose levels ranging from 2,500 to 30,000 ppm (357 to 4,286 mg/kg bwt/day).

6. Fosetyl-Al was not mutagenic in eight well conducted genotoxic assays.

Since the increase in the bladder tumor incidence was limited only to male rats at doses well above the limit dose (1,000 mg/kg bwt/day for carcinogenicity studies), EPA believes that no significant cancer risk would be posed to humans. Therefore, the standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity was applied to fosetyl-Al.

Using a 100-fold safety factor and the NOEL of 250 mg/kg bwt/day determined by the most sensitive species from the 2-year dog feeding study, the RfD is 3.0 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.0453 mg/kg bwt/day and utilizes 1.51 percent of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population did not utilize a significantly greater amount of the RfD. Previous tolerances have been established for fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in asparagus, brassica vegetable crop group, caneberries, citrus, cucurbit vegetables group, dry bulb onions, fresh ginseng root, leafy vegetables crop group, pineapples, pineapple forage and fodder, and strawberries.

The metabolism of aluminum tris(*O*-ethylphosphonate) in plants is adequately understood. No animal feed items are associated with these petitions; therefore, there is no reasonable expectation of secondary residues occurring in milk, eggs, and meat of livestock or poultry.

An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-4432.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health.

Therefore, the tolerances are 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 fees provided 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, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (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 on 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 raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: March 26, 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. 348a and 371.

2. In § 180.415, by amending paragraph (a) table by alphabetically inserting the raw agricultural commodity avocados, to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.

(a) * * *

Commodity	Parts per million
Avocados	25
* * * * *	

* * * * *

[FR Doc. 93-8569 Filed 4-13-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180 and 185

[PP 3F2884 and 3F2947 and FAP 3H5396 and 3H5411/R1191; FRL-4579-8]

RIN No. 2070-AB78

Pesticide Tolerances and Food Additive Regulations for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These regulations revise the tolerances for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on various raw agricultural commodities and processed food commodities. The regulations also establish tolerances for residues for chlorpyrifos in or on the raw agricultural commodities wheat grain, wheat straw, and wheat forage, and the processed food commodity milling fractions (except flour) of wheat. These regulations to revise maximum permissible levels for residues and establish new levels for residues of the insecticide were requested in petitions submitted by DowElanco.

EFFECTIVE DATE: These regulations became effective on April 1, 1993.

ADDRESSES: Written objections, identified by the document control numbers [FP 3F2884 and 3F2947 and FAP 3H5396 and 3H5411/R1191], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (H7505C), Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA has issued notices in the **Federal Register** announcing that DowElanco has submitted pesticide petitions to EPA proposing to amend 40 CFR 180.342 by revising tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the combined residues of the insecticide chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol (TCP) in or on various raw agricultural commodities and food additive petitions proposing to amend 40 CFR 185.1000 by revising tolerances under section 409 of the FFDCA, 21 U.S.C. 348, for the combined residues of the insecticide chlorpyrifos and its metabolite in or on various processed food commodities. The proposed revision included a change in the form of the tolerance expression. The existing tolerance was expressed as a numerical value indicating the total concentration of chlorpyrifos and the metabolite TCP. The proposed revision continued to indicate a total, but also included a separate statement that the concentration of the parent chlorpyrifos in the total must not exceed a specified value. The petitioner subsequently amended the petition by proposing to remove the metabolite TCP from the tolerance expression, thus expressing the tolerance for various commodities in terms of the parent chlorpyrifos only. By removing TCP from the tolerance expression for chlorpyrifos for various commodities, the petitioner intends to more accurately reflect the level of residues of toxicological concern that are anticipated on treated commodities and the impact of this exposure calculation on the determination of whether the Reference Dose (RfD) or Acceptable Daily Intake (ADI) have been exceeded.

The specific publication dates of the petitions were as follows: (1) PP 3F2884 and FAP 3H5396 appeared in the **Federal Register** of June 22, 1983 (48 FR 28545); (2) PP 3F2947 and FAP 3H5411 appeared in the **Federal Register** of September 29, 1983 (48 FR 44643).

There were no comments or requests for a referral to an advisory committee received in response to the notices of filing. The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought and capable of achieving its intended physical or technical effect. The toxicological data considered in support

of the proposed tolerances include the following:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) for systemic effects of 1.0 milligram (mg)/kilogram (kg)/day and lowest effect level (LEL) (increased liver weight) of 3.0 mg/kg/day. The NOELs for cholinesterase (ChE) inhibition were as follows: 0.01 mg/kg/day for plasma, 0.1 mg/kg/day for red blood cells, and 1.0 mg/kg/day for brain cells. Levels tested were 0, 0.01, 0.03, 0.1, 1.0, and 3 mg/kg/day.

2. A voluntary human study with ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

3. A 2-year mouse chronic toxicity/carcinogenicity study with a NOEL of 15 ppm for systemic effects (equivalent to 2.25 mg/kg/day) and no carcinogenic effects observed under the conditions of the study at all levels tested (0, 0.5, 5, and 15 ppm, equivalent to 0.075, 0.75, and 2.25 mg/kg/day).

4. A 2-year rat feeding/carcinogenicity study with ChE NOEL of 0.1 and LEL of 1.0 mg/kg/day (based on decreased plasma and brain ChE activity), and a systemic NOEL of 1.0 mg/kg/day and LEL of 10 mg/kg/day (based on decreased erythrocyte and hemoglobin values and increased platelet count during the first year). There were no observed carcinogenic effects at the levels tested (0.05, 0.1, 1.0, and 10 mg/kg/day) under the conditions of the study.

5. A three-generation reproduction study in rats with no reproductive effects observed at the dietary levels tested (0, 0.1, 0.3, and 1.0 mg/kg/day).

6. Two rat developmental toxicity studies: one negative for developmental toxicity at all dose levels (levels tested were 0.1, 3.0, and 15.0 mg/kg/day); and one with maternal and developmental NOELs of 2.5 mg/kg/day (levels tested, by gavage, were 0, 0.5, 2.5, and 15 mg/kg/day).

7. A mouse developmental toxicity study with a teratogenic NOEL greater than 25 mg/kg/day (highest dose tested) and a developmental fetotoxic NOEL of 10 mg/kg/day and LEL of 25 mg/kg/day (decreased fetal length and increased skeletal variants).

8. A developmental toxicity study in rabbits with maternal and developmental NOELs of 81 mg/kg/day, and maternal and developmental LELs of 140 mg/kg/day (based on maternal decreased food consumption on gestation day 15 to 19, and body weight loss during the dosing period followed by a compensatory weight gain; and based on a slight reduction in fetal weights and crown-rump lengths, and fetal increased incidence of unossified fifth sternebrae and/or xiphisternum). Levels tested were 0, 1, 9, 81, and 140 mg/kg/day.

9. An acute delayed neurotoxicity study in the hen that was negative at 50 and 100 mg/kg/day.

10. Several mutagenicity studies which were all negative. These include an Ames assay, two Chinese hamster ovary cell mutation assays, a micronucleus assay for chromosomal aberration, an in vitro chromosomal aberration assay with and without enzymatic activation, and an unscheduled DNA synthesis assay.

11. A general metabolism study in rats shows that the major metabolite of chlorpyrifos is 3,5,6-trichloro-2-pyridinol (TCP). The studies listed below were conducted to demonstrate that TCP is less toxic than chlorpyrifos and is not a ChE inhibitor.

a. A 90-day rat feeding study with a systemic NOEL of 30 mg/kg/day. Levels tested were 0, 10, 30, and 100 mg/kg/day.

b. A rat developmental toxicity study with no developmental toxicity observed at the dosages tested (0, 50, 100, and 150 mg/kg/day).

c. Mutagenicity studies (including an Ames assay and an unscheduled DNA synthesis assay) were negative for mutagenic effects.

Based on the above studies, the Agency has concluded that the TCP metabolite is not of toxicological concern.

Regarding tolerances for residues of chlorpyrifos in or on the various raw agricultural commodities and processed food commodities, the reference dose (RfD) based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold uncertainty factor is calculated to be 0.003 mg/kg of body weight/day. Tolerances for food uses appear in 40 CFR 180.342 and 40 CFR 185.1000. The Dietary Risk Exposure Section (DRES) chronic dietary exposure analysis made use, when justified and appropriate, of anticipated residues rather than published tolerance values, and data regarding percent crop treated (when less than 100 percent). The TCP metabolite was removed from tolerance expressions. The anticipated residue contribution (ARC) for chlorpyrifos is estimated to be 0.000792 mg/kg of body weight/day for the overall U.S. population. This represents 26.4 percent of the RfD. (Before removal of the TCP metabolite from the tolerance expression, the ARC was 0.001430 mg/kg of body weight/day, 47.7 percent of the RfD.) The population subgroups with the highest estimated ARCs are nonnursing infants, less than 1 year old, with an ARC of 0.002095 mg/kg of body weight/day, 69.8 percent of the RfD (before removal of TCP the ARC was 0.003580 mg/kg of body weight/day, 119.3 percent of the RfD); children, 1 to 6 years old, with an ARC of 0.001780 mg/kg of body weight/day, 59.3 percent of the RfD (before removal of TCP the ARC was 0.003132 mg/kg of body weight/day, 104.4 percent of the RfD); and children, 7 to 12 years old, with an ARC of 0.001184 mg/kg of body weight/day, 39.5 percent of the RfD (before removal of TCP the ARC was 0.002123 mg/kg/day, 70.8 percent of the RfD).

Regarding tolerances for residues of chlorpyrifos in or on the raw agricultural commodities wheat grain, wheat straw, and wheat forage, and the processed food commodity milling fractions (except flour) of wheat, the reference dose (RfD) based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold uncertainty factor is calculated to be 0.003 mg/kg of body weight/day. The Dietary Risk Exposure Section (DRES) chronic dietary exposure analysis made use, when justified and appropriate, of anticipated residues rather than published tolerance values, and data regarding percent crop treated (when less than 100 percent). The TCP metabolite was not included in tolerance expressions. The anticipated residue contribution (ARC) for chlorpyrifos was estimated to be 0.000792 mg/kg of body weight/day for the overall U.S. population. This represents 26.4 percent of the RfD. The addition of tolerances for wheat grain, wheat straw, and wheat forage raises the ARC to 0.000811 mg/kg of body weight/day. This represents 27.0 percent of the RfD. The population subgroups with the highest ARCs are nonnursing infants, less than 1 year old, with an ARC of 0.002108 mg/kg of body weight/day (70.3 percent of the RfD); children, 1 to 6 years old, with an ARC of 0.001823 mg/kg of body weight/day (60.8 percent of the RfD); and children, 7 to 12 years old, with an ARC of 0.001214 mg/kg of body weight/day (40.4 percent of the RfD).

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought and capable of achieving its intended physical or technical effect. A conditional registration for the use of chlorpyrifos on wheat is being issued, although the Agency has some concerns about the potential for adverse effects on both avian and aquatic species. Risk mitigation measures are being imposed to reduce that potential. In order to determine if the risk mitigation

measures are effective, the Agency as a condition of registration will impose both incident and residue monitoring requirements. Monitoring will not commence, however, until the Agency is able to provided additional guidance.

Adequate gas chromatographic analytical methods are available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. There are currently no actions pending against continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.342 would protect the public health and use of the pesticide in accordance with amended 40 CFR 185.1000 would be safe. Therefore, the tolerances are 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 each such issue, 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. 96-54, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

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

1. In part 180:

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

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

b. In § 180.342, paragraph (a) is amended by revising the table therein, and paragraph (c) is amended by revising the table therein, to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almonds	0.2
Almonds, hulls	12.0
Apples	1.5
Beans, lima	0.05
Beans, lima, forage	1.0
Beans, snap	0.05
Beans, snap, forage	1.0
Beets, sugar, roots	1.0
Beets, sugar, tops	8.0
Blueberries	2 ppm (of which no more than 1 ppm is chlorpyrifos)
Citrus fruits	1.0
Corn, fresh (inc. sweet K-CWHR)	0.1
Cranberries	1.0
Kiwifruit	2.0
Mushrooms	0.1
Onions (dry bulb)	0.5
Peppers	1.0
Seed and pod vegetables	0.1
Sorghum, fodder	6.0
Sorghum, forage	1.5
Sorghum, grain	0.75
Sunflower, seeds	0.25
Tomatoes	0.5
Tree nuts	0.2
Vegetables, leafy, *Brassica* (cole)	[1]2.0
Walnuts	0.2

[1] Of which no more than 1.0 ppm is chlorpyrifos.

* * * * *

(c) * * *

Commodity	Parts per million
Alfalfa, forage	3
Alfalfa, hay	13
Bananas, whole	0.1
Bananas, pulp with peel removed	0.01
Bean, forage	0.7
Broccoli	1
Brussels sprouts	1
Cabbage	1
Caneberries	1.0
Cattle, fat	0.3
Cattle, meat and meat byproducts	0.05
Cauliflower	1
Cherries	1
Chinese cabbage	1
Corn, field, grain	0.05
Corn, forage and fodder	8
Cottonseed	0.2
Cucumbers	0.05
Eggs	0.01
Figs	0.01
Goats, fat	0.2
Goats, meat and meat byproducts	0.05
Hogs, fat	0.2
Hogs, meat and meat byproducts	0.05
Horses, meat, fat, and meat byproducts	0.25
Legume vegetables, succulent or dried (except soybeans)	0.05
Milk, fat	0.25
Milk, whole	0.01
Mint, hay	0.8
Nectarines	0.01
Peaches	0.01
Pea forage	0.7
Peanut hulls	2
Peanuts	0.2
Pears	0.01
Plums (fresh prunes)	0.01
Poultry, meat, fat, and meat byproducts (inc. turkeys)	0.1
Pumpkins	0.05
Radishes	2
Rutabagas	0.5
Sheep, fat	0.2
Sheep, meat and meat byproducts	0.05
Soybean grain	0.3
Soybean forage	0.7
Strawberries	0.2
Sweet potatoes	0.05
Turnip greens	0.3
Turnips	1
Wheat, grain	0.5
Wheat, straw	6
Wheat, forage	3

* * * * *

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.1000, paragraph (a) is amended by revising the table therein, and new paragraph (d) is added, to read as follows:

§ 185.1000 Chlorpyrifos.

(a) * * *

Foods	Parts per million
Citrus oil	25.0
Corn oil	3.0

* * * * *

(d) Tolerances are established for residues of the insecticide chlorpyrifos

[*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] resulting from application of the insecticide to growing crops as follows:

Foods	Parts per million
Milling fractions (except flour) of wheat	1.5
Mint oil	8
Peanut oil	0.4

[FR Doc. 93–8572 Filed 4–13–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 180, 185, and 186

[PP 2F4144 and FAP 2H5648/R1192; FRL–4580–4]

RIN 2070–AB78

Pesticide Tolerances for Fenpropathrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of the pesticide chemical fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) in or on the raw agricultural commodities (RACs) cottonseed at 1.0 part per million (ppm); meat, meat byproducts, and fat of cattle, goats, hogs, horses, poultry, and sheep at 0.02 ppm; milk fat (reflecting 0.02 ppm in whole milk) at 0.03 ppm; and eggs at 0.02 ppm; a food additive tolerance for fenpropathrin in or on cottonseed oil at 3 ppm; and a feed additive tolerance for fenpropathrin in or on cottonseed soapstock at 2.0 ppm. These regulations to establish maximum permissible levels for residues of the pesticide chemical were requested in petitions submitted by Valent U.S.A. Corp.

EFFECTIVE DATE: These regulations become effective April 2, 1993.

ADDRESSES: Written objections, identified by the document control number [PP 2F4144 and FAP 2H5648/R1192], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of December 9, 1992 (57 FR 58211), which announced that Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, had submitted pesticide petition (PP) 2F4144 proposing to establish tolerances under section 408(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a (b), in or on the raw agricultural commodities cottonseed at 1.0 ppm; meat and meat byproducts and fat of cattle, goats, hogs, horses, and sheep at 0.02 ppm; milk fat (reflecting 0.03 ppm in whole milk) at 0.07 ppm; poultry meat, fat, meat byproducts, and eggs 0.02 ppm and food/feed petition (FAP) 2H5648 proposing to establish tolerances in or on the food commodity cottonseed oil at 3 ppm and feed commodity cottonseed soapstock at 2.0 ppm. The milk fat tolerance was incorrectly announced in the notice of filing and was subsequently corrected to milk fat (reflecting 0.02 ppm in whole milk) at 0.03 ppm.

No comments were received in response to the notice of filing.

On March 30, 1993, the Agency issued a conditional registration for fenpropathrin, a synthetic pyrethroid, on cotton with an expiration date of November 15, 1993. The registration was made conditional to be consistent with other synthetic pyrethroids conditionally registered for use on cotton and to allow time for the Agency to complete its regulatory and risk reviews of cotton use of the synthetic pyrethroids. Because synthetic pyrethroids are toxic to fish and other aquatic organisms, the Agency is concerned about adverse impacts on aquatic ecosystems related to this use of the synthetic pyrethroids.

In November 1990, the Agency and five registrants of pyrethroid cotton insecticides (collectively, the Pyrethroid Working Group (PWG)) in collaboration with the National Cotton Council agreed to interim risk reduction measures designed to reduce the potential for exposure of aquatic habitats of concern to synthetic pyrethroids applied to cotton. The interim risk reduction measures included user surveys to assess current pyrethroid use practices on cotton, label changes aimed at reducing the aquatic environmental exposure to pyrethroids, and a program of data generation to estimate the effectiveness of the steps taken. As part of this interim risk reduction program, the Agency agreed to extend the registration of the cotton-use synthetic pyrethroids to November 15, 1993. By November 15, 1993, it is the Agency's intent to complete its review of all data submitted under the data generation program and other information and to make FIFRA Section 3(c)(5) or other appropriate regulatory decisions for cotton use synthetic pyrethroids.

With respect to the use of fenpropathrin on cotton, the Agency concluded that use of fenpropathrin would not cause a significant increase in the risk of adverse effects to the environment. This conclusion was premised mainly on the following:

1. The short period of time the registration would be in effect before the Agency completes its final regulatory and risk reviews of cotton use of the synthetic pyrethroids.

2. Valent U.S.A. Corp.'s commitment to agree to the terms and conditions stipulated by the Agency for continued registration of current cotton pyrethroid products. These conditions include aquatic risk mitigation language for the cotton use labeling and conditional registration subject to an Agency determination of aquatic risk.

3. The total number of treated acres of cotton is essentially the same and the registration of a new pyrethroid on cotton, such as fenpropathrin, would result in no significant increase in the number of acres treated. Instead, it would result in only changes in market share, i.e., the percentage of acres that are treated with any particular cotton pyrethroid.

Therefore, as set forth below the Agency is establishing these tolerances with an expiration date of November 15, 1994, to cover residues expected to be present during the period of conditional registration. The tolerances could be made permanent if full registration is subsequently granted.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of the tolerances include the following:

1. A 12-month oral toxicity study (dog): Systemic no-observed-effect level (NOEL) of 100 ppm (2.5 milligram (mg)/kilogram (kg)/day) and a systemic lowest effect level (LEL) of 250 ppm (6.25 mg/kg/day).

2. A 24-month chronic feeding/carcinogenicity (rat): Systemic NOEL's of 450 ppm in males, 150 ppm in females (17.06 mg/kg/day and 7.23 mg/kg/day, respectively). Systemic LEL of 600 ppm (HDT: 22.80 mg/kg/day) in males (increased mortality, body tremors, increased pituitary, kidney, and adrenal weights), and systemic LEL of 450 ppm (19.45 mg/kg/day) in females (increased mortality and body tremors). There were no oncogenic effects observed at any dose levels.

3. A 24-month chronic feeding/carcinogenicity study (mouse): Systemic NOEL greater than 600 ppm HDT (males and females; 56.0 and 65.2 mg/kg/day, respectively). There were no indications of toxicity or carcinogenicity other than marginally increased hyperactivity in females dosed at 600 ppm.

4. Three-generation reproduction study (rats): (Parent) systemic NOEL of 40 ppm (M/F 3.0/3.4 mg/kg/day). Systemic LEL of 120 (M/F 8.9/10.1 mg/kg/day)— body tremors with spasmodic muscle twitches, increased sensitivity, and maternal lethality. (Pups) Reproductive NOEL = 120 ppm (M/F 8.9/10.1 mg/kg/day). Reproductive LEL = 360 ppm (M/F 26.9/32.0 mg/kg/day)— Decreased mean F_{2B} loss. Developmental NOEL = 40 ppm (M/F 3.0/3.4 mg/kg/day). Developmental LEL = 120 ppm (M/F 8.9/10.1 mg/kg/day)— body tremors, increased mortality.

5. Developmental toxicity (rabbits): Maternal NOEL = 4 mg/kg/day, maternal LEL = 12 mg/kg/day (grooming, anorexia, flicking of the forepaws). Developmental NOEL > 36 mg/kg/day, there were no compound-related effects on reproductions. Clinical signs included grooming, anorexia, flicking of the forepaws and hindfeet, shaky movements, trembling, stamping of the hindfeet, and lethargy.

6. Developmental toxicity (rats): Maternal NOEL = 6 mg/kg/day, maternal LEL of 10 mg/kg/day (death moribundity, ataxia, sensitivity to external stimuli, spastic jumping, tremors, prostration, convulsion, hunched posture, squinted eyes, chromodacryorrhea, and lacrimation). Developmental NOEL > 10 mg/day. No developmental effects were observed at a dose that was lethally neurotoxic to dams.

The following genotoxicity tests were negative: A gene mutation assay (Ames), a chromosomal aberration study in rodents, an *in vitro* cytogenics assay, and DNA damage/repair in *Bacillus subtilis*.

The Reference Dose (RfD) is 0.025 mg/kg/day based on a NOEL of 2.5 mg/kg body weight (bwt)/day from a 1-year dog feeding study and an uncertainty safety factor of 100. The Dietary Risk Evaluation System (DRES) chronic exposure analysis used tolerance level residues and 100 crop treated to estimate the Theoretical Maximum Residue Contribution (TMRC) for the overall U.S. population and 22 population subgroups. The TMRC for the overall U.S. population from published uses is only 0.000284 mg/kg bwt/day, which represents 1.13 percent of the RfD. DRES estimates that exposure at the tolerance level would be approximately 1 percent of the RfD for the general population, and as high as 5 percent for nonnursing infants less than 1 year old. When Anticipated Residues are used, exposure is estimated to be 0.4 percent of the RfD for the general population and 0.5 percent for nonnursing infants less than 1 year old.

The metabolism of the chemical in plants and animals is adequately understood for this use. Secondary residues occurring in meat, fat, and meat by-products of catttle, goats, hogs, horses, poultry and sheep, and in eggs and milk will not exceed the proposed tolerances. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. Prior to its publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail: Calvin Furlow, (H7506C), Public Response and Program Resources Branch, Field Operation Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

The pesticide is considered useful and capable of achieving the intended physical or technical effect. Based on the above information, the Agency concludes that the proposed section 408 tolerances will protect the public health and that use of the pesticide in accordance with the proposed section 409 food/feed additive regulation will be safe. Therefore, the tolerances and food/feed additive regulations are established as set forth below.

The Office of Management and Budget has exempted these rules 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/feed additive regulations or raising tolerance or food/feed additive regulation levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

1. In part 180:

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

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

b. By adding new § 180.466, to read as follows:

§ 180.466 Fenpropathrin; tolerance for residues.

Tolerances are established for residues of the pesticide chemical fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Cottonseed	1.0	Nov. 15, 1994
Cattle, fat	0.02	Do.
Cattle, mbyp	0.02	Do.
Cattle, meat	0.02	Do.
Eggs	0.02	Do.
Goats, fat	0.02	Do.
Goats, mbyp	0.02	Do.
Goats, meat	0.02	Do.
Hogs, fat	0.02	Do.
Hogs, mbyp	0.02	Do.
Hogs, meat	0.02	Do.
Horses, fat	0.02	Do.
Horses, mbyp	0.02	Do.
Horses, meat	0.02	Do.
Milkfat (reflecting 0.02 ppm in whole milk)	0.03	Do.
Poultry, fat	0.02	Do.
Poultry, mbyp	0.02	Do.
Sheep, fat	0.02	Do.
Sheep, mbyp	0.02	Do.
Sheep, meat	0.02	Do.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 185.3225, to read as follows:

§ 185.3225 Fenpropathrin.

A food additive tolerance is established for residues of the pesticide chemical fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) as follows:

Commodity	Parts per million	Expiration date
Cottonseed oil	3.0	Nov. 15, 1994

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read asfollows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.3225, to read as follows:

§ 186.3225 Fenpropathrin

A feed additive tolerance is established for residues of the pesticide chemical fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) as follows:

Commodity	Parts per million	Expiration date
Cottonseed soapstock	2.0	Nov. 15, 1994

[FR Doc. 93–8571 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–283; RM–8122]

Radio Broadcasting Services; Hope and Fordyce, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 269C2 for Channel 269A at Hope, Arkansas, and modifies the license of Station KXAR–FM to specify operation on the higher powered channel, as requested by KdB, Inc. Additionally, in order to accommodate the modification at Hope, Channel 272A is substituted for Channel 269A at Fordyce, Arkansas, and the license issued to Dallas Properties, Inc. for Station KQEW(FM) is modified accordingly. See 57 FR 59331, December 15, 1992. Coordinates for Channel 269C2 at Hope are 33–40–15 and 93–37–10. Coordinates for Channel 272A at Fordyce are 33–48–17 and 92–26–07. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 24, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–283, adopted March 12, 1993, and released April 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 269A and adding Channel 272A at Fordyce, and by removing Channel 269A and adding Channel 269C2 at Hope.

Federal Commissions Commission.

Michael C. Ruger,

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

[FR Doc. 93–8631 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1141

[Ex Parte No. 507]

Procedures to Calculate Interest Rates

AGENCY: Interstate Commerce Commission.

ACTION: Final Rule.

SUMMARY: The Commission is revising its regulations for the computation of interest. The revisions result in the use of the 13-week Treasury Bill coupon equivalent yield in both investigation and complaint cases; the use of quarterly compounding of interest in both investigation and complaint cases; and the use of floating interest rates in complaint cases where extended time periods are involved. The purpose of these revisions is to clarify the procedures for the computation of interest, so as to produce a more equitable compensation formula for all parties, whether there are undercharges or overcharges.

EFFECTIVE DATE: This action is effective April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 927–6187. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on August 7, 1992 at 57 FR 34891. Comments on the proposal were received from the Association of the American Railroads and the National Industrial Transportation League.

Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose of our regulation is to clarify our procedures for the computation of interest. The economic impact, if any, is not likely to be felt by a substantial number of small entities.

List of Subjects in 49 CFR Part 1141

Administrative practice and procedure.

Decided: April 5, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1141 of the Code of Federal Regulations is amended as follows:

1. Part 1141 is revised to read as follows:

PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

Authority: 49 U.S.C. 10321; 5 U.S.C. 553.

§ 1141.1 Procedures to calculate interest rates.

(a) For purposes of complying with a Commission decision in a complaint or investigation proceeding, interest rates to be computed shall be the coupon equivalent yield (investment rate) of marketable securities of the United States Government having a duration of 91 days (3 months). The rate levels will be determined as follows:

(1) For investigation proceedings, the interest rate shall be the coupon equivalent yield in effect on the date the statement is filed accounting for all amounts received under the new rates (See 49 U.S.C. 10707(d)(1)).

(2) For complaint proceedings, the interest rate shall be the coupon equivalent yield in effect on the first day of the calendar quarter in which an unlawful charge is paid. The interest rate in complaint proceedings shall be updated as of the first day of all subsequent calendar quarters, at the coupon equivalent yields in effect on those days. Updating will continue until the required reparation payments are made.

(3) For purposes of this section, coupon equivalent yields shall be considered "in effect" on the date the securities are issued, not on the date they are auctioned. If the date the statement is filed (for investigation proceedings) or if the first day of the calendar quarter (for complaint proceedings) is the same as the issue date, then the yield on that date shall be used.

(b) Interest in a complaint or investigation proceeding shall be compounded quarterly, as follows:

(1) For investigation proceedings, the reparations period shall begin on the date the investigation is started. Thus, unless by coincidence, the quarterly compounding periods in investigation proceedings will not coincide with the calendar quarters.

(2) For complaint proceedings, the reparations period shall begin on the date the unlawful charge is paid. However, in order for the quarterly compounding periods in complaint cases to coincide with the calendar quarters (so that only one interest rate is in effect during each compounding period), the first compounding period shall run from the date the unlawful charge is paid to the last day of the current calendar quarter, and all subsequent compounding periods shall coincide with the calendar quarters.

(3) For both investigation and complaint proceedings, the annual effective interest rate shall be the same as the annual nominal (or stated) rate. Thus, the nominal rate must be factored exponentially to the power representing the portion of the year covered by the interest rate. A simple multiplication of the nominal rate by the portion of the year covered by the interest rate would not be appropriate because it would result in an effective rate in excess of the nominal rate. Under this "exponential" approach, the total cumulative reparations payment (including interest) is calculated by multiplying the interest factor for each quarterly period (or part thereof) by the principal amount for that period plus any accumulated interest from previous periods. The "interest factor" for each period is 1.0 plus the interest rate for that period to the power representing the portion of the year covered by the interest rate. As an example, if the annual interest rate for the quarter is 5.6 percent, then the interest factor would be 1.01368, or 1.056 to the power of 91/365.

[FR Doc. 93–8715 Filed 4–13–93; 8:45 am]

BILLING CODE 7035–01–P

Proposed Rules

Federal Register
Vol. 58, No. 70
Wednesday, April 14, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239 and 274

[Release Nos. 33-6989, IC-19391, File No. S7-15-93]

RIN 3235-AF86

Continuous or Delayed Offerings by Certain Closed-End Management Investment Companies; Automatic Effectiveness of Certain Registration Statements and Post-Effective Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule, proposed amendments to a rule and form, and request for comment.

SUMMARY: The Commission is proposing for public comment a new rule and an amendment to a rule under the Securities Act of 1933 (the "Securities Act") that would enable a closed-end management investment company or business development company that makes periodic repurchase offers (a "closed-end interval fund") to offer securities on a continuous or delayed basis under the "shelf registration" provisions of the Securities Act, and provide for the automatic effectiveness of post-effective amendments and registration statements filed for the purpose of registering additional securities. The Commission also is proposing to amend the instructions and facing sheet of the closed-end registration form to explain and implement the new procedures.

The Commission is proposing these changes because the rules currently do not permit closed-end interval companies to offer their shares on a delayed basis or obtain automatic effectiveness of post-effective amendments or new registration statements filed to register additional securities; commenters on another Commission proposal recommended such changes for offerings of securities by closed-end interval funds. The proposals would provide closed-end interval funds with a new offering procedure and a simplified registration process so that they can offer shares on an ongoing basis to counter reductions in net assets caused by repurchases.

DATES: Comments must be received on or before June 14, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549. All comment letters should refer to File No. S7-15-93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert G. Bagnall, Special Counsel, (202) 272-3042, or Diane C. Blizzard, Assistant Director, (202) 272-2048, Office of Regulatory Policy; or James E. Anderson, Staff Attorney, (202) 272-7027, Office of Investment Company Regulation; Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on an amendment to rule 415(a) under the Securities Act (17 CFR 230.415(a)) and proposed rule 485a under the Securities Act. The Commission also is proposing new instructions to Form N-2, the form used by closed-end investment companies to register their securities.

I. Background

Closed-end management investment companies traditionally have offered their shares through underwritten offerings of a fixed number of shares. By contrast, open-end management investment companies generally offer and sell new shares to the public on a continuous basis in order to replenish monies withdrawn by redemption of shares. The Commission today adopted rule 23c-3 [1] under the Investment Company Act of 1940 [2] ("Investment Company Act"), which permits closed-end interval funds to make periodic repurchase offers for their shares; such funds may need to offer shares on a continuous or delayed basis in order to counter reductions in net assets resulting from repurchases, and hence may wish to offer their shares more like open-end companies than traditional closed-end companies.

Certain provisions of the securities laws accommodate continuous offerings of securities by open-end companies. Rule 485 under the Securities Act provides that post-effective amendments filed by open-end investment companies are effective automatically.[3] Post-effective amendments filed pursuant to paragraph (a) of the rule become effective on the 60th day after filing (or such date, within 80 days of filing, specified by the registrant, or an earlier date declared by the Commission), and amendments filed pursuant to paragraph (b) become effective upon filing (or on such date, within 20 days of filing, specified by the registrant). Open-end companies file post-effective amendments under paragraph (a) if the amendment contains disclosure about a material event. Open-end companies are eligible to file under paragraph (b) only to register additional securities pursuant to section 24 of the Investment Company Act or to update the financial or other disclosure contained in their prospectuses. Section 24(e)(1) of the Investment Company Act allows an open-end company to register additional securities by post-effective amendment.[4] Section 24(f) of the Investment Company Act authorizes the Commission to adopt rules to permit an open-end company to register an indefinite number of redeemable securities,[5] and rule 24f-2 effectuates that provision.[6]

Similar procedures are not available for closed-end companies. Instead, a closed-end company that wishes to make a continuous offering of its securities must rely on the "shelf registration" procedures contained in rule 415 under the Securities Act.[7] Closed-end companies relying on rule 415 may register their securities only pursuant to paragraph (a)(1)(ix), which requires that the securities be offered on a continuous basis. Thus, issuers relying

[1] 17 CFR 270.23c-3.
[2] 15 U.S.C. 80a.
[3] 17 CFR 230.485. Post-effective amendments filed by registered separate accounts and certain unit investment trusts are effective automatically pursuant to rules 486 (17 CFR 230.486) and 487 (17 CFR 230.487), respectively.
[4] 15 U.S.C. 80a-24(e)(1).
[5] 15 U.S.C. 80a-24(f).
[6] 17 CFR 270.24f-2.
[7] 17 CFR 230.415.

on paragraph (a)(1)(ix) may not suspend and resume offerings of securities. An issuer relying on rule 415(a)(1)(ix) also may register only securities that it reasonably expects to offer and sell within two years of the initial effective date of the registration statement.[8] A closed-end fund that registers securities in reliance on rule 415 is required to undertake to file a post-effective amendment to include a prospectus containing current disclosure pursuant to section 10(a)(3) of the Securities Act.[9]

Section 6(a) of the Securities Act[10] has been construed to prohibit issuers (other than investment companies subject to sections 24(e) and (f) of the Investment Company Act) from registering additional shares by post-effective amendment. Rule 413 under the Securities Act expressly requires issuers to file a new statement to register securities of the same class as other securities for which a registration statement is already in effect.[11] Post-effective amendments of closed-end funds do not become effective automatically. A new registration statement filed by a closed-end fund becomes effective on the twentieth day after filing.[12]

Pursuant to rule 429 under the Securities Act, a registrant that registers additional shares pursuant to a new registration statement may use a combined prospectus to cover the securities under earlier registration statements and the additional securities.[13] The combined prospectus must contain all the information that currently would be required in a prospectus relating to the securities covered by the earlier statements.

In the release proposing rule 23c-3,[14] the Commission stated that an amendment to rule 415 for closed-end interval funds might not be necessary because a proposed exemption from rule 10b–6[15] would obviate any need for a closed-end interval fund to interrupt its offering.[16] The Commission requested comment, however, on whether other circumstances made new registration procedures necessary or desirable.[17] All commenters that addressed the topic recommended that the Commission amend the rules governing offerings by closed-end interval funds.[18] Because closed-end companies are required by section 23(b) of the Investment Company Act[19] to sell their shares at net asset value, the commenters believed that closed-end interval funds whose shares are traded in a secondary market would not be able to sell shares in the periods between repurchase offers, when the market price might be at a discount to net asset value. The commenters asserted that such closed-end interval funds need the flexibility to suspend offerings between repurchase offers if a market discount develops and the funds effectively are unable to sell shares. The commenters also asserted that a rule similar to rule 485 would be extremely helpful. In response, the Commission today is proposing rule changes and changes to Form N–2 to modify the offering and registration procedures available to closed-end interval funds.

II. Proposed Rules and Revisions to Rules to Provide for Registration of Securities by Closed-end Interval Funds

Under new rule 23c–3, closed-end interval funds, like open-end companies, will likely sell shares, either continuously or intermittently, to raise additional equity to offset the effects of repurchases. Under these proposals, offerings by closed-end interval funds and the review of their registration statements would have many of the same attributes as those for open-end companies. Certain differences would remain, however; closed-end interval funds would not be able to register an indefinite number of shares or to net repurchases against new sales in computing registration fees.[20]

The provisions proposed below would be available only to closed-end interval funds. Other closed-end funds presumably would not have the same need to make continuous or intermittent offerings of their common stock; because they would not be repurchasing their shares periodically, they would not have the same need to replenish the assets invested. The Commission requests comment, however, on whether other closed-end funds should be eligible to rely upon proposed paragraph (a)(1)(xi) of rule 415 and on rule 485a. Commenters who support making these provisions more widely available should discuss what factors require the broader availability of these provisions, and what additional provisions may be necessary to ensure the currency and adequacy of information to investors.

A. Revisions to Rule 415

Unlike paragraph (a)(1)(ix) of rule 415, which permits shelf registration by closed-end companies only if an offering is to be continuous, proposed paragraph (a)(1)(xi) would provide that an offering could be made on either a delayed or a continuous basis. In addition, an interval fund registering securities under the new rule would not be subject to the limitation currently imposed by paragraph (a)(2) that an issuer may only register the securities it reasonably expects to sell in the next two years.

The new rule responds to the concerns expressed by the commenters. If the shares of an interval fund are available at a discount to net asset value in a secondary market, the interval fund may suspend or delay its offering. Moreover, an interval fund may use periodic repurchases and intermittent offerings as a method to control portfolio management. The proposed rule is consistent with the recommendation made in the report issued last year by the Division of Investment Management, Protecting Investors, A Half Century of Investment Company Regulation (1992).[21]

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[8] 17 CFR 230.415(a)(2).

[9] 15 U.S.C. 77j(a)(3). The undertakings are among those required pursuant to paragraph (a)(1)(i) of Item 512 of Regulation S-K (17 CFR 229.512) and Item 33 of Form N–2. *See* 17 CFR 230.415(a)(3).

[10] 15 U.S.C. 77f(a).

[11] 17 CFR 230.413.

[12] Effectiveness can be delayed through the use of a delaying amendment filed in accordance with rule 473 under the Securities Act (17 CFR 230.473). The staff of the Commission must act under delegated authority, however, to make such a registration statement effective if the registrant desires that it be made effective without waiting 20 days.

[13] 17 CFR 230.429.

[14] Securities Act Release No. 6948 (July 28, 1992).

[15] 17 CFR 240.10b-6. Rule 10b-6 generally prohibits persons involved in the distribution of securities from bidding for or purchasing those securities and certain related securities until after their participation in the distribution is complete. Without an exemption from rule 10b-6 or other relief, interval funds would have to suspend offering their shares during the pendency of any repurchase offer, and consequently might not be permitted to register shares pursuant to rule 415(a)(ix).

[16] Sec. Act Rel. 6948, *supra* note 11, at 42.

[17] *Id.*

[18] Letter from American Bar Association, Section of Business Law to Jonathan G. Katz, Secretary, SEC 7 (Nov. 2, 1992), File No. S7–27–92; Letter from Prudential Mutual Fund Management to Jonathan G. Katz, Secretary, SEC 13 (Nov. 2, 1992), File No. S7–27–92; Letter from Brown & Wood to Jonathan G. Katz, Secretary, SEC 21–22 (Nov. 3, 1992), File No. S7–27–92; Letter from Eaton Vance Management to Jonathan G. Katz, Secretary, SEC 2 (Nov. 3, 1992), File No. S7–27–92; Letter from Hale and Dorr to Jonathan G. Katz, Secretary, SEC 7 (Nov. 4, 1992), File No. S7–27–92; Letter from Investment Company Institute to Jonathan G. Katz, Secretary, SEC 21 (Nov. 4, 1992), File No. S7–27–92; and Letter from Ropes & Gray to Jonathan G. Katz, Secretary, SEC 8 (Nov. 4, 1992), File No. S7–27–92.

[19] 15 U.S.C. 80a-23(b).

[20] Sections 24(e) and (f) of the Investment Company Act and the rules thereunder allow open-end funds to pay registration fees only on the amount of securities being registered that exceed the amount of securities repurchased or redeemed by the issuer in the prior fiscal year.

[21] Division of Investment Management, SEC, Protecting Investors, A Half Century of Investment Company Regulation 453 (1992) (recommending that rule 415 be amended to allow closed-end

B. Rule 485a

Under Securities Act rule 485, post-effective amendments to registration statements filed by open-end companies automatically become effective without affirmative action on the part of the Commission or its staff. Post-effective amendments under paragraph (a) generally become effective in 60 days; post-effective amendments meeting the conditions under paragraph (b) become effective automatically. Automatic effectiveness of post-effective amendments enables the staff to concentrate its resources on those filings that present material or complex issues.

Proposed rule 485a is patterned after rule 485. Because many closed-end interval funds are likely to need a continuously effective registration statement, rule 485a would provide them a procedure for automatic effectiveness of their post-effective amendments and registration statements for additional shares of common stock. Unlike open-end companies, which may register additional shares by post-effective amendment, closed-end interval funds must file a new registration statement under the Securities Act. Rule 485a would continue this distinction, but would provide in paragraph (b) that a new registration statement filed solely to register additional shares may become effective immediately, in the same way as amendments under rule 485(b) for the purpose of registering an indefinite number of, or additional, shares. Automatic effectiveness under rule 485a would be limited to filings of post-effective amendments or new registration statements for common stock for which a prior post-effective amendment or registration statement had become effective within the last two years; this requirement is intended to assure that funds update their prospectus disclosure regularly and that a new filing does not become effective without recent staff review or the opportunity for review.

C. Revisions to Form N–2

Proposed paragraph 4 of Instruction E to Form N–2 would explain that closed-end interval funds may offer shares on a continuous or delayed basis pursuant to rule 415(a)(1)(xi), and that post-effective amendments and new registration statements to register additional securities will be automatically effective pursuant to rule 485a. Instruction E directs closed-end interval funds to use combined prospectuses pursuant to rule 429 under the Securities Act when filing new registration statements to register additional shares. Instruction E also clarifies that the registrant would be required to pay a filing fee only with respect to the additional securities.[22]

In addition, the facing sheet of Form N–2 would be amended to require registrants to check the appropriate box to indicate whether a filing is made pursuant to paragraph (a) or (b) of rule 485a, and to indicate the proposed effective date. This change is based upon the facing sheet of Form N–1A.

III. Cost/Benefit of Proposed Action

Proposed rule 485a and the proposed amendments to rule 415 and Form N–2 would permit closed-end interval funds to engage in continuous or delayed offerings of their securities, and would permit automatic effectiveness of post-effective amendments or new registration statements for additional securities. These proposals would provide closed-end interval funds with a new offering procedure and a simplified registration process so that they can offer shares on an ongoing basis to counter reductions in net assets caused by repurchases. The Commission believes that the new offering procedure and simplified registration process should be less burdensome than the current requirements under rule 415(a)(1)(ix). Comments are requested, however, on the above assessment of the costs and benefits associated with the proposed rule and rule and form amendments. Commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical evidence.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rule 485a under the Securities Act of 1933 (the "Securities Act") and proposed amendments to rule 415 under the Securities Act and Form N–2, the registration statement form for closed-end management investment companies. The Analysis explains that the proposals are intended to permit closed-end management investment companies and business development companies that make periodic repurchase offers pursuant to rule 23c–3 to engage in continuous or delayed offerings of their securities, and would permit the automatic effectiveness of post effective amendments or new registration statements of additional securities. The Analysis describes the present regulatory framework, under which closed-end companies or business development companies seeking to rely on rule 23c–3 would not be able to make offerings of their securities on a delayed basis or obtain automatic effectiveness of post-effective amendments or new registration statements for additional securities. The Analysis states that several significant alternatives to the proposals were considered, including imposing fewer requirements for small entities, but concludes that different compliance or reporting requirements or timetables are not necessary to accommodate small entities and would not be consistent with the protection of investors. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Robert G. Bagnall, at Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Statutory Authority

The proposed rule, rule amendment, and form amendment would be adopted under the following authority: rule 485a pursuant to sections 7, 8, and 19(a) of the Securities Act (15 U.S.C. 77g, 77h, and 77s(a)); amendment to rule 415 pursuant to sections 6, 7, 10, and 19(a) of the Securities Act (15 U.S.C. 77f, 77g, 77j, and 77s(a)); and amendment to Form N–2 pursuant to sections 6, 7, and 8 of the Securities Act (15 U.S.C. 77f, 77g, and 77h) and sections 8(b), 24(a), and 38(a) of the Investment Company Act (15 U.S.C. §§ 80a-8(b),-24(a),-37(a)).

Text of Proposed Rule and Rule Amendment

For the reasons set out in the preamble, the Commission is proposing to amend chapter II, title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Section 230.415 is amended by removing the word "or" at the end of paragraph (a)(1)(ix), removing the "period" and adding the word "or;" at the end of paragraph (a)(1)(x), and adding new paragraph (a)(1)(xi) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

companies to offer their shares on a continuous or delayed basis).

[22] *See, e.g.*, Instruction E to Form S–8.

(xi) Shares of common stock which are to be offered and sold on a delayed or continuous basis by or on behalf of a closed-end management investment company or business development company which makes periodic repurchase offers pursuant to § 270.23c-3 of this chapter.

3. By adding new § 230.485a to read as follows:

§ 230.485a Effective Date of Post-Effective Amendments and Registration Statements Filed by Certain Closed-End Management Investment Companies.

(a) Except as otherwise provided in this section, a post-effective amendment to a registration statement, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on Form N–2 (§§ 239.14 and 274.11a-1 of this chapter) is effective, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers pursuant to § 270.23c-3 of this chapter shall become effective on the sixtieth day after the filing thereof, or such later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall not be later than eighty days after the date on which the amendment or registration statement is filed, *Provided* That the Commission, having due regard to the public interest and the protection of investors, may declare an amendment or registration statement filed pursuant to this paragraph effective on an earlier date.

(b) Except as otherwise provided in this section, a post-effective amendment to a registration statement, or a registration statement for additional shares of common stock, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers pursuant to § 270.23c-3 of this chapter, shall become effective on the date on which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall be not later than twenty days after the date on which the amendment or registration statement is filed, provided that the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Registering additional shares of common stock for which a registration statement filed on Form N–2 (§§ 239.14 and 274.11a-1 of this chapter) is effective; and

(ii) Bringing the financial statements and other information up to date pursuant to section 10(a)(3) of the Act, and in conjunction therewith, making such other non-material changes as the registrant deems appropriate; and

(2) Any prospectus or Statement of Additional Information filed as a part of such amendment or registration statement does not include disclosure relating to any of the following events to the extent that such events have occurred since the effective date of the registrant's registration statement or the effective date of its most recent post-effective amendment thereto which included a prospectus of or Statement of Additional Information, whichever is later, unless such events are disclosed in a post-effective amendment or registration statement filed pursuant to paragraph (a) of this section which has not yet become effective:

(i) Termination of an investment advisory contract;

(ii) A change in the registrant's investment objectives, in any of its policies listed in section 8(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-8(b)(1)), or in any other investment policy which the registrant deems fundamental or which, pursuant to section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a-13), is changeable only by shareholder vote;

(iii) Suspension or postponement of periodic repurchase offers for securities issued by the registrant;

(iv) Resignation of any of the registrant's directors, unless the registrant represents that such director did not resign due to disagreement with the registrant on any matter relating to the registrant's operations, policies or practices; or

(v) A change in the registrant's independent public accountant, unless the registrant represents that there were no disagreements with the former accountant on any matter of accounting principles or practice or financial statement disclosures; and

(3) The registrant represents that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the latest of the following three dates:

(i) The effective date of the registrant's registration statement;

(ii) The effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or

(iii) The filing date of a post-effective amendment or registration statement filed pursuant to paragraph (a) of this section which has not become effective; and

(4) Such amendment or registration statement recites on the facing sheet thereof that the registration proposes that the amendment or registration statement will become effective pursuant to paragraph (b) of this section.

(c) No amendment or registration statement shall become effective pursuant to paragraph (a) of this section if, prior to the effective date of such amendment or registration statement, it should appear to the Commission that the amendment or registration statement may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment or registration statement is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment or registration statement, the amendment or registration statement shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d)(1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment or registration statement which includes a prospectus shall not become effective pursuant to paragraph (a) of this section if a subsequent post-effective amendment or registration statement relating to such prospectus is filed before such amendment or registration statement becomes effective.

(2) A post-effective amendment or registration statement which includes a prospectus shall become effective pursuant to paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment or registration statement relating to such prospectus, *Provided*, That such subsequent amendment or registration statement is filed pursuant to paragraph (b) of this section, *And provided further*, That such subsequent amendment or registration statement designates as its effective date the date on which the prior post-effective amendment or registration statement shall become effective pursuant to paragraph (a) of this section. If another post-effective amendment or registration statement relating to the same prospectus is filed pursuant to paragraph (a) of this section before the prior amendments or registration statements filed pursuant to paragraphs (a) and (b) of this section

have become effective, neither the prior amendment or registration statement filed pursuant to paragraph (a) of this section nor the amendment or registration statement filed pursuant to paragraph (b) of this section shall become effective pursuant to this section.

(e) The representations of the registrant referred to in paragraphs (b)(2)(iv), (b)(2)(v) and (b)(3) of this section shall be made by certification of the signature page of the post-effective amendment or registration statement that such amendment or registration statement meets all of the requirements for effectiveness pursuant to paragraph (b) of this section. If counsel prepared or reviewed the post-effective amendment or registration statement filed pursuant to paragraph (b) of this section, such counsel shall furnish to the Commission at the time the amendment or registration statement is filed a written representation that the amendment or registration statement does not contain disclosure which would render it ineligible to become effective pursuant to paragraph (b) of this section.

(f) A post-effective amendment or new registration statement shall not become effective pursuant to paragraph (a) or (b) of this section unless within two years prior to the filing thereof a post-effective amendment or registration statement relating to the common stock of the issuer has become effective.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

5. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

* * * * *

§§ 239.14, 274.11a–1 [Amended]

6. Form N–2 (§§ 239.14 and 274.11a–1) is amended by adding the following to the facing sheet before the heading "Calculation of Registration Fee under the Securities Act of 1933".

Form N–2

* * * * *

It is proposed that this filing will become effective (check appropriate box)

—immediately upon filing pursuant to paragraph (b)

—on (date) pursuant to paragraph (b)

—60 days after filing pursuant to paragraph (a)

—on (date) pursuant to paragraph (a) of rule 485a

* * * * *

7. Adding new paragraph 4 to General Instruction E to Form N–2 (§§ 239.14 and 274.11a–1) to read as follows:

Form N–2

* * * * *

General Instructions

* * * * *

E. Amendments

* * * * *

4. A post-effective amendment to a registration statement on this Form, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on this Form is effective, filed on behalf of a Registrant which makes periodic repurchase offers pursuant to Rule 23c–3 under the Investment Company Act (17 CFR 270.23c–3) may become effective automatically in accordance with Rule 485a under the Securities Act (17 CFR 230.485a). In accordance with Rule 429 under the Securities Act (17 CFR 230.429), a Registrant filing a new registration statement for the purpose of registering additional shares of common stock may use a prospectus with respect to the additional shares also in connection with the shares covered by earlier registration statements if such prospectus includes all of the information which would currently be required in a prospectus relating to the securities covered by the earlier statements. The filing fee required by the Act and Rule 457 under the Securities Act (17 CFR 230.457) shall be paid with respect to the additional shares only.

* * * * *

By the Commission.

Dated: April 7, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–8640 Filed 4–13–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued April 8, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of informal conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) will be holding an informal conference pursuant to the notice of informal conferences issued on March 10, 1993. The purpose of the conference is to review the progress of industry working groups in developing standards relating to Electronic Bulletin Boards, as set forth in the March 10 Notice.

DATES: Monday, April 19 and Tuesday, April 20, 1993: beginning at 1 p.m. on April 19.

ADDRESSES: Edison Electric Institute, Conference Center, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426 (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of

issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Notice of Informal Conference

Take notice that Commission staff will convene an informal conference in this matter on Monday, April 19 and Tuesday, April 20, 1993. The purpose of the conference is to review the progress of the working groups in developing standards relating to Electronic Bulletin Boards, as set forth in the Notice of Informal Conferences issued by the Commission on March 10, 1993 (58 FR 14530, March 18, 1993).

The conference will begin at 1 p.m. on April 19, 1993 and will be held at: Edison Electric Institute, Conference Center, 701 Pennsylvania Avenue NW., Washington, DC 20004.

All interested persons are invited to attend. For additional information, or to indicate intent to participate in the conference, such persons should contact Marvin Rosenberg at (202) 208–1283 or Brooks Carter at (202) 208–0666.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8684 Filed 4–13–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

Addition of Douglas Municipal Airport to List of Designated Landing Locations for Private Aircraft

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations by adding Douglas Municipal Airport, Douglas, Arizona, to the list of designated airports at which private aircraft, arriving in the Continental U.S. via the U.S./Mexican border, the Pacific Coast, the Gulf of Mexico, or the Atlantic Coast, from certain locations in the southern portion of the Western Hemisphere, must land for Customs processing. This amendment is made to improve the effectiveness of Customs enforcement efforts to combat the smuggling of drugs by air into the United States, as Douglas is adjacent to the Southwest Border of the U.S. and is on a regularly traveled flight path, and to improve service to the community, by relieving congestion at the Bisbee-Douglas International Airport, also located in Douglas, Arizona.

DATES: Comments must be received on or before June 14, 1993.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Joe O'Gorman, Office of Inspection and Control, (202) 927–0543.

SUPPLEMENTARY INFORMATION:

Background

As part of Customs efforts to combat drug-smuggling efforts, Customs air commerce regulations were amended in 1975 to impose special reporting requirements and control procedures on private aircraft arriving in the Continental United States from certain areas south of the United States. T.D. 75–201. Thus, commanders of such aircraft are required to furnish Customs with timely notice of their intended arrival and certain private aircraft must land at designated airports for Customs processing. Since 1975, the list of designated airports has been changed and the reporting requirements and control procedures—now contained in subpart C of part 122 of the Customs Regulations (19 CFR subpart C, part 122)—have been amended, as necessary.

Specifically, § 122.23 (19 CFR 122.23) provides that subject aircraft arriving in the Continental U.S. must furnish a notice of intended arrival at the designated airport located nearest the point of crossing. And § 122.24(b) further provides that, unless exempt, such aircraft must land at the designated airport for Customs processing and delineates those airports designated for private aircraft reporting and processing purposes. There are currently 28 designated airports listed at § 122.24(b).

Community officials from Douglas, Arizona, have requested that certain Customs facilities be made available at the Douglas Municipal Airport for purposes of federal inspection. The request is based on the proximity of the airport to the center of business activity and the fact that significantly better facilities are available at that airport than at Bisbee-Douglas International Airport, which is also located in Douglas, Arizona. Customs has determined that the addition of Douglas Municipal Airport to the list of designated landing sites for subject aircraft will improve the effectiveness of Customs drug-enforcement programs relative to private aircraft arrivals, as Douglas is adjacent to the Southwest Border of the U.S. and is on a regularly traveled flight path. Further, the designation would enhance the efficiency of the Customs Service, as the airport is close to the normal work location for inspectional personnel assigned in the Port of Douglas-area. In this regard, it is pointed out that the private aircraft processing services Customs provides at the Bisbee-Douglas International Airport will continue; designating Douglas Municipal Airport is meant to provide an alternative airport to Bisbee-Douglas International in order to relieve air traffic congestion there.

Although notice of this proposed designation is not required to be published in the **Federal Register**, comments are solicited from interested parties concerning whether or not the Douglas Municipal Airport should be designated as an airport for the landing of private aircraft.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1099 14th St., NW., 4th floor, Washington, DC.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12291

Because this proposed amendment seeks to expand the list of designated airports at which private aircraft may land for Customs processing, which will not result in a significant economic impact, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the proposed amendment will not have a significant impact on a substantial number of small entities. Further, as this amendment does not meet the criteria for a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch.

List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports.

Proposed Amendment to the Regulations

For the reasons stated above, it is proposed to amend part 122, Customs Regulations (19 CFR part 122), as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

§ 122.24 [Amended]

2. In § 122.24, paragraph (b) is amended by adding, in appropriate alphabetical order, "Douglas, Ariz." in the column headed "Location" and, on the same line, "Douglas Municipal Airport" in the column headed "Name".

Approved: February 22, 1993.

John P. Simpson,

Acting Assistant Secretary of the Treasury,

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 93–8706 Filed 4–13–93; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 657 and 658

[FHWA Docket No. 92–15]

RIN 2125–AC86

Truck Size and Weight; Restrictions on Longer Combination Vehicles (LCV's) and Vehicles With Two or More Cargo-Carrying Units

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued a supplemental notice of proposed rulemaking (SNPRM) in the **Federal Register** on February 25, 1993 (58 FR 11450), to clarify and standardize the information listed in the previous NPRM on March 20, 1992 (57 FR 9900). In addition, it also included a definition and applicable length limits for a "maxi-cube" vehicle; changes to the proposed definition of a nondivisible load; changes in the proposal to allow States to make temporary minor adjustments in approved routes and operating restrictions for these vehicles; clarification of the requirement to show actual operation, on or before June 1, 1991, of each vehicle configuration described in appendix C; and corrections or clarifications to 23 CFR parts 657 and 658 reflecting statutory changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Surface Transportation Assistance Act of 1982.

The FHWA received petitions from the American Trucking Association and the Wyoming Trucking Association seeking extension of the comment period. Both indicated that more time was needed to gather and submit information to the docket documenting the actual operations of the vehicles listed in appendix C on or before June 1, 1991.

After carefully considering the requests, the FHWA has decided to allow additional time for comments. This will help assure that accurate and complete information is received to implement the freeze mandated by the ISTEA and reduce the need for subsequent corrections. Therefore, the comment period will be extended for 45 days.

The comment period for this SNPRM is hereby extended to May 27, 1993.

DATES: Responses to the docket must be received by May 27, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 92–15, Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management, at (202) 366–2212 or Mr. Charles Medalen, Office of the Chief Counsel, at (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. App. 2311; 49 CFR 1.48.

Issued on: April 7, 1993.

E. Dean Carlson,

Executive Director.

[FR Doc. 93–8697 Filed 4–13–93; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of Colorado's rules concerning backfilling and grading for elimination of highwalls and limited variances from approximate original contour requirements. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations and improve operational efficiency.

This document sets forth the times and locations that the Colorado program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t., May 14, 1993. If requested, a public hearing on the proposed amendment will be held on May 10, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on April 29, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free

copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 766–1486.

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, CO 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (46 FR 5899). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated March 19, 1993, Colorado submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. CO–536). Colorado submitted the proposed amendment at its own initiative.

Colorado proposes to revise Rule 4.14.1(2)(a) to (1) reference proposed and existing rules containing exemptions from the requirement that all disturbed areas be backfilled and graded to their approximate original contour, and (2) exempt underground and remining operations from the requirement for complete highwall elimination if they meet the criteria proposed at Rules 4.14.1(2) (f) and (g).

Colorado proposes new Rules 4.14.1(2) (f) and (g) setting forth performance standards by which underground mining operations or remining operations would be permitted if exempted from the requirement for complete elimination of face-up areas and highwalls. Both (1) underground mining operations, with an existing highwall that was in place prior to August 3, 1977, and (2) remining operations initiated after August 3, 1977, on sites which were mined and abandoned prior to August 3, 1977 with a preexisting highwall, would be exempted if the volume of all reasonably available spoil is insufficient to completely backfill the highwall and face-up area so as to achieve a safety factor of 1.3. The proposed performance standards are: (1) All reasonably available spoil in the immediate vicinity of the highwall shall be used to backfill the area and shall be included in the permit area, (2) the backfill shall be graded to a slope which is compatible with the approved post-mining land use and which provides adequate drainage and meets a minimum static safety factor of 1.3, (3) the highwall remnant shall be sufficiently stable so as not to pose a hazard to the public health and safety or to the environment, (4) exposed coal seams, toxic and acid forming materials, and combustible materials shall be adequately covered or treated in accordance with Rule 4.14.3, and (5) spoil placed on the outslope during mining operations which occurred prior to August 3, 1977 shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

Colorado proposes to revise Rule 4.14.2(1) to specify that the requirements of Rule 4.14.2, which addresses general grading requirements, may be modified by the Division of Minerals and Geology (Division) for (1) steep slope mining pursuant to Rule 4.27, (2) underground operations pursuant to Rules 4.14.1(2) (e) and (f), and (3) remining operations pursuant to Rule 4.14.1(2)(g). Colorado proposes to revise Rule 4.14.2(1)(b) to exempt an operation from complete elimination of a highwall if retention of a highwall remnant is approved by the Division pursuant to proposed Rules 4.14.1(2) (f) and (g).

Colorado proposes to revise Rule 4.27.4 to indicate that persons may be granted variances from the approximate original contour requirements of Rule 4.27.3(3) for steep slope coal mining and reclamation operations. Colorado proposes to revise Rule 4.27.4(1) to exempt an operation from complete backfilling and grading of a highwall if retention of a highwall remnant is approved by the Division pursuant to proposed Rules 4.14.1(2)(f) or 4.14.1(2)(g).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on April 29, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for

actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 6, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–8698 Filed 4–13–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 215 and 217

RIN 0596–AB30

Review and Comment and Appeal Procedures for National Forest Planning and Project Decisions; Requesting Review of National Forest Plans and Project Decisions

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement a provision of the Department of the Interior and Related Agencies Appropriations Act for fiscal year 1993 (the Act) which revises the process for administrative review of National Forest System management decisions. The proposed changes to the current appeals process will encourage participation in the public involvement processes by expanding opportunities for pre-decisional involvement of the public in Forest Service decisionmaking. These proposed regulations would establish procedures for providing the public with notice and opportunity to comment on proposed actions implementing National Forest land and resource management plans and procedures by which the public may use to appeal decisions on those actions and thereby obtain review of the decision by a higher level official prior to implementation. The proposed rule also would make minor revisions to the process by which the public may administratively appeal decisions to approve, amend, or revise a National Forest land and resource management plan, or approve or amend a regional guide. These proposed changes should result in improved administrative efficiencies in Agency decisionmaking, less uncertainty for communities and workers dependent upon Forest Service goods and services by minimizing delay in providing a stable supply of resources, remove impediments to economic growth arising from the current appeal process, and provide a reasonable assurance that the Forest Service has the ability to carry out programs authorized and funded by Congress. Public comment is invited and will be considered in adoption of a final rule.

DATES: Comments must be received in writing by April 29, 1993.

ADDRESSES: Send written comments to the Deputy Chief, National Forest System (1570), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Staff Assistant for Operations, National Forest System, 3rd Floor, Northwest Wing, Auditors Building, 201 14th and Independence Avenue SW., Washington, DC, between the hours of 8 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead, (202) 205–1519, to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Susan Yonts-Shepard, Staff Assistant, Operations, Office of the Deputy Chief, National Forest System, telephone (202) 205–1519.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service is responsible for managing 191 million acres of National Forest, National Grassland, and other lands known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of Regional Foresters, Forest Supervisors, and District Rangers, manages the surface resources, and in some instances, the subsurface resources of these lands.

Under the current rule at 36 CFR part 217, the Department provides a process by which individuals or groups may appeal National Forest System management decisions. Until the 1993 Act, there was no statutory requirement that the Forest Service provide an appeal procedure. The Agency, at its own discretion, has provided an administrative appeal process since 1907. Until the enactment of several environmental statutes in the 1960's and 1970's, the appeal process was used primarily by those with a business relationship with the Forest Service.

Appeals have become a steadily increasing, costly workload. In fiscal

year 1991 the Forest Service received 1,386 appeals; appeals focusing on timber harvest activities were the most common. By April of 1992, another 705 appeals had been filed, 41 percent of which were timber harvest-oriented. The 1992 total contains 182 appealed timber sales, with proposed harvest of 801.3 million board feet of timber being stayed pending final appeal decisions. It is important to note that these numbers do not include any appeals of timber sales on the 17 National Forests with northern spotted owl habitat, since those activities have been enjoined since May 1991.

On an average, $8,000 is expended for processing and resolving each project appeal. Current regulations require thoughtful consideration of each appeal and each issue raised.

Introduction

Over the past 50 years, the administrative appeal process has shifted back and forth from an informal to a formal process, from adjudication by semi-independent boards to a wholly internal administrative review. Since 1965, the appeal process has undergone four major revisions. The most recent major revision, published on January 23, 1989, at 54 FR 3342, part VI, resulted in two separate and distinct appeal rules: 36 CFR part 251, subpart C for appeals by persons or organizations holding written instruments authorizing the use of National Forest System lands; and 36 CFR part 217 for appeals of decisions relating to National Forest land and resource management plans, projects, and activities. The decisions subject to part 217 arise from compliance with the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA), and implementing regulations, policies, and procedures.

Nature of Forest Plan and Project Decisions

With section 322 of the Act, Congress recognizes that critical decisions irretrievably committing resources generally occur at the project level of decisionmaking; a long-standing view held by the Forest Service as evidenced in many decisions rendered by the Chief on appeals of land and resource management plans. The Chief of the Forest Service identified the programmatic nature of decisions made in forest plans in two landmark administrative appeal decisions (Idaho Panhandle Land and Resource Management Plan appeal #2130, August 15, 1988; Flathead National Forest Land and Resource Management Plan appeals #1467 and #1513, August 31, 1988). Numerous other appeal decisions also reflect the nature of forest plan decisions. For example, in the Chief's decision on the Routt National Forest Land and Resource Management Plan appeal filed by the Rocky Mountain Oil and Gas Association (appeal #1004, May 25, 1984), the Chief ruled that lands designated as not available for oil and gas leasing in the forest plan could be redesignated when a decision was made for a project at a particular site. Similarly, in his decision on the appeal filed by Walter Maas on the Pike and San Isabel National Forest Land and Resource Management Plan (appeal #1130, February 13, 1986), the Chief affirmed the possible ski area designation in the forest plan but noted that this was not the final decision nor appeal opportunity on whether a ski area would be developed. In the Chief's decision on another appeal of the Routt National Forest Land and Resource Management Plan filed by Richard Wahl (appeal #1010, April 23, 1986), assignment of a timber harvesting prescription in the forest plan was affirmed, but the decision noted that this did not represent the final decision on development as further NEPA compliance and appeal opportunities would occur at the project-level.

The courts have adopted the Chief's interpretation of the nature of forest plans as programmatic documents (see *Griffin* v. *Yeuter*, 90–55386 (9th Cir., Sept. 11, 1991); *Council for Environmental Quality (CFEQ)* v. *Lyng*, 731 F. Supp. 970, 977–978 (D. Colo. 1989). In addition, the decision in *Idaho Conservation League* v. *Mumma*, 956 F.2d 1508 (9th Cir., 1992) further supports the Chief's interpretation. In *Resources Ltd, Inc.* v. *Robertson*, 789 F. Supp. 1529 (D.Mt. 1991), the Montana District court once again clearly upheld the staged decisionmaking structure of NFMA. Most recently, the courts have implicitly affirmed the Forest Service's multi-level decisionmaking process in *Sierra Club* v. *Robertson*, 90–150 (W.D. Ark.) by recognizing that the Ouachita National Forest Land and Resource Management Plan contained programmatic management direction and output estimates but did not contain site-specific decisions (slip op. at 7–9).

In *Idaho Conservation League* v. *Mumma*, the plaintiffs initially argued that the assignment of non-wilderness management prescriptions in the forest plan constituted an irreversible commitment to develop these roadless areas. In rejecting the plaintiffs' position, the District Court noted: "The Plan does not deal with any specific development of those areas which were designated as non-wilderness. It does not even propose any future development; it merely allows for the possibility of development in the future" (at 5–6). The Ninth Circuit affirmed on the merits noting the Forest Plan and project "two-stage approach" and that:

> "Direct implementation of the [land and resource management plan] occurs at a second stage, when individual site-specific projects are proposed and assessed. The Forest Supervisor must ensure that all projects are consistent * * * . Further NEPA analysis is conducted to evaluate the effects of the specific project and contemplate a range of alternative actions, including a 'no action' alternative" (*Mumma*, 956 F.2d at 1511–12 (citation omitted)).

In *Resources Ltd, Inc.*, v. *Robertson*, the court decision looked beyond the narrow question of wilderness planning and considered the integrated nature of multiple resource forest planning. The decision sustains the view of forest plans as a framework for making later project decisions rather than as a collection of project decisions. More specifically it states:

> "Plaintiffs would have the Forest Service produce an EIS enormous in size and complexity * * * . The Forest Service readily admits that the analysis does not include site-specific considerations as those kinds of analyses will be done at the project level. This concession is at the heart of many of the arguments between the parties over the adequacy or inadequacy of the EIS and Forest Plans. The court finds, however, that by necessity, the agency must delay detailed analysis and discussion of possible effects until a specific proposal is set forth" (*Robertson*, 789 F.Supp. at 1536).

The characterization of project decisionmaking as the point authorizing the irreversible commitment of resources is consistent with the description of the nature of forest plan decisions. The basis for this relationship between plans and projects rests largely upon the requirements for compliance with NEPA. In a landmark court case (*State of California* v. *Block*, 690 F.2d 753 (9th Cir. 1982)), the Ninth Circuit stated that "the critical inquiry in considering the adequacy of an EIS prepared for a large scale, multi-step project is not whether the project's site-specific impact should be evaluated in detail, but when such detailed evaluation should occur." The court determined that "[t]his threshold is reached when, as a practical matter, the agency proposes to make an 'irreversible and 'irretrievable commitment of the availability of resources' to a project at a particular site."

It is, as a practical matter, impossible for a forest plan to identify all of the projects to be implemented for a ten-

year period and then to adequately disclose their site-specific environmental effects in an accompanying environmental impact statement. If such irreversible and irretrievable commitments were to be made in the forest plan for the ten-year plan period the need to disclose site-specific impacts would impose an unreasonable burden upon a forest plan environmental impact statement. In addition, many activities occurring on a forest are initiated by forest users and not the Forest Service. The relationship of projects initiated by others and projects planned by the Forest Service is continuously changing. Furthermore, new information regarding the relationship and effects of actions within a forest is constantly being developed. No matter how sophisticated forest models become, it is doubtful that the order and relationship of possible activities can ever be forecast with enough precision to fulfill environmental laws or the realities of a changing world at the forest plan approval stage. As a result, the forest plan is best viewed as a dynamic management system which provides the framework for further decisionmaking at the project level.

Review of Appeal Procedures

In 1992, the Forest Service undertook a year-long review and evaluation of the effectiveness and efficiency of the appeal procedures. This review and evaluation uncovered many problems with the procedures including the fact that the process has become a significant generator of paperwork and a time-consuming, procedurally onerous, confrontational, and costly effort that diverts resources that otherwise might be directed to on-the-ground resource management. These regulations will attempt to correct these problems by encouraging participation in the public involvement processes by expanding opportunities for pre-decisional involvement in Forest Service decisionmaking.

Many communities which depend on National Forests for their economic livelihood rely upon the Forest Service to achieve congressionally funded programs in mining, grazing, timber, recreation, fisheries, and wildlife. This rule is designed to reduce uncertainty of the Forest Service's ability to deliver those goods and services, the lack of which might impede economic growth and development, and to reduce delay in the delivery of National Forest System goods and services which could place the economic viability of communities at risk. The delays arising from the appeal process could also adversely affect the cost of homes, Federal payments to States for local schools and roads, and increase costs to the Federal government.

The Secretary of Agriculture published a proposed rule on March 26, 1992, in the **Federal Register** (57 FR 10444) to amend 36 CFR part 217 which would have provided that only proposed actions which would adopt, revise, or significantly amend National Forest land and resource management plans would be subject to appeal while proposed actions documented in environmental assessments, findings of no significant impact, and decision notices would be subject to pre-decisional public notice and comment. No change in 36 CFR part 251 was proposed. In response to the **Federal Register** notice of the proposed rule and numerous meetings and briefings held for groups around the country, the Forest Service received over 30,000 letters postmarked on or before April 27, 1992, including 38 petitions with 5,900 signatures. After the public comment period closed, the Senate Agriculture Subcommittee on Conservation and Forestry held an oversight hearing on the proposed rule. However, before a final rule was adopted, the Department of the Interior and Related Agencies Appropriations Act for fiscal year 1993, Public Law 102–381, was signed into law, including section 322 requiring Forest Service decisionmaking and appeals reform. As elaborated in the Senate colloquy on section 322, the Act mandates that the Secretary of Agriculture shall modify, as limited by section 322, the appeal regulations as found in 36 CFR part 217. This rule would implement section 322.

This regulation is being issued as a proposed rule with request for comments. The content of the proposed rule is substantially dictated by Public Law 102–831, section 322. Moreover, the nature of this proposal is entirely procedural. This proposed rule contains procedural modifications to 36 CFR part 217 necessary to execute the intent of Congress in section 322.

Second, this proposed rule consists of changes necessary to effectuate the intent of Congress to modify the existing rule at 36 CFR part 217. This proposed rule contains changes to the existing rule imposed upon the agency by law. Changes made in addition to those specifically required by section 322 are necessary to make the existing rule consistent with section 322.

This proposed rule would establish a new part 215 to codify the revised appeal procedure.

A section-by-section description of the proposed revisions by subpart follows.

Subpart A: Public Notice and Comment on Proposed Forest Service Actions Implementing National Forest Land and Resource Management Plans

Section 215.1 Scope and Applicability

This section would establish the process described in section 322 of the Act for giving the public notice and opportunity to comment, prior to issuance of a final decision, on proposed actions that implement National Forest land and resource management plans. This process would allow expanded opportunities during the early planning stages to identify and correct problems and enhance public participation.

Section 215.2 Definitions

This section defines some of the significant and commonly-used terms and phrases in the proposed rule.

Section 215.3 Proposed Actions Subject to Notice and Comment

This section limits decisions subject to notice and comment, as established in this subpart, to certain proposed actions which implement land and resource management plans on National Forest System lands. Also subject to this subpart are:

1. Proposed actions for which an environmental assessment is prepared, including non-significant amendments to land and resource management plans;

2. Proposed actions listed in Forest Service Handbook (FSH) 1909.15, section 31.2, category 4, which are categorically excluded from documentation in an environmental assessment or environmental impact statement for which a project or case file and Decision Memo are required;

3. Proposed actions on National Forests without approved land and resource management plans for which an environmental assessment, Decision Notice, and finding of no significant impact are prepared or actions listed in FSH 1909.15, section 31.2, category 4; and

4. Certain proposed actions of forest research and state and private forestry projects which are to be carried out directly on National Forest System lands.

Category 4 of FSH 1909.15, section 31.2, includes timber harvest which removes 250,000 board feet or less of merchantable wood products, or salvage which removes 1,000,000 board feet or less of merchantable wood products; which requires one mile or less of low

standard road construction (Service level D, FSH 7709.56); and assures regeneration of harvested or salvaged acres, where required (see Forest Service Handbook 1909.15, section 31.2 for examples).

Examples of activities which, when documented in an environmental assessment and Decision Notice, may be subject to this subpart, are timber harvest, road and facility construction, range allotment management plans and range improvements, wildlife and fisheries habitat improvement measures, forest pest management activities, removal of certain minerals or mineral materials, and conveyance of land or interests in land into or out of Federal ownership. This section responds to section 322(a) of the Act.

Section 215.4 Proposed Actions Not Subject to This Subpart

Paragraph (a) of this section would exclude from the notice and comment process proposed actions described in a draft environmental impact statement. This exclusion is appropriate because the NEPA implementing regulations at 40 CFR parts 1500–1508 proscribe notice and comment requirements for these actions. Paragraph (b) excludes proposed actions related to emergency situations documented when the Regional Forest or Chief has determined that the action is exempt from formal public notice and comment and has given notice as required in this section. This provision is included to allow certain activities to occur in response to emergency situations and natural disasters because severity and timelines are essential to resource protection, rehabilitation, and recovery. Paragraph (c) excludes from this process proposed actions not requiring documentation in an environmental impact statement or an environmental assessment pursuant to 7 CFR 1b.3, or FSH 1909.15, sections 31.1a–31.1b, and for which a case file and decision memo are not required. Paragraph (d) excludes actions listed in FSH 1909.15, section 31.2, categories 1 through 3 and 5 through 9 which are subject to scoping as prescribed by NEPA. Paragraph (e) excludes any proposed action or policy not subject to the provisions of NEPA and its implementing regulations. Paragraph (f) excludes rules promulgated in accordance with the Administrative Procedure Act (APA) (5 USC 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Forest Service Handbooks (36 CFR parts 200, 216). Rules are excluded because notice and opportunity to comment are already required by APA. Forest Service directives are excluded from notice and comment under this proposed rule because separate regulations at 36 CFR part 216 govern notice and comment on Forest Service Manual directives and Forest Service Handbooks are generally highly detailed and technical instructions and procedures issued to agency specialists on how to conduct agency activities.

Section 215.5 Notice for Public Comment on Proposed Actions

This section describes the method to be used when giving notice that a proposed action subject to this subpart is ready for public review and how the proposed action will be described in this notice. Except for proposed actions of the Chief which require **Federal Register** publication, the Responsible Official will announce through a notice in a previously designated newspaper of general circulation that an environmental assessment and proposed finding of no significant impact are ready for public review, or that an action is proposed which fits the criteria for categorical exclusion from documentation in an environmental impact statement or environmental assessment pursuant to Forest Service Handbook 1909.15, section 31.2, category 4, and solicit public comment. Paragraph (b) of this subpart outlines the format and content of the newspaper notice. Paragraph (c) requires annual publication in the **Federal Register** of the newspapers to be used for giving notice of actions subject to this rule. This section is in direct response to section 322 of the Act.

While the proposed rule provides minimum requirements for public notification, it is anticipated that in most instances additional public involvement will occur. For example, in addition to the requirements of this section, current NEPA regulations at 40 CFR 1506.6(b)(1) require the agency to mail notice to those who have requested it on an particular action. Forest Service NEPA procedures also contain provisions for subscribing in advance to decision documents and environmental reviews. In another effort, as part of his commitment to improving public participation in project planning and decisionmaking, the Chief of the Forest Service has convened a special Forest Service task force to develop guidance on improving public participation at the project level.

Section 215.6 Comments

This section provides for a 30-day period during which the public may review and comment on proposed actions subject to this subpart, as required by section 322. Paragraph (b) of this section outlines the format and required information that persons submitting comments must supply to the Responsible Official in order to facilitate review of the comments. Paragraph (c) of this section explains that timeliness of comments is based upon the date the comments are received and that the person submitting comments is responsible for the timliness of their comments. Comments will not be considered unless they are received by the close of business on the 30th day following publication of the notice inviting comment. Saturdays, Sundays, and Federal holidays are included in computing all time periods in this subpart; however, if the comment period ends on a Saturday, Sunday, or Federal holiday, the comment period shall be extended to the close of business of the next Federal working day.

Subpart B: Appeal of Project and Activity Decisions Implementing National Forest Land and Resource Management Plans

Section 215.20 Purpose and Scope

This section, as required by section 322(c) of the Act, stipulates that this is an informal review process by which a person may appeal decisions made by Forest Service officials on projects or activities implementing land and resource management plans on National Forest System lands and thereby obtain review of the decision by a higher level official prior to implementation. As stated in paragraph (b), the process that would be established in these regulations provides for prompt administrative review of decisions subject to this subpart.

Section 215.21 Definitions

This section defines some of the significant and commonly used terms and phrases in the rule. Some terms are cross-referenced to definitions in subpart A.

Section 215.22 Decisions Subject to Appeal

This section lists the types of decisions that would be appealable under this subpart of the proposed regulation as described in section 322(c). These decisions would be limited to NEPA-based project and activity decisions documented in a Record of Decision or a Decision Notice, including those which, as part of the project approval decision, contain a nonsignificant amendment to a National Forest land and resource management plan (36 CFR part 219).

Paragraph (b) of this section specifies that project and activity decisions documented in a Decision Memo for activities listed in Forest Service Handbook 1909.15, section 31.2, category 4, would be subject to appeal under this subpart. Category 4 of Forest Service Handbook 1909.15, section 31.2 includes timber harvest which removes 250,000 board feet or less of merchantable wood products, or salvage which removes 1,000,000 board feet or less of merchantable wood products; which requires one mile or less of low standard road construction (Service level D, FSH 7709.56); and assures regeneration of harvested or salvaged acres, where required (see Forest Service Handbook 1909.15, section 31.2 for examples). These decisions, because they involve timber management, are sometimes subject to more complex analyses than the other actions listed in Forest Service Handbook 1909.15, section 31.2, categories 1 through 3 and 5 through 9. Much of the discussion in Congress about the Forest Service appeals process was directed towards timber harvesting, and the Agency feels that it is important to preserve the opportunity to appeal such decisions, unless such decisions are related to emergency situations and natural disasters referred to in § 215.4.

Paragraph (c) of this section specifies that the following decisions on forest research and State and private forestry actions are also subject to appeal under this subpart, if they will be carried out directly on National Forest System lands: (1) Those actions which are documented in an environmental assessment and Decision Notice; and (2) those actions for which a project or case file and Decision Memo are required to implement a proposed project or activity listed in Forest Service Handbook 1909.15, section 31.2, category 4.

Section 215.23 Decisions Not Subject to Appeal

Written decisions to approve, amend, or revise a National Forest land and resource management plan and written decisions to approve or amend a regional guide prepared pursuant to 36 CFR part 219 would not be subject to appeal under this subpart. Furthermore, significant amendments to land and resource management plans or regional guides which include a decision on a project or activity are not subject to subpart B. Such decisions would be subject to appeal under subpart C. Also excluded from appeal under this section would be decisions on projects or activities for which environmental effects have been analyzed and disclosed within a final environmental impact statement and documented in a Record of Decision for approval, amendment, or revision of a land and resource management plan, as these decisions are subject to subpart C. Decisions related to emergency situations or catastrophic events would not be subject to appeal because the severity and timelines of such situations require expediency. Decisions solely affecting the business relationship between the Forest Service and holders of written instruments regarding occupancy and use of National Forest System lands which are governed by appeal procedures at 36 CFR part 251, subpart C, would not be subject to appeal under this subpart. Preliminary decisions made during planning and/or analysis processes and proposed actions for which notice and opportunity to comment have been published and no expression of interest was received on the specific proposal prior to close of the comment period, as specified in subpart A, and where the decision does not modify the proposed action, would not be subject to appeal under this proposal. Also excluded from appeal would be project or activity decisions documented in a Decision Memo listed in Forest Service Handbook 1909.15, section 31.2, categories 1 through 3 and 5 through 9. Since activities covered by these categories are routine actions that have no extraordinary circumstances and have little potential for soil movement, loss of soil productivity, water or air quality degradation, or impact on sensitive resources, and are generally non-controversial, the Agency feels that there is no need to provide an appeal provision for these actions. Such decisions are subject to the normal scoping process as prescribed by NEPA.

Paragraph (b) directs that the Appeal Deciding Officer shall dismiss notices of appeal filed on subsequent implementing actions that result from the initial decision subject to appeal under this subpart as defined at § 215.22.

Section 215.24 Giving Notice of Decision

This section provides the methods that the Responsible Official shall use to give notice of decisions. As well as notice mailed to those who have made a written request and to those who submitted comments during the comment period, notice shall be published in either the **Federal Register**, if the decision was made by the Chief, or in a newspaper of general circulation identified as required in subpart A of this rule. This is consistent with section 322 of the Act and the provisions of subpart A of these regulations. The legal notice requirement is intended to be in addition to the notice requirements specified by the Council on Environmental Quality (CEQ) at 40 CFR 1506.6. This section also includes provisions for the information that should be included in the decision document implementing a project or activity, including the requirements of Forest Service Handbook 1909.15, and for the information that should be included in a notice of decision that is published in a newspaper of general circulation or in the **Federal Register**. The notice of decision should include a statement indicating whether the decision is subject to appeal and should state when the decision will be implemented. Because publication dates may not always be known in advance, informal disposition meeting dates will need to be scheduled far enough in advance to allow for delays in publication.

Section 215.25 Implementation of Decisions

This section allows decisions subject to appeal under this subpart to be implemented only after the end of the appeal period. If more than one appeal is filed, implementation would not occur for 15 days following the date of disposition of the last appeal resolved. In the context of this proposed rule, disposition means a decision on the merits, dismissal of an appeal, or withdrawal of an appeal.

Paragraph (c) of this section stipulates that if a decision is not subject to appeal under this subpart pursuant to § 215.23(a)(3) regarding decisions relating to emergency situations or rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, implementation of that decision would occur immediately upon publication of the notice of a final decision in the **Federal Register**. This is consistent with section 322(e) which states that "[u]nless the Chief of the Forest Service determines that an emergency situation exists with respect to a decision of the Forest Service, implementation of the decision shall be stayed during the period beginning on the date of the decision" for 45 days if no appeals are filed, or for 15 days following the disposition of the appeals.

Paragraph (c) of this section also stipulates that if a decision is exempt from appeal pursuant to § 215.23(a)(6) regarding proposed actions for which notice and opportunity to comment have been published, no expression of interest has been received on the specific proposal as specified in subpart

A, and the decision does not modify the proposed action, implementation would occur immediately after publication of the notice of decision. This would allow the Forest Service to implement immediately any decisions in which the public has expressed no interest.

Section 215.26 Who May Participate in Appeals

This section of the rule defines who may participate in appeals filed under this subpart. Forest Service employees are specifically exempt from participation in this process. Otherwise, persons and non-Federal entities that have been involved in the public comment process on the specific proposal prior to the close of the comment period as defined in subpart A, who have submitted written comment in response to a draft environmental impact statement, or otherwise have notified the Responsible Official of their interest prior to the close of the comment period specified in subpart A, may submit an appeal of a decision subject to this subpart or may request to intervene in appeals of decisions subject to this subpart. Federal agencies would be excluded from this process because they have informal mechanisms through which to bring their concerns to the attention of the Forest Service. No purpose would be served by providing Federal agencies an additional administrative process to challenge decisions.

Section 215.27 Where to File Appeals

This section specifies the Appeal Deciding Officer for the various decisions made by Responsible Officials which would be subject to appeal under this subpart and indicates with whom an appeal must be filed.

Section 215.28 Time Periods

This section describes the various time periods and the process involved in this subpart. Paragraphs (a) through (e) provide general information on timeframes and information pertaining to the filing of appeals. Paragraph (a) specifies the procedures to be used to file an appeal of a decision subject to appeal under this subpart. The courtesy copy provision is to allow the Responsible Official to prepare for the informal disposition meeting and to determine which portions of the planning record pertain to an appeal.

Paragraph (b) states that the day after publication of the notice of decision is the first day of the appeal period. Because of this requirement, the date of publication is the date of the decision and should be so noted on copies of the decision document.

Paragraph (c) indicates that the responsibility for filing a timely appeal lies with the appellant and specifies how an Appeal Deciding Officer shall determine the timeliness of an appeal.

Paragraph (d) states that time extensions are not permitted except as specified in § 215.34(c) of this subpart, which allows the Appeal Deciding Officer to extend the formal disposition period for 15 days after receipt of the Appeals Review Officer's recommendation.

Paragraph (e) requires that the Appeal Deciding Officer acknowledge the acceptance of an appeal. This will help the Responsible Official and the appellant to prepare for the informal disposition meeting and the Appeals Review Officer to begin preparation for review if the appeal is accepted.

Paragraph (f) describes the timeframes involved in the informal disposition section of the rule. If needed, the Responsible Official will meet with appellants within 15 days of the end of the appeal period to attempt to reach informal disposition of an appeal as directed by section 322 of the Act. The Responsible Official shall document and forward to the Appeal Deciding Officer the results of the meeting and any written comments received from intervenors. The end of the 15-day informal disposition period does not preclude further discussions and subsequent withdrawal of an appeal filed pursuant to this subpart.

Paragraph (g) describes the process for formal disposition of appeals including the transmittal of the decision documentation from the Responsible Official to the Appeals Review Officer, the transmittal of the recommendation from the Appeals Review Officer to the Appeal Deciding Officer, and the timeframe for the Appeal Deciding Officer to issue a decision on an appeal. The timeframes and process are consistent with those provided for in section 322(d).

Section 215.29 Content of an Appeal

This section provides a detailed list of information that an appellant must include in an appeal, including that the document is an appeal filed pursuant to 36 CFR part 215, subpart B; the name, address, and telephone number of the appellant; the identification of the decision document by title, subject, date of decision, and name and title of the Responsible Official; identification of the specific changes in the decision that the appellant seeks or that portion of the decision to which the appellant objects; whether the appellant wishes to participate in an informal resolution meeting; how the decision fails to consider comments previously provided to the Responsible Official, either before or during the comment period provided in subpart A of this rule; and how the appellant believes the decision violates law, regulation, or policy. By providing this information, appellants will assist the Responsible Official in attempting informal disposition of the appeals and will assist the Appeals Review Officer and Appeal Deciding Officer to expeditiously review and decide an appeal.

Section 215.30 Dismissal of Appeal Without Review

This section specifies when an Appeal Deciding Officer shall dismiss an appeal without review on the merits. According to this section, an Appeal Deciding Officer shall dismiss an appeal without decision on the merits when the appeal is untimely; the requested relief or change cannot be granted under law, fact, or regulation; the decision at issue is being appealed under another administrative proceeding by the same appellant; the decision is excluded from appeal; the appellant did not express an interest in the specific proposal prior to the close of the comment period as specified in subpart A; the appellant withdraws the appeal; the Responsible Official withdraws the appealed decision; or the appellant has filed for Federal judicial review of the decision and the Chief has invoked the provisions of § 215.36 of this subpart.

Paragraph (b) of this section provides that the Appeal Deciding Officer shall give written notice to all participants that an appeal is dismissed. Paragraph (b) continues the current practice of requiring an Appeal Deciding Officer to document the reasons for dismissal in the written notice that the appeal is dismissed.

Section 215.31 Intervention

As in 36 CFR part 217, this rule eliminates intervention as a formal process but provides for accepting written comments submitted to the appeal record and for participation in the informal meeting stipulated in § 215.32. Intervenors must meet the same requirements for participation in an appeal that appellants must meet. Paragraph (a) specifies that until the close of business of the day before the informal disposition meeting, interested persons who have previously expressed an interest in the decision being appealed may intervene by notifying the Responsible Official.

Paragraph (b) specifies that intervenors may participate in the informal disposition meeting. Furthermore, intervenors cannot

continue an appeal if the appeal is dismissed pursuant to § 215.30.

Paragraph (c) specifies that intervenors must submit their comments in writing to the Responsible Official prior to the informal disposition meeting or at the informal disposition meeting if the comments are to be included in the appeal record.

Paragraph (d) requires that intervenors provide a copy of their written comments to the appellant. The agency continues to believe that providing all the "formal" embellishments of intervention is unnecessary and counterproductive to achieving the initial goals of offering a separate, less formal process for review of management decisions prescribed in section 322 of the Act.

Section 215.32 Informal Disposition

This section describes the informal disposition process stipulated by section 322(d)(1) of the Act. When a decision is appealed under this subpart, a 15-day informal disposition period is available for appellants, intervenors, and the Responsible Official, or other designated Forest Service employee, to meet to discuss and explore opportunities to resolve appeals by means other than formal review and decision on the appeal. Paragraph (b) requires that the Responsible Official schedule and announce a meeting at a location in the vicinity of the National Forest System lands affected by the decision as provided for at § 215.24. An informal disposition meeting will not be held if the appellant, or in the case of multiple appeals of the same decision, all appellants, decline to participate in the meeting. A meeting will be held if one or more appellants indicate that they want to participate. Although the informal disposition meeting will be open to the public, participation in the meeting will be limited to the appellant, intervenor, and the Responsible Official or other designated Forest Service employee.

Paragraph (c) discusses how the Responsible Official will document the informal disposition of an appeal if agreement is reached between the Responsible Official and the appellant. If the appellant and Responsible Official reach agreement and informally dispose of an appeal, the Responsible Official shall document and forward a summary of the informal disposition to the Appeal Deciding Officer. Upon notice from the appellant that the appeal is withdrawn, the Appeal Deciding Officer shall dismiss the appeal and notify all participants that the appeal has been resolved. Discussions and possible withdrawal of an appeal may continue after the end of the 15-day informal disposition period. Paragraph (d) discusses failure to reach informal disposition and withdrawal of an appeal. If there are multiple appeals of a single decision, an appellant may agree to negotiate and settle a single appeal independent from any other appeals filed on that decision. If the participants cannot resolve an appeal, the Responsible Official shall document and forward the result of the informal meeting and any written comments received from intervenors to the Appeal Deciding Officer who shall advise the Appeals Review Officer to proceed with formal review and preparation of a recommendation to the Appeal Deciding Officer.

Section 215.33 Formal Disposition

This section describes the formal disposition process for appeals of decisions subject to this subpart, as discussed in section 322. Paragraph (a) of this section provides that the Appeal Deciding Officer shall complete a review and issue an appeal decision not later than 30 days after the end of the appeal period, unless time has been extended as provided for in § 215.34.

Paragraph (b) describes the type of decision an Appeal Deciding Officer may issue and what factors the Appeal Deciding Officer should consider when deciding an appeal. The written appeal decision should affirm or reverse, in whole or in part, the Responsible Official's decision and may include instructions for further action. The recommendation provided by the Appeals Review Officer shall be attached to the Appeal Deciding Officer's appeal decision. If the Appeal Deciding Officer does not issue a decision within the allotted 45 days, the Responsible Official's decision which is the subject of appeal is the final agency action for the purpose of judicial review as prescribed in chapter 7 of title 5, United States Code (Administrative Procedure Act).

Section 215.34 Appeal Deciding Officer Authority

Paragraph (a) of this section provides that, in accordance with such procedures as the Chief may issue, the Appeal Deciding Officer shall designate an Appeals Review Officer, as stipulated in section 322(d)(2) of the Act, who is a Forest Service line officer of at least the same or higher level as the Responsible Official, who has not participated in the initial decisionmaking, and who will not be responsible for implementation of the decision under appeal.

Paragraph (b) allows the Appeal Deciding Officer to issue one consolidated appeal decision if there are multiple appeals of a decision subject to this subpart.

Paragraph (c) allows the Appeal Deciding Officer to extend the time period for formal disposition of an appeal for an additional 15 days after receipt of the Appeals Review Officer's recommendation. The Appeal Deciding Officer shall notify the appellant, intervenors, and Responsible Official of such an extension by posting public notice of the extension in the Responsible Official's office.

Paragraph (d) states that the Appeal Deciding Officer shall make all procedural decisions in this subpart and that such procedural decisions shall be the final determination of the Department of Agriculture.

Paragraph (e) provides that the Appeal Deciding Officer shall consider the Appeals Review Officer's written recommendation and the appeal record when rendering a decision on an appeal. The Appeal Deciding Officer shall make a decision on an appeal within 30 days of the end of the appeal disposition period, unless extended as provided for in § 215.34(c), and that the Appeal Deciding Officer's appeal decision is the final administration determination of the Department of Agriculture.

Section 215.35 Appeals Review Officer Authority

This section describes the authority provided the Appeals Review Officer as stipulated in section 322(d). Paragraph (a) of this section provides that the Appeals Review Officer shall use the appeal record as defined in § 215.21 as the basis for preparing a recommendation on the appeal. However, the Appeals Review Officer may seek additional information from any source, if needed, to conduct the review. The Appeals Review Officer will keep a log of all contacts made during the review and the log will be part of the appeal record forwarded to the Appeals Deciding Officer. Paragraph (b) allows the Appeals Review Officer to issue one consolidated recommendation on multiple appeals of a decision subject to this subpart. This consolidated recommendation by the Appeals Review Officer does not require that the Appeal Deciding Officer then issue one consolidated appeal decision. Paragraphs (c) and (d) provide that before the end of the appeal disposition period the Appeals Review Officer shall review the appeal and provide a brief, written recommendation to the Appeal Deciding Officer regarding the disposition of the appeal. The Appeals

Review Officer shall forward the appeal record upon which the recommendation is based to the Appeal Deciding Officer.

Section 215.36 Policy in Event of Judicial Proceedings

This section articulates the longstanding practice that the administrative appeal process must be completed prior to court review. However, this section provides that the Chief may waive this policy on a case-by-case basis after litigation is filed.

Section 215.37 Applicability and Effective Date

This section specifies that the rules of the subpart are effective 60 days from publication and allows the continuance of appeals that have already been filed under the current rules at 36 CFR 211.16, 211.18, 217, 228.14, and 292.15.

Subpart C: Appeal of Regional Guides and National Forest Land and Resource Management Plans

The provisions of this subpart remain essentially the same as those in 36 CFR part 217. Many of the changes to those sections are to provide consistent use of terminology and procedures resulting from section 322 of the Act. Following is a description of those sections which have changed from those codified at 36 CFR part 217:

Section 215.50 Purpose and Scope

This section stipulates that this is a process for administrative appeal and review, by an official at the next administrative level, of decisions to approve, amend, or revise a National Forest land and resource management plan, or to approve or amend a regional guide prepared pursuant to 36 CFR part 219. This section narrows the scope of what decisions are subject to appeal pursuant to this subpart. Subpart B, resulting from section 322, provides appeal procedures for other decisions on activities or projects implementing land and resource management plans. This subpart complements, but does not replace, numerous opportunities to participate in and influence agency decisionmaking provided pursuant to NEPA, and the associated implementing regulations and procedures in 40 CFR parts 1500–1508, 36 CFR parts 216 and 219, Forest Service Manual Chapters 1920 and 1950, and Forest Service Handbooks 1909.12 and 1909.15. This change in scope is in direct responses to the intent of section 322 as elaborated in the Senate floor colloquy on Forest Service appeals following (or at the time of) passage of the Appropriations Act.

Section 215.51 Definitions

This section is essentially unchanged and defines some of the significant and commonly used terms and phrases in this rule. Some terms are cross-referenced to their definitions in subpart A.

Section 215.52 Decisions Subject to Appeal

This section narrows the scope of decisions appealable under this subpart to those decisions that approve, amend, or revise a forest land and resource management plan, and decisions that approve or amend a regional guide, prepared pursuant to 36 CFR part 219 and documented in a Record of Decision or Decision Notice. Exceptions to this are found in § 215.54. Paragraph (b) of this section limits appeals of forest land and resource management plans to the management decisions made therein. As stated in the National Forest Land and Resource Management Planning Advance Notice or Proposed Rulemaking (ANPR) (**Federal Register**, Vol. 56, No. 32, February 15, 1991), land and resource management plans are broad, programmatic documents which provide a framework for how a National Forest shall be managed. Decisions in land and resource management plans generally do not provide final authorization for the irretrievable commitment of resources. As described in the ANPR, land and resource management plans contain the following decisions:

1. Establishment of forest-wide multiple use goals and objectives;
2. Establishment of forest-wide standards and guidelines;
3. Establishment of management areas and associated management area prescriptions;
4. Identification of lands not suited for timber production;
5. Establishment of monitoring and evaluation requirements; and
6. Project decisions made in conjunction with decisions on land and resource management plans.

Specific project or activity decisions implementing a forest land and resource management plan, formerly subject to appeal under 36 CFR part 217, are subject to appeal under subpart B of these regulations.

Paragraph (c) specifies that decisions documented in a Decision Notice or Record of Decision made by a subordinate Forest Service staff officer acting within delegated authority are considered decisions of the Forest Service line officer

Section 215.53 Decisions Not Subject to Appeal

In addition to those exclusions previously contained in 36 CFR part 217, this section excludes from appeal pursuant to this subpart decisions on projects or activities implementing National Forest land and resource management plans including project decisions that include a non-significant amendment to a National Forest land and resource management plan, which are subject to appeal pursuant to subpart B of this rule.

Section 215.54 Giving Notice of Decisions

The following are the minor changes between 36 CFR part 217.5 and this section:

In order to be consistent with the intent and language of section 322, the wording in paragraph (a) was changed from "* * * and to those who are known to have participated in the decisionmaking process" to "* * * and to those who have provided comments."

Paragraph (c) has been sub-divided to provide ease of reading and comprehension.

Paragraph (d) allows the Regional Foresters to accomplish their annual notice of the principal newspaper to be utilized for publishing notices of decision in concert with the annual notice required in § 215.5 of subpart A.

Section 215.55 Who May Participate in Appeals

This section contains no substantive change from 36 CFR 217.6.

Section 215.56 Levels of Appeal

Paragraph (a) of this section has been sub-divided to provide ease of reading and comprehension. Paragraph (b) contains no substantial changes from 36 CFR 217.7. Paragraph (c) is essentially identical to 36 CFR 217.7(e). This section removes reference to appeals of decisions made by District Rangers because District Rangers have no authority to issue decisions appealable under this subpart. Therefore, provisions for a Regional Forester's decision on second-level review have also been deleted because it is no longer applicable. Paragraph (d) is essentially identical to 36 CFR 217.7(d); however, the provision for discretionary review of appeal decisions rendered by the Forest Supervisor has been deleted because it is no longer applicable.

Section 215.57 Time Periods

Paragraphs (a) and (b) contain no significant changes to the present language in 36 CFR 217.8. Paragraph (c) provides that an appeal must be

received by the end of the appeal period and no longer relies on the use of postal service postmarks to determine the timeliness of appeals. This ensures consistency among the subparts when determining timeliness of submissions. Paragraph (f) also removes reference to appeals of District Ranger decisions.

Section 215.58 Content of an Appeal

This section contains no substantive change from 36 CFR 217.9.

Section 215.59 Implementation and Stays of Decisions

Paragraph (a) of this section provides that decisions subject to appeal pursuant to this subpart shall not take effect for 30 calendar days following publication of the notice of decision. Paragraph (b) indicates that requests to stay the approval, amendment, or revision of land and resource management plans and regional guides subject to appeal pursuant to this subpart, shall not be granted.

Section 215.60 Dismissal Without Review

This section contains no substantive change from 36 CFR 217.11.

Section 215.61 Resolution of Issues

This section contains no substantive changes from 36 CFR 217.12; however, it has been sub-divided to provide ease of reading and comprehension.

Section 215.62 Appeal Deciding Officer Authority

This section contains no substantive changes from 36 CFR 217.13.

Section 215.63 Intervention

Paragraph (a) provides that for 20 days following the end of the appeal period, the Appeal Deciding Officer shall accept requests to intervene in appeals of a decision subject to appeal pursuant to this subpart. This is a change from 36 CFR 217.14 which allowed for intervention for 20 days following the filing of an appeal. This change will allow more efficient processing of intervention requests and will decrease the number of blanket intervention requests received by the Appeal Deciding Officer because potential intervenors will be able to obtain a list of appellants from the Appeal Deciding Officer before requesting intervention and can determine in which appeals they are interested before the file their requests. The other paragraphs of this section remain essentially unchanged from 36 CFR 217.14.

Section 215.64 Appeal Record

Paragraphs (a) through (d) contain no substantive changes from 36 CFR 217.15 (a) through (d). Paragraph (e) provides that the Appeal Deciding Officer shall close the appeal record only after receipt of the decision documentation from the Responsible Official and receipt of the intervenor comments. This removes the ambiguity found in 36 CFR pat 217.15(e).

Section 215.65 Decision

This section contains no substantive changes from 36 CFR 217.16.

Section 215.66 Discretionary Review

This section contains no substantive changes from 36 CFR 217.17; however, it has been sub-divided to provide ease of reading and comprehension.

Section 215.67 Policy in Event of Judicial Proceedings

This section articulates longstanding practice that the administrative process must be completed prior to court involvement. However, this section provides that the Chief may waive this policy on a case-by-case basis if litigation is filed.

Section 215.68 Applicability and Effective Date

This section specifies the effective date of this subpart and allows the continuance of appeals that have already been filed under the current rules at 36 CFR 211.16, 211.18, 217, 228.14, and 292.15.

Finally 36 CFR 217.19 is revised to provide for transition to the new rules at 36 CFR part 215.

Summary

The Forest Service is committed to fostering a public involvement climate that allows for the open expression of ideas and encourages the public to join with the Agency in identifying and analyzing natural resource management options which result in balanced multiple-use management of the National Forests. In examining the efficiency of the current appeal process, the question is not whether the public should be involved in Forest Service planning and decisionmaking, but when and how that involvement should occur. Section 322 of the Department of the Interior and Related Agencies Appropriations Act, 1993, allows for expanded opportunities for public involvement in Forest Service decisionmaking. With section 322 of the Act, Congress recognizes that critical decisions irretrievably committing resources generally occur at the project level of decisionmaking a view long held by both the Forest Service and the courts as evidenced in decisions rendered on appeals and litigation of land and resource management plans. The Agency has concluded that the public interest is best served by mutual efforts to resolve differences during the decisionmaking process, rather than by trying to resolve those differences after a decision has been made. Finally, the Forest Service believes better resource decisions and fewer challenges of those decisions will result if interested citizens and organizations become involved early in providing meaningful comment to the Agency.

Therefore, in proposing this rule, the Forest Service hopes to expand opportunities for pre-decisional involvement of the public in its decisionmaking by establishing procedures to require public notice of and opportunity to comment on proposed actions. The procedures for the appeal of project and activity decisions which implement land and resource management plans will allow for expeditious review of public concerns. The current procedures, as documented in proposed part 215, subpart C, continue to apply to decisions, revisions, and significant amendments of forest land and resource management plans documented in a record of decision and environmental impact statement, and approval and amendment of regional guides.

Adding a pre-decisional public notice and comment opportunity will help reduce the uncertainty that results from post-decisional appeals for communities dependent upon Forest Service goods and services, and will allow for greater stability in these dependent communities.

Regulatory Impact

The proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The proposed rule will not substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. To the contrary, this proposal is expected to reduce the disruption and delay arising from the current appeal rule and, thereby, provide a greater assurance that the Forest Service can carry out programs authorized and funded by Congress. This proposed rule also has been reviewed in light of the President s regulatory review guidance of January 28, 1992, and it has been determined

that the expected benefits of this proposed rule outweigh the expected costs to society, and that the rule will provide clarity and certainty to the regulated community and designed to avoid needless litigation.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities as defined by that Act.

Executive Order No. 12778

Executive Order No. 12778 implements the Civil Justice Reform Act. The General Counsel has certified to the Office of Management and Budget that the regulations in the interim rule meet the applicable standards provided in sections 2(a) and 2(b) of Executive Order No. 12778. By focusing on pre-decisional notice and comment, the proposed rule is fully consistent with the President's emphasis in implementing the Civil Justice Reform Act to use early and alternative methods to resolve conflicts and thereby reduce the potential of litigation.

Environmental Impact

This proposed rule falls within a category of actions (Rules, regulations or policies to establish Service-wide administrative procedures, program processes, or instructions) which normally does not individually or cumulatively have a significant effect on the quality of the human environment and, therefore, may be categorically excluded from documentation in an environmental assessment or environmental impact statement unless scoping indicates extraordinary circumstances exist (Forest Service Handbook 1909.15, section 31.1b, paragraph 2; 57 FR 43180, 43208, September 18, 1992). Scoping of this proposed rule indicates that there are no extraordinary circumstances involved and that, therefore, this proposed rule is excluded from documentation in an environmental assessment or environmental impact statement.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and thereby imposes no paperwork burden on the public.

List of Subjects in 36 CFR Parts 215 and 217

Administrative practice and procedures, National forests.

Therefore, for the reasons set forth in the preamble, chapter II of title 36 of the Code of Federal Regulations is proposed to be amended as follows:

1. Add a new part 215 to read as follows:

PART 215—NATIONAL FOREST SYSTEM NOTICE, COMMENT, AND APPEAL PROCEDURES

Subpart A—Public Notice and Comment on Proposed Forest Service Actions Implementing National Forest Land and Resource Management Plans

Sec.

215.1 Scope and applicability.
215.2 Definitions.
215.3 Proposed actions subject to notice and comment.
215.4 Proposed actions not subject to this subpart.
215.5 Notice for public comment on proposed actions.
215.6 Comments.

Subpart B—Appeal of Project and Activity Decisions Implementing National Forest Land and Resource Management Plans

215.20 Purpose and scope.
215.21 Definitions.
215.22 Decisions subject to appeal.
215.23 Decisions not subject to appeal.
215.24 Giving notice of decision.
215.25 Implementation of decisions.
215.26 Who may participate in appeals.
215.27 Where to file appeals.
215.28 Time periods.
215.29 Content of an appeal.
215.30 Dismissal of appeals without review.
215.31 Intervention.
215.32 Informal disposition.
215.33 Formal disposition.
215.34 Appeal Deciding Officer authority.
215.35 Appeals Review Officer authority.
215.36 Policy in event of judicial proceedings.
215.37 Applicability and effective date.

Subpart C—Appeal of Regional Guides and National Forest Land and Resource Management Plans

215.50 Purpose and scope.
215.51 Definitions.
215.52 Decisions subject to appeal.
215.53 Decisions not subject to appeal.
215.54 Giving notice of decisions.
215.55 Who may participate in appeals.
215.56 Levels of appeal.
215.57 Time periods.
215.58 Content of an appeal.
215.59 Implementation and stays of decisions.
215.60 Dismissal without review.
215.61 Resolution of issues.
215.62 Appeal Deciding Officer authority.
215.63 Intervention.
215.64 Appeal record.
215.65 Decision.
215.66 Discretionary review.
215.67 Policy in event of judicial proceedings.
215.68 Applicability and effective date.

Authority: 16 U.S.C. 551, 472; 16 U.S.C. 1612 note (Pub. L. 102–381, section 322).

Subpart A—Public Notice and Comment on Proposed Forest Service Actions Implementing National Forest Land and Resource Management Plans

§ 215.1 Scope and applicability.

(a) This subpart establishes a process for giving the public notice and opportunity to comment on proposed actions implementing National Forest land and resource management plans prior to a final decision by the Responsible Official.

(b) The notice and comment procedures established in this subpart apply to all proposed actions as defined in § 215.3 that are issued after [Insert date 30 days from the date of publication of the final rule in the Federal Register.]

§ 215.2 Definitions.

For the purposes of this subpart—

Categorical exclusion refers to a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an Environmental Impact Statement nor an Environmental Assessment is required. (40 CFR 1508.4, Forest Service Handbook (FSH) 1909.15, Chapter 30; 36 CFR 200.2 and 200.4).

Comment period is the 30 calendar day period available to interested persons to provide comments to a Responsible Official on a proposed action subject to this subpart.

Decision document is a Record of Decision, Decision Notice, or Decision Memo for actions implementing land and resource management plans.

Decision memo is a concise written record of the Responsible Official's decision to implement actions that have been categorically excluded from documentation in an Environmental Impact Statement or Environmental Assessment (40 CFR 1508.4, Forest Service Handbook 1909.15, Chapter 30).

Decision notice is a concise written record of the Responsible Official's decision based on an Environmental Assessment and a Finding Of No Significant Impact. The Decision Notice must either contain or refer to a Finding Of No Significant Impact (40 CFR 1508.9, Forest Service Handbook 1909.15, Chapter 40).

Environmental assessment is a concise public document that provides sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement or a

Finding Of No Significant Impact (40 CFR 1508.9; Forest Service Handbook, Chapter 40).

Environmental impact statement is a detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act, 1969, 40 CFR 1508.11.

Finding of no significant impact (FONSI) is a document by a federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an Environmental Impact Statement therefore will not be prepared. It shall include the Environmental Assessment or a summary of it and shall note any other environmental documents related to it (40 CFR 1508.13; Forest Service Handbook 1909.15, Chapter 40).

Proposed action is a proposal made by the Forest Service to authorize, recommend, or implement an action on National Forest System lands to meet a specific purpose and need.

Record of decision is a document signed by a Responsible Official recording a decision that was preceded by preparation of an Environmental Impact Statement (40 CFR 1505.2; Forest Service Handbook 1909.15, Chapter 20).

Responsible official is the Forest Service line officer who has the authority and responsibility to make decisions on proposed actions subject to notice and comment under this subpart.

§ 215.3 Proposed actions subject to notice and comment.

The notice and comment procedures of this subpart apply to the following proposed actions implementing National Forest land and resource management plans (36 CFR part 219).

(a) Proposed actions for which an Environmental Assessment and proposed FONSI are prepared, including non-significant forest plan amendments.

(b) Proposed actions listed in Forest Service Handbook 1909.15, section 31.2 category 4: Timber harvest which removes 250,000 board feet or less of merchantable wood products, or salvage which removes 1,000,000 board feet or less of merchantable wood products; which requires one mile or less of low standard road construction (Service level D. FSH 7709.56); and assures regeneration of harvested or salvaged areas, where required.

(c) On those National Forests without approved land and resource management plans, proposed actions for which an Environmental Assessment and proposed FONSI are prepared, or project and activities which are listed in FSH 1909.15, section 31.2, category 4.

(d) Proposed actions of forest research and state and private forestry actions which are to be carried out directly on National Forest System lands—

(1) For which an Environmental Assessment and proposed FONSI has been prepared; or

(2) For which a project or case file and Decision Memo are required to implement a proposed project and activity listed in Forest Service Handbook (FSH) 1909.15, section 31.2, category 4.

§ 215.4 Proposed actions not subject to this subpart.

The following proposed actions are not subject to this subpart:

(a) Proposed actions described in a draft Environmental Impact Statement, for which notice and comment procedures are governed by 40 CFR parts 1500–1508;

(b) Proposed actions related to emergency situations or rehabilitation of National Forest System lands or recovery of forest resources resulting from natural disasters or other natural phenomena such as insect or disease infestation, wildfires, severe wind, earthquakes, or flooding, when the Regional Forester or, in situations of national significance, the Chief of the Forest Service, determines the action is exempt from the requirements of this subpart;

(c) Proposed actions not requiring documentation in an Environmental Impact Statement or Environmental Assessment and FONSI pursuant to 7 CFR 1b.3 or FSH 1909.15, sections 31.1a–31.1b and for which a case file and decision memo are not required;

(d) Proposed actions listed in FSH 1909.15, section 31.2, categories 1 through 3, and 5 through 9.

(e) Any proposed action or policy not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500 through 1508;

(f) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in Forest Service Manuals and Handbooks (36 CFR parts 200, 216).

§ 215.5 Notice for public comment on proposed actions.

(a) *Manner of giving notice.* The Responsible Official shall give notice of the opportunity to comment on proposed actions subject to this subpart as follows:

(1) For all proposed actions for which the Chief is the Responsible Official, notice shall be published in the Federal Register.

(2) For proposed actions for which a Forest Service line officer other than the Chief is the Responsible Official, and for which an Environmental Assessment and proposed FONSI have been prepared, notice shall be published in a newspaper of general circulation identified pursuant to the requirements of paragraph (c) of this section.

(3) Notice of a proposed action for actions listed in FSH 1909.15, section 31.2, category 4, shall be published prior to the issuance of a Decision Memo.

(b) *Content of notice.* All notices published pursuant to this subpart shall include the following:

(1) Title or subject matter of the proposed action;

(2) Brief description of the proposed project or activity;

(3) General description of the project location;

(4) Name, address, and telephone number of the official to contact to obtain a copy of the applicable environmental analysis documentation;

(5) Name, title, address, and telephone number of the Responsible Official and to whom comments should be addressed; and

(6) Date the comment period ends in terms of the number of days following the date of publication of the notice.

(c) *Annual notice of newspapers.* Annually, each Regional Forester shall, through notice published in the Federal Register, advise the public of the principal newspapers to be utilized for publishing comment notices required by this subpart.

§ 215.6 Comments.

(a) *Comment period.* Comments on a proposed action subject to this subpart will be accepted by the Responsible Official for 30 days following publication of the comment notice. The 30-day period for comment begins on the first day after publication of notice.

(b) *Submission.* Persons submitting comments to the Responsible Official in response to a comment notice published pursuant to § 215.5 of this subpart shall provide the following information:

(1) Name, address, and telephone number;

(2) Title of the document(s) on which comment is being submitted; and

(3) Facts or comments along with supporting reasons that the person believes the Responsible Official should consider in reaching a decision.

(c) *Timeliness.* It is the responsibility of persons providing comments to do so by the close of the comment period.

(1) When comments are received, the Responsible Official shall clearly identify the date of receipt; and

(2) Comments will not be considered unless they are received by the close of business on the 30th day following publication of the comment notice. Saturdays, Sundays, and Federal holidays are included in computing all time periods in this subpart; however, when the comment period ends on a Saturday, Sunday, or Federal holiday, the comment period shall be extended to the close of business of the next Federal working day.

Subpart B—Appeal of Project and Activity Decisions Implementing National Forest Land and Resource Management Plans

§ 215.20 Purpose and scope.

(a) This subpart establishes a process by which a person may appeal decisions made by Forest Service officials on projects or activities implementing land and resource management plans on National Forest System lands and thereby obtain review of the decision by a higher level official prior to implementation. This subpart establishes who may appeal, the kind of decisions that may be appealed, the responsibilities of the participants in an appeal, and the procedures that apply.

(b) The process provides for prompt administrative review of decisions.

§ 215.21 Definitions.

For the purposes of this subpart—

Appeal is the written document filed with an Appeal Deciding Officer by one who objects to a decision covered by this subpart.

Appeal deciding officer is the Forest Service line officer one administrative level higher than the Responsible Official who has the delegated authority and responsibility to render a decision on an appeal filed under this subpart.

Appeal period is the 45 calendar day time period following the date of publication of the notice of decision during which an appeal may be filed with the Appeal Deciding Officer.

Appeal record is the information upon which the Appeals Review Officer shall conduct the review and consists of the appeal, written comments submitted by intervenors, the written summary prepared by the Responsible Official of the meeting held to attempt to informally resolve the appeal, and decision documentation.

Appeals review officer is the official designated by the Appeal Deciding Officer to review an appeal and make a recommendation on the disposition of the appeal who is a Forest Service line officer of at least the same level as the Responsible Official, has not participated in the initial decision, and is not responsible for implementation of the decision after the appeal is decided.

Appellant is a person filing an appeal under this subpart.

Decision document (§ 215.2).

Decision documentation refers to the decision document and all relevant environmental and other analysis documentation on which the Responsible Official based a decision that is at issue under this subpart. Decision documentation may include, but is not limited to, a project or case file, decision documents, Environmental Assessments, Findings of No Significant Impact, draft and final Environmental Impact Statements, land and resource management plans, regional guides, pertinent draft documents, and documents incorporated by reference in any of the preceding documents.

Decision memo (§ 215.2).

Decision notice (§ 215.2).

Finding of no significant impact (FONSI) (§ 215.2).

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Deputy District Ranger, Assistant District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief of the Forest Service, or an employee delegated the authority to act in their capacity. *Intervenor* is a person who has made a timely request to intervene in an appeal filed under this subpart.

Notice of decision is the notice of a decision published in the **Federal Register** or in a newspaper of general circulation as required in § 215.5(c), subpart A.

Record of decision (§ 215.2).

Responsible official (§ 215.2).

§ 215.22 Decisions subject to appeal.

Decisions subject to appeal under this subpart include:

(a) Project and activity decisions documented in a Record of Decision or Decision Notice, including those which, as a part of the project approval decision, contain a nonsignificant amendment (36 CFR part 219) to a National Forest land and resource management plan.

(b) Project and activity decisions documented in a Decision Memo for activities listed in Forest Service Handbook (FSH) 1909.15, section 31.2, category 4.

(c) Decisions on forest research and State and private forestry actions which are to be carried out directly on National Forest System lands—

(1) For which an Environmental Assessment and proposed FONSI has been prepared; or

(2) For which a project or case file and Decision Memo are required to implement a proposed project and activity listed in Forest Service Handbook (FSH) 1909.15, section 31.2, category 4.

§ 215.23 Decisions not subject to appeal.

(a) The following decisions are not subject to appeal under this subpart:

(1) Written decisions to approve, amend, or revise a National Forest land and resource management plan and written decisions to approve or amend a regional guide prepared pursuant to 36 CFR part 219 undertaken separately from a decision on a project or activity;

(2) Project or activity decisions for which environmental effects have been analyzed and disclosed within a final EIS and documented in a Record of Decision for approval, significant amendment, or revision of a land and resource management plan;

(3) Decisions related to emergency situations or rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service gives notice in the **Federal Register**;

(4) Decisions solely affecting the business relationship between the Forest Service and holders of written instruments regarding occupancy and use of National Forest System lands, appeal of which is governed by 36 CFR 251.82;

(5) Preliminary decisions made during planning and/or analysis processes, such decisions are appealable upon issuance of a decision document;

(6) Proposed actions for which notice and opportunity to comment have been published and no expression of interest has been received on the specific proposal prior to the close of the comment period as specified in subpart A, and the Responsible Official's decision does not modify the proposed action; and

(7) Decisions for actions, documented in a Decision Memo, listed in FSH 1909.15, section 31.2, categories 1, 2, 3, 5, 6, 7, 8, and 9.

(b) In addition to decisions excluded from appeal by paragraph (a) of this section, the Appeal Deciding Officer shall dismiss any appeal on subsequent implementing actions that result from the initial decision subject to appeal under this subpart as defined at § 215.22 and for which a decision document is not required. For example, an initial decision to offer a timber sale is appealable under this part; subsequent actions to advertise or award that sale are not appealable under this subpart. A subsequent implementing decision that is documented in a new decision document would be subject to appeal under this subpart.

§ 215.24 Giving notice of decision.

(a) *Notice.* The Responsible Official shall promptly mail the decision document to those who have made a written request and to those who submitted comments during the comment period pursuant to subpart A.

(b) *Decision document content.* In addition to the content requirements in Forest Service Handbook 1909.15, the decision document shall:

(1) Address substantive comments received in response to notice published pursuant to § 215.5 of subpart A;

(2) State that the decision is subject to appeal pursuant to 36 CFR part 215, subpart B;

(3) Include the date, time, and location where a meeting would be held, if needed, to attempt to informally resolve any appeal(s) received pursuant to this subpart, and the name and telephone number of the official to contact for information regarding the meeting, if one is needed.

(c) *Publication of notice of decision.* The Responsible Official shall publish a notice for decisions subject to this subpart as follows:

(1) For all decisions of the Chief, the notice of decision shall be published in the **Federal Register.**

(2) For decisions made by other Forest Service line officers, the notice of decision shall be published in a newspaper of general circulation identified pursuant to the requirements of § 215.5(c) of subpart A.

(d) *Notice of decision content.* Notices of decision published pursuant to this section shall—

(1) Include a concise description of the decision title or subject matter, the date the decision is to be implemented, the name and title of the Responsible Official, and information on how to obtain a copy of the decision;

(2) State whether the decision is subject to appeal pursuant to 36 CFR part 215,subpart B;

(3) The name and address of the Appeal Deciding Officer with whom an appeal should be filed;

(4) Specify that an appeal must be received within 45 days of the date of publication by the Appeal Deciding Officer as provided for in § 215.28(c);

(5) Include the date, time, and location where a meeting would be held, if needed, to attempt to informally resolve any appeal(s) received pursuant to this subpart, and the name and telephone number of the official to contact for information regarding the meeting, if one is needed.

§ 215.25 Implementation of decisions.

(a) Implementation of decisions subject to appeal pursuant to this subpart shall not occur until the end of the appeal period.

(b) If an appeal is filed, implementation shall not occur for 15 days following the date of appeal disposition. In the event of multiple appeals of the same decision, the disposition date of the last appeal resolved controls the implementation date.

(c) If a project is exempted from appeal pursuant to § 215.23(a)(6), implementation may occur immediately upon publication of the notice of decision as provided in § 215.24(c).

(d) If a project is exempted from appeal pursuant to § 215.23(a)(3), implementation may occur immediately upon publication of the determination in the **Federal Register** or the notice of decision in the newspaper of general circulation described in § 215.5(c) subpart A.

§ 215.26 Who may participate in appeals.

(a) An appeal of decisions pursuant to this subpart may be filed by persons who or any non-Federal organization or entity that—

(1) Submitted written comment in response to a draft EIS; or

(2) For actions subject to the provisions of subpart A, provided comment or otherwise expressed their interest in the specific proposal prior to the close of the comment period as specified in subpart A.

(b) Persons interested in or potentially affected by an appeal may participate by intervening in accordance with § 215.31 of this subpart, provided they—

(1) Submitted written comment in response to a draft EIS; or

(2) For actions subject to the provisions of subpart A, provided comment or otherwise expressed their interest in the specific proposal prior to the close of the comment period as specified in subpart A.

(c) Forest Service employees may not participate as appellants or intervenors.

§ 215.27 Where to file appeals.

The Appeal Deciding Officer with whom appeals are filed is determined as follows—

Responsible Official	Appeal Deciding Officer
Chief of the Forest Service.	Secretary of Agriculture.
Regional Forester, Station Director, or Area Director.	Chief of the Forest Service.
Forest Supervisor	Regional Forester.
District Ranger	Forest Supervisor.

§ 215.28 Time periods.

(a) *Filing procedures.* To appeal a decision under this subpart, a person must:

(1) File one copy of a written appeal with the Appeal Deciding Officer and provide one copy of the appeal to the Responsible Official;

(2) File an appeal within the appeal period specified in the notice of decision published pursuant to § 215.24 of this subpart.

(b) *Computation of time periods.*

(1) The day after the publication of the notice of decision is the first day of the appeal period.

(2) All time periods in this subpart are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(c) *Evidence of timely filing.* It is the responsibility of the appellant to file an appeal on or before the last day of the appeal period. The appeal must be received by the Appeal Deciding Officer by close of business on the last day of the appeal period. When an appeal is received, the Appeal Deciding Officer shall clearly identify the date of receipt.

(d) *Time extensions.* Time extensions are not permitted except as provided in § 215.34(c) of this subpart.

(e) *Acknowledgement of appeal.* The Appeal Deciding Officer shall acknowledge the acceptance of an appeal.

(f) *Informal disposition.* A period of 15 days following the close of the appeal period is available to the appellant to attempt to reach informal disposition of the appeal as provided for in § 215.32 of this subpart.

(1) *Informal disposition meeting.* If needed, within 15 days after the close of the appeal period, the Responsible Official will hold a meeting with the appellant(s) and intervenor(s) to provide an opportunity for informal disposition

of the appeal within 15 days after the close of the appeal period.

(2) *Documentation of informal disposition results.* Within 15 days after the close of the appeal period, the Responsible Official shall document and forward to the Appeal Deciding Officer the results of the informal disposition meeting.

(g) *Formal disposition.* Unless time has been extended as provided for in § 215.34(c) of this subpart, or unless the appeal is resolved through the informal disposition process provided for in § 215.32, the following process shall apply:

(1) *Transmittal of decision documentation.* The Responsible Official shall transmit the decision documentation to the Appeals Review Officer.

(2) *Review recommendation.* The Appeals Review Officer shall review the appeal record and forward to the Appeal Deciding Officer the appeal record and a brief written recommendation on the disposition of the appeal.

(3) *Appeal decision.* Within 30 days following the end of the appeal period, the Appeal Deciding Officer shall issue a brief written decision on an appeal, unless the period is extended as provided for in § 215.34(c) of this subpart.

§ 215.29 Content of an appeal.

(a) It is the appellant's responsibility to provide an Appeal Deciding Officer sufficient written evidence and rationale to show why the Responsible Official's decision should be changed or reversed.

(b) A written appeal filed with the Appeal Deciding Officer must:

(1) State that the document is an appeal filed pursuant to 36 CFR part 215, subpart B;

(2) List the name, address, the telephone number of the appellant;

(3) Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;

(4) Identify the specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;

(5) State whether the appellant wishes to proceed with informal disposition of the appeal as provided in § 215.32 and will attend the meeting prescribed in the notice of decision issued pursuant to § 215.24; and

(6) Demonstrate how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period (§ 215.6, subpart A) and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

§ 215.30 Dismissal of appeals without review.

(a) An Appeal Deciding Officer shall dismiss an appeal without review when:

(1) The appeal is not filed within the 45-day appeal period in accordance with § 215.28(c) of this subpart;

(2) The requested relief or change cannot be granted under law, fact, or regulation;

(3) The decision at issue is being appealed by the appellant under another administrative proceeding;

(4) The decision is excluded from appeal pursuant to § 215.23(a)(3) or § 215.23(b) of this subpart;

(5) The appellant did not express an interest in the specific proposal prior to the close of the comment period as specified in subpart A;

(6) The appellant(s) withdraws the appeal;

(7) The Responsible Official withdraws the appealed decision; or

(8) The appellant has filed for Federal judicial review of the decision and the Chief has invoked the provisions of § 215.36 of this subpart.

(b) The Appeal Deciding Officer shall give written notice to the appellant, intervenor, and Responsible Official that the appeal is dismissed and state the rationale for dismissal.

§ 215.31 Intervention.

(a) Before the close of business the day before the informal disposition meeting occurs, interested persons who have previously provided comments or expressed an interest prior to the close of the comment period as provided for in subpart A, may intervene in an appeal by notifying the Responsible Official.

(b) An intervenor may participate in the informal disposition meeting provided for in § 215.32 of this subpart. An intervenor cannot continue an appeal if the appeal is dismissed (§ 215.30).

(c) To be considered a part of the appeal record, intervenor comments must be written and be submitted to the Responsible Official either—

(1) Prior to the date of the informal disposition meeting; or

(2) At the informal disposition meeting.

(d) Intervenors shall provide a copy of their written comments to the appellant.

§ 215.32 Informal disposition.

(a) *Informal disposition period.* When a decision is appealed under this subpart, a 15-day informal disposition period shall be available to provide the appellant and intervenor an opportunity to meet with the Responsible Official, or designated representative, to discuss and explore opportunities to resolve the appeal by means other than review and decision on the appeal.

(b) *Informal disposition meeting.* A meeting shall be announced by the Responsible Official, as provided for in § 215.24. A meeting will be held if one or more appellants indicate they want to participate. A meeting will not be held if the appellant, or in the case of multiple appeals, all appellants, decline to participate (§ 215.29(b)(5)). Although the meeting will be open to the public, meeting participation will be limited to the appellant(s), intervenor(s), the Responsible Official or designated representative.

(c) *Agreement on informal disposition.* If the appellant and Responsible Official reach agreement on the informal disposition of the appeal, the Responsible Official shall document and forward to the Appeal Deciding Officer a summary of the informal disposition. Upon notice from the appellant that the appeal has been withdrawn, the Appeal Deciding Officer will dismiss the appeal and notify the appellant, intervenor, Appeals Review Officer, and Responsible Official.

(d) *Failure to reach informal disposition.* If the appeal is not resolved, the Responsible Official shall document, and forward to the Appeal Deciding Officer, the result of the meeting and a copy of any written comments received from the intervenor. The Appeal Deciding Officer shall then advise the Appeals Review Officer to proceed with formal review and preparation of a recommendation to the Appeal Deciding Officer.

§ 215.33 Formal disposition.

(a) *Formal disposition period.* Unless the time has been extended as provided for in § 215.34(c), the Appeal Deciding Officer shall complete a review and issue an appeal decision not later than 30 days after the end of the appeal period.

(b) *Appeal decision.*

(1) The Appeal Deciding Officer shall issue a written appeal decision either affirming or reversing, in whole or in part, the Responsible Official's decision and may include instructions for further action. The appeal decision shall include a copy of the Appeals Review Officer's recommendation. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant, intervenor, Appeals Review Officer and Responsible Official.

(2) If the Appeal Deciding Officer fails to decide the appeal within the 45 day period, the Responsible Official's decision shall be deemed to be the final agency action for the purpose of chapter

7 of title 5, United States Code. In this event, the decision being appealed stands as the final agency decision.

§ 215.34 Appeal deciding officer authority.

(a) *Designation of Appeals Review Officer.* The Appeal Deciding Officer shall designate an Appeals Review Officer in accordance with such procedures as the Chief may issue. In making such designation, the Appeal Deciding Officer shall select as Appeals Review Officer a Forest Service line officer who is at least the same or higher level as the Responsible Official, has not participated in the initial decisionmaking, and will not be responsible for implementation of the decision under appeal.

(b) *Consolidation of appeal decisions.* The Appeal Deciding Officer shall determine whether to issue one appeal decision or separate appeal decisions in cases involving multiple appeals of a decision subject to this subpart.

(c) *Extension of time.* After the Appeal Deciding Officer has received the Appeals Review Officer's recommendation as provided for in § 215.35(d) of this subpart, the Appeal Deciding Officer may extend the time period for formal disposition for an additional 15 days. The Appeal Deciding Officer shall notify the appellant, intervenor, and the Responsible Official of the extension by posting public notice of the extension in the Responsible Official's office.

(d) *Procedural decisions.* The Appeal Deciding Officer shall make all procedural decisions in this subpart. Such determinations constitute the final administrative determination of the Department of Agriculture.

(e) *Appeal decisions.* The Appeal Deciding Officer's decision shall consider the Appeals Review Officer's written recommendation and the appeal record. The Appeal Deciding Officer shall make a decision on the appeal within 30 days of the end of the appeal period, unless extended as provided in § 215.34(c). The Appeal Deciding Officer's decision constitutes the final administrative determination of the Department of Agriculture.

§ 215.35 Appeals review officer authority.

(a) *Scope of review.* The Appeals Review Officer shall review the appeal record. The Appeals Review Officer may seek additional information during the review from any source. The Appeals Review Officer shall maintain a log of all contacts made during their review and the log shall be made part of the appeal record.

(b) *Consolidation of recommendations.* The Appeals Review Officer shall determine whether to issue one recommendation or separate recommendations in cases involving multiple appeals of a decision subject to this subpart.

(c) *Review period.* As provided for in § 215.28(h)(2), the Appeals Review Officer shall review the appeal and recommend in writing to the Appeal Deciding Officer, the disposition of the appeal before the end of the appeal disposition period.

(d) *Appeal disposition recommendation.* The Appeals Review Officer's recommendation shall be brief and in writing. The appeal record upon which the recommendation is based will be forwarded to the Appeal Deciding Officer.

§ 215.36 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this subpart is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this part. This position may be waived upon written notice of the Chief after a lawsuit has been filed.

§ 215.37 Applicability and effective date.

(a) The procedures of this subpart apply to all decisions appealable under this subpart for which notice is published on or after [insert date 60 days from publication of the final rule in the **Federal Register**].

(b) Notices of appeal filed prior to [*insert date 60 days from publication of the final rule in the* **Federal Register**] remain subject to the procedures of 36 CFR part 217.

Subpart C—Appeal of Regional Guides and National Forest Land and Resource Management Plans

§ 215.50 Purpose and scope.

(a) This subpart provides a process by which a person may administratively appeal decisions to approve, amend, or revise a National Forest land and resource management plan, or approve or amend a regional guide prepared pursuant to 36 CFR part 219. This subpart establishes who may appeal such decisions, the kind of decisions that may be appealed, the responsibilities of the participants in an appeal, and the procedures that apply. The subpart provides a review of such decisions by an official at the next administrative level.

(b) This subpart complements, but does not replace, numerous opportunities to participate in and influence agency decisionmaking provided pursuant to the National Environmental Policy Act of 1969 (NEPA), and the associated implementing regulations and procedures in 40 CFR parts 1500 through 1508, 36 CFR parts 216 and 219, Forest Service Manual Chapters 1920 and 1950, and Forest Service Handbooks 1909.12 and 1909.15.

§ 215.51 Definitions.

For the purposes of this subpart—

Appeal is the written document filed with an Appeal Deciding Officer by one who objects to a decision subject to this subpart.

Appeal deciding officer (§ 216.21).

Appeal period is the 45 or 90 calendar day time period following the legal notice of decision during which appeals may be filed with the Appeal Deciding Officer.

Appellant is the term used to refer to a person or organization filing an appeal under this subpart.

Decision document means a written document that a Responsible Official signs to execute a decision subject to review under this subpart, specifically, a Record of Decision or a Decision Notice.

Decision documentation refers to the decision document and all relevant environmental and other analysis documentation on which the Responsible Official based a decision that is at issue under this subpart. Decision documentation includes, but is not limited to, environmental assessments, findings of no significant impact, environmental impact statements, land and resource management plans, regional guides, documents incorporated by reference in any of the preceding documents, and drafts of these documents released for public review and comment.

Decision notice (§ 215.2).

Decision review or "review" is the term used to refer to the process provided in this subpart by which a higher level officer reviews a decision of a subordinate officer in response to an appeal.

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, the Chief of the Forest Service, or an

employee delegated the authority to act in one of these decision.

Intervenor is an individual or organization that has made a timely request to intervene in an appeal filed under this subpart.

Notice of decision is the notice of a decision published in the **Federal Register** or in the legal notices section of a newspaper of general circulation as required in § 215.54 of this subpart.

Record of decision (§ 215.2).

Responsible official is the Forest Service line officer who has delegated authority and responsibility to make the decision being appealed under this subpart.

§ 215.52 Decisions subject to appeal.

(a) Effective [*insert date 60 days from date of publication of the final rule in the* **Federal Register**], decisions to approve, amend, or revise a National Forest land and resource management plan and decisions to approve or amend a regional guide prepared pursuant to 36 CFR part 219 and documented in a Decision Notice or Record of Decision are subject to appeal under this subpart, except as provided in § 217.53 of this rule.

(b) Appeals of decisions to approve, amend, or revise National Forest land and resource management plans are limited to the management decisions made therein. Those decisions are as follows:

(1) Establishment of forest-wide multiple use goals and objectives;

(2) Establishment of forest-wide standards and guidelines;

(3) Establishment of management areas and associated management area prescriptions;

(4) Identification of lands not suited for timber production;

(5) Establishment of monitoring and evaluation requirements; and

(6) Project decisions made in conjunction with decisions on land and resources management plans;

(c) Decisions documented in a Decision Notice or a Record of Decision made by a subordinate Forest Service staff officer acting within delegated authority are considered to be decisions of the Forest Service line officer.

§ 215.53 Decisions not subject to appeal.

(a) The following decisions are not subject to appeal under this subpart:

(1) Decisions on projects or activities implementing National Forest land and resource management plans including project decisions that include a non-significant amendment to a National Forest land and resource management plan.

(2) Preliminary planning decisions or preliminary decisions as to National Environmental Policy Act or National Forest Management Act processes made prior to release of final plans, guides, and environmental documents.

(3) Recommendations of Forest Service line officers to higher ranking Forest Service or Departmental officers or to other entities having final authority to implement the recommendation in question, such as wilderness and wild and scenic river recommendations.

§ 215.54 Giving notice of decisions.

(a) *Direct notice.* For decisions subject to appeal under this subpart, the Responsible Official shall promptly mail the decision document to those who have requested it in writing and to those who have provided comments.

(b) *Publication of notice.* The Responsible Official shall also give notice of decisions appealable under this subpart as follows:

(1) For all initial decisions of the Chief, notice of decision shall be published in the **Federal Register**.

(2) For all other decisions, notice of decision shall be published in a newspaper of general circulation identified pursuant to the requirements of paragraph (d) of this section.

(c) *Content of published notice.* All notices of decision published pursuant to this section shall:

(1) Include a concise description of the decision made by title or subject matter, the date of the decision, the name and title of the official making the decision, and information on how to obtain a copy of the decision;

(2) State that the decision is subject to appeal pursuant to 36 CFR part 215, subpart C;

(3) Specify the date by which an appeal must be received by the Appeal Deciding Officer as provided for in § 215.58 of this section.

(4) State the name and address of the Appeal Deciding Officer with whom appeals should be filed;

(d) *Annual notice of newspapers.* Annually, each Regional Forester shall, through notice published in the **Federal Register**, advise the public of the principal newspaper to be utilized for publishing notices of decision required by this section. The **Federal Register** notice shall also list all additional newspapers which the Regional Forester expects to use for purposes of providing additional notice. This notice may be accomplished in concert with biannual notice required in § 215.5 of subpart A.

§ 215.55 Who may participate in appeals.

(a) Other than Forest Service employees, any person or non-Federal organization or entity may appeal a decision covered by this part and request a review by the Forest Service line officer at the next administrative level.

(b) An intervenor as defined in § 215.51 of this subpart.

§ 215.56 Levels of appeal.

(a) *Appeal of decisions made by the Chief.* If the Chief of the Forest Service is the Responsible Official, an appeal must be filed with the Secretary of Agriculture. Review by the Secretary is wholly discretionary.

(1) Within 15 days of receipt of an appeal, the Secretary shall determine whether to review the decision in question.

(2) If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the appellant(s) shall be notified by the Secretary's office that the Chief's decision is the final administrative decision of the Department of Agriculture.

(3) When the Secretary elects to review a decision made by the Chief, the Secretary shall conduct the review in accordance with the same procedures as outlined in this subpart for decisions by the Chief.

(b) *Appeal of decisions made by Forest Supervisors and Regional Foresters.* Only one level of administrative review is available for appeals of written decisions by Forest Supervisors and Regional Foresters. The levels of available review are as follows:

(1) If the decision is made by a Forest Supervisor, an appeal must be filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, an appeal must be filed with the Chief of the Forest Service.

(c) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this subpart are subject to only one level of discretionary review as follows:

(1) If the Appeal Deciding Officer was the Regional Forester, the Chief has discretion to review.

(2) If the Appeal Deciding Officer was the Chief, the Secretary of Agriculture has discretion to review.

(d) *Discretionary review of dismissal decisions.* Decisions rendered by the Appeal Deciding Officer to dismiss an appeal (§ 215.60; § 215.66) are subject to one level of discretionary review as follows:

(1) If the initial Appeal Deciding Officer was the Regional Forester, the Chief has discretion to review the dismissal decision.

(2) If the Appeal Deciding Officer was the Chief, the Secretary of Agriculture has discretion to review the dismissal decision.

§ 215.57 Time periods.

(a) *Filing.* To appeal a decision under this subpart, a person must file a written appeal, in duplicate, as specified in § 215.58 of this subpart within the following time periods:

(1) For decisions that make non-significant amendments to land and resource management plans, the appeal must be received by the Appeal Deciding Officer within 45 days of the date of publication of the notice of decision.

(2) For decisions to approve, significantly amend, or revise land and resource management plans or approve or amend regional guides, the appeal must be received by the Appeal Deciding Officer within 90 days of the date of publication of the notice of decision.

(b) *Computation of time periods.*

(1) The day after the publication of the notice of decision is the first day of the appeal period.

(2) All time periods in this subpart are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the appeal period; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(c) *Evidence of timely filing.* It is the responsibility of the appellant to file an appeal on or before the close of business on the last day of the appeal period. The appeal must be received by the Appeal Deciding Officer by the last day of the filing period. When an appeal is received, the Appeal Deciding Officer shall clearly identify the date of receipt.

(d) *Time extensions.* Time extensions are not permitted except as provided in § 215.61, § 215.62, and § 215.66 of this subpart.

(e) *Forwarding Copies.* Upon receipt of a timely appeal, the Appeal Deciding Officer shall immediately forward a copy of it to the Responsible Official.

(f) *Appeal decision.* Unless time has been extended as provided for in § 215.61 and § 215.62, the Appeal Deciding Officer shall not exceed the following time periods for rendering an appeal decision:

(1) For an appeal of a non-significant amendment to a land and resource management plan, the appeal decision shall be rendered within 100 days from the closing date of the appeal period.

(2) For an appeal of the approval or amendment of a regional guide or the approval, significant amendment, or revision of a land and resource management plan, the appeal decision shall be rendered within 160 days from the closing date of the appeal period.

§ 215.58 Content of an appeal.

(a) It is the responsibility of those who appeal a decision under this subpart to provide an Appeal Deciding Officer sufficient narrative evidence and reason to show why the decision by the Responsible Official should be changed or reversed.

(b) At a minimum, a written appeal filed with the Appeal Deciding Officer must:

(1) State that the document is an appeal filed pursuant to 36 CFR part 215, subpart C;

(2) List the name, address, and telephone number of the appellant;

(3) Identify the decision about which the appellant objects;

(4) Identify the document in which the decision is contained by title and subject, date of the decision, and name and title of the Responsible Official.

(5) Identify specifically that portion of the decision or decision document to which the appellant objects;

(6) State the reasons for objecting, including issues of fact, law, regulation, or policy, and, if applicable, specifically how the decision violates law, regulation, or policy; and

(7) Identify the specific change(s) in the decision that the appellant seeks.

§ 215.59 Implementation and stays of decisions.

(a) Decisions made pursuant to 36 CFR parts 219.8(d)(1) and 219.10(c)(1) and subject to appeal pursuant to this subpart shall not take effect for 30 calendar days following publication of the notice of decision as required in § 215.54.

(b) Requests to stay the approval, amendment, or revision of land and resource management plans and approval or amendment of regional guides prepared pursuant to 36 CFR part 219, covered by this subpart shall not be granted.

§ 215.60 Dismissal without review.

(a) An Appeal Deciding Officer shall dismiss an appeal and close the appeal record without decision on the merits when:

(1) The appeal is not filed within the time specified in § 215.57 of this subpart;

(2) The requested relief or change cannot be granted under law or regulation;

(3) The appeal fails to meet the requirements of § 215.58 of this subpart to such extent that the Appeal Deciding Officer lacks adequate information on which to base a decision;

(4) The decision at issue is being appealed under another administrative proceeding;

(5) The decision is excluded from appeal pursuant to § 215.53 of this subpart.

(6) The appellant(s) withdraws the appeal;

(7) The Responsible Official withdraws the appealed decision; or

(8) The Chief has invoked the provisions of § 215.67 of this subpart.

(b) The Appeal Deciding Officer shall give written notice of a dismissal to appellants, intervenors, and the Responsible Official that includes an explanation of why the appeal is dismissed.

(c) An Appeal Deciding Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 215.66(d) of this subpart, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Responsible Official.

§ 215.61 Resolution of issues.

(a) *Request for meetings.* When a decision is appealed, appellants or intervenors may request meetings with the Responsible Official to discuss the appeal, either together or separately, to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal.

(b) *Appeal Deciding Officer request for meetings.* Appeal Deciding Officers may, on their own initiative, request the Responsible Official to meet with appellants and intervenors to discuss the appeal and explore opportunities to resolve the issues. However, Appeal Deciding Officers may not participate in such discussions.

(c) *Extension of time.* At the request of the Responsible Official, or on their own initiative, Appeal Deciding Officers may extend the time periods for review to allow for conduct of meaningful negotiations.

(1) Such extensions may occur only after the time periods for intervention and for the Responsible Official to transmit the decision documentation have elapsed.

(2) In granting an extension, the Appeal Deciding Officer must establish a specific time period for the conduct of negotiations.

(d) *Withdrawal of decision.* The Responsible Official may withdraw a decision, in whole or in part, during the appeal. Where a Responsible Official decides to withdraw a decision, all appellants and intervenors to the appeal will be notified that the case is dismissed. A subsequent decision to reissue the withdrawn or a modified

decision constitutes a new decision and is subject to appeal under this subpart.

§ 215.62 Appeal deciding officer authority.

(a) *Discretion to establish procedures.* An Appeal Deciding Officer may issue such determinations and procedural instructions as appropriate to ensure orderly and expeditious conduct of the appeal process as long as they are in accordance with this subpart.

(1) In appeals involving intervenors, the Appeal Deciding Officer may prescribe special procedures to conduct the appeal.

(2) In case of multiple appeals of a decision, the Appeal Deciding Officer may prescribe special procedures as necessary to conduct the review.

(3) All participants shall receive notice of any procedural instructions or decisions governing conduct of an appeal.

(4) Procedural instructions and decisions are not subject to review by higher level officers.

(b) *Consolidation of multiple appeals.* (1) The Appeal Deciding Officer shall determine whether to issue one appeal decision or separate decisions in cases involving multiple notices of appeal under this subpart. In the event of a consolidated decision, the Appeal Deciding Officer shall give advance notice to all who have appealed the decision.

(2) Decisions to consolidate an appeal decision are not subject to review by higher level officers.

(c) *Requests for information.* At any time during the appeal process, the Appeal Deciding Officer at the levels specified in § 215.56 (a) or (b) of this subpart may extend the time periods for review to request additional information from an appellant, intervenor, or the Responsible Official. Such requests shall be limited to obtaining and evaluating information needed to clarify issues raised. The Appeal Deciding Officer shall notify all participants of such requests and the information obtained.

§ 215.63 Intervention.

(a) For a period ending 20 days after the close of the appeal period, the Appeal Deciding Officer shall accept requests to intervene in the appeal from any interested or potentially affected person. Requests must be received by the Appeal Deciding Officer by the end of the 20 day period. Requests to intervene during a discretionary review (§ 215.66(d)) shall not be granted.

(b) Upon receiving an intervention request, the Appeal Deciding Officer shall promptly acknowledge the request, in writing, and mail the appeal to the intervenor.

(c) The Appeal Deciding Officer shall accept into the appeal record written comments about the appeal from an intervenor for a period not to exceed 30 days following acknowledgement of the intervention request (§ 215.63(b)). Comments must be received by the Appeal Deciding Officer by the end of the 30 day comment period. Intervenor comments are limited to the issues identified in the appeal and shall not include additional issues.

(d) Intervenors must concurrently furnish copies of all submissions to the appellant. Failure to provide copies may result in removal of a submission from the appeal record.

(e) An intervenor cannot continue an appeal if the appeal is dismissed (§ 215.60).

§ 215.64 Appeal record.

(a) *Timeframe for transmittal of appeal record.* Upon receipt of a copy of the appeal, the Responsible Official shall assemble the relevant decision documentation (§ 215.51) and pertinent records, and transmit them to the Appeal Deciding Officer within 30 days in appeals of decisions of non-significant amendments to National Forest land and resource management plans and within 60 days for:

(1) Appeals of decisions to approve, significantly amend, or revise land and resource management plans.

(2) Appeals of decisions to approve, revise, or amend regional guides.

(b) *Transmittal of appeal record.* In transmitting the decision documentation to the Appeal Deciding Officer, the Responsible Official shall indicate where the documentation addresses the issues raised in the appeal. The Responsible Official shall provide a copy of the transmittal letter to the appellant(s) and intervenor(s).

(c) *Content of appeal record.* The review of decisions appealed under this subpart focuses on the documentation developed by the Responsible Official in reaching decisions. The records on which the Appeal Deciding Officer shall conduct the review consist of the appeal, any written comments submitted by intervenors, the official documentation prepared by the Responsible Official in the decisionmaking process, the Responsible Official's letter transmitting those documents to the Appeal Deciding Officer, and any appeal related correspondence, including additional information requested by the Appeal Deciding Officer pursuant to § 215.62 of this subpart.

(d) *Maintenance of appeal record.* It is the responsibility of the Appeal Deciding Officer to maintain in one location a file of documents related to the decision and appeal.

(e) *Closing the record.* The Appeal Deciding Officer shall close the appeal record upon receipt of the decision documentation from the Responsible Official and comments by intervenors, unless time has been extended as provided for in § 215.61 and § 215.62.

(f) *Public access to appeal record.* The appeal record is open to public inspection at any time during the review.

(g) *Appeal record for appeals of Chief's decision.* In appeals involving initial decisions of the Chief (§ 215.56(a)), the establishment of an administrative record as defined in paragraph (a) of this section shall not begin unless the Secretary elects to review the appeal. Except for the initial appeal, any filings made previous to the Secretary's election to review will not become part of the appeal record.

§ 215.65 Decision.

(a) The Appeal Deciding Officer shall not issue an appeal decision prior to the record closing (§ 215.64(e)).

(b) The Appeal Deciding Officer's decision shall, in whole or in part, affirm or reverse the original decision. The Appeal Deciding Officer's decision may include instructions for further action by the Responsible Official.

(c) An appeal decision must be consistent with applicable law, regulations, and orders.

(d) The Appeal Deciding Officer shall send a copy of the decision to the appellants, intervenors, and Responsible Official.

(e) Unless a higher level officer exercises the discretion to review an appeal decision as provided at § 215.56(d), the Appeal Deciding Officer's appeal decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this subpart.

§ 215.66 Discretionary review.

(a) *Factors to consider regarding discretionary reviews.* Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review. In electing to exercise discretion, the official conducting discretionary review should consider, but is not limited to, such factors as controversy surrounding the decision, the potential for litigation, whether the decision is precedential in nature, or

whether the decision modifies existing policy or establishes new policy.

(b) *Decisions subject to discretionary review.* As provided for in § 215.56(d), certain dismissal decisions rendered by Forest Service line officers, and appeal decisions rendered by Regional Foresters and the Chief (§ 215.56(c)) are subject to discretionary review at the next highest administrative level.

(1) Within one day following the date of any decision subject to discretionary review under § 215.56(d), the Appeal Deciding Officer shall forward a copy of the decision and the decision documents (§ 215.51) upon which the appeal was predicated to the next higher officer.

(2) The official conducting discretionary review shall have 15 days from date of receipt to decide whether to review an Appeal Deciding Officer's decision, and may request and use the appeal record in deciding whether to review the decision, including decisions to dismiss.

(3) If the record is requested, the 15-day period is suspended at that point. The Appeal Deciding Officer shall forward it within 5 days of the request.

(4) Upon receipt, the official conducting discretionary review shall have 15 days to decide whether to review the lower level decision. If that officer takes no action by the expiration of the 15-day period or the additional 15-day period following receipt of the record, the decision of the Appeal Deciding Officer stands as the final administrative decision of the Department of Agriculture.

(5) The appellants, intervenors, Responsible Official, and Appeal Deciding Officer shall be notified by the official conducting discretionary review as to whether the decision will be reviewed.

(c) *Basis for discretionary review.* Where an official exercises the discretion in § 215.57(d) of this subpart to review a dismissal or appeal decision, the discretionary review shall be made on the existing appeal record and the Appeal Deciding Officer's decision. The record shall not be reopened to accept additional submissions from any source including the Appeal Deciding Officer whose appeal decision is being reviewed.

(d) *Notification of discretionary review.* The official conducting discretionary review shall conclude the review within 30 days of the date of notice issued to the appellants, intervenors, Responsible Official, and Appeal Deciding Officer that the lower level decision will be reviewed and shall send a copy of the review decision to all participants.

(e) *Exhaustion of administrative remedy.* If a discretionary review decision is not issued by the end of the 30-day review period, appellants and intervenors shall be deemed to have exhausted their administrative remedies for purposes of judicial review. In such cases, the participants shall be notified by the discretionary level.

§ 215.67 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this subpart is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this subpart. This position may be waived upon a written finding by the Chief.

§ 215.68 Applicability and effective date.

(a) The appeal procedures established in this subpart apply to decision documents published on or after [*insert 60 days from publication of the final rule in the* **Federal Register**].

(b) Decision documents signed prior to [*insert 60 days from publication of the final rule in the* **Federal Register**] remain subject to the procedures in effect at the time of signing.

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

2. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 551,472.

3. Revise § 217.19(a) to read as follows:

§ 217.19 Applicability and effective date.

(a) The appeal procedures established in this part apply to appeal decision documents published on or after February 6, 1991 and before [*insert 60 days from publication of the final rule in the* **Federal Register**].

* * * * *

Dated: February 19, 1993.

F. Dale Robertson,

Chief.

[FR Doc. 93–8529 Filed 4–13–93; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F03272 and 6F03381/R1186; FRL–4576–1]

RIN No. 2070–AC18

Pesticide Tolerance for 4-(Dichloroacetyl)-1-Oxa-4-Azaspiro[4.5]Decane

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes that a time-limited tolerance be established for residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane (CAS Reg. No. 71526-07-3) in pesticide formulations applied to corn fields before the corn plants emerge from the soil with a maximum use level of 0.4 pound of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane per acre at a level of 0.005 ppm in or on corn. The proposed regulation to establish a maximum permissible level for residues of the inert ingredient in or on the commodity was requested by the Monsanto Co. This time-limited tolerance would expire on January 31, 1998.

DATES: Comments, identified by document control number [OPP-300280], must be received on or before May 14, 1993.

ADDRESSES: By mail, submit comments 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 22202.

Information submitted as a comment concerning this document may be claimed as 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 will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 246 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: Kerry Leifer, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711L, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5180.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities.

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 and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

A policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), included data requirements which were to be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. The minimal ("base set") data requirements for inert ingredients were listed in that policy statement. It was also noted that, based upon the results of the "base set" studies, the Agency may elect to require additional data such as would be required under 40 CFR part 158 for an active ingredient. Included among these additional requirements are residue chemistry data which would support the establishment of a finite tolerance for the residues of an inert ingredient in raw agricultural commodities and/or processed foods.

In those cases where the toxicity of an inert ingredient is such that exposure to the inert ingredient must be restricted to assure that the use of the inert ingredient in a pesticide formulation does protect the public health, EPA will propose to establish a tolerance for residues of the inert ingredient on raw agricultural commodities.

II. Provisions of Proposed Rule

The Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, submitted pesticide petitions (PP) 5F03272 and 6F03381 to EPA. These petitions requested that the Administrator, pursuant to section 408(e) of the FFDCA, amend 40 CFR part 180 by proposing the establishment of an exemption from the requirement of a tolerance for residues of the inert ingredient 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane when used in formulations of the herbicides acetochlor (PP 5F03272) and alachlor (PP 6F03381) applied to corn fields either before the corn plants emerge from the soil or until the corn reaches 5 inches in height with a maximum of 0.4-pound inert ingredient per acre.

EPA issued two notices, published in the Federal Register of August 21, 1985 (50 FR 33840) and on June 11, 1986 (51 FR 21233), announcing receipt of tolerance petitions PP 5F03272 and PP 6F03381, respectively. The petitioner amended this request on March 14, 1986, eliminating post-emergence treatments and subsequent proposed that a Sensitivity of Method (SOM) tolerance be established for residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane for use as an inert ingredient in pesticide formulations containing alachlor (November 10, 1988) or alachlor (May 30, 1990) rather than requesting an exemption from the requirement of a tolerance. Monsanto further amended these petitions on March 5, 1991, requesting that 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane be allowed to be used as an inert ingredient (safener) in any pesticide formulation applied to corn, not specifically alachlor or acetochlor, thereby making the two petitions equivalent. A safener is a herbicidal antidote that protects desirous crops while allowing the herbicide to act on the intended weed targets.

The data submitted in the petitions and other relevant material have been evaluated. This inert ingredient is considered useful for the purpose for which the tolerance is sought. The toxicological, ecological, and environmental fate data considered in support of the proposed tolerance include the following:

1. An acute rat oral toxicity study with an acute oral LD_{50} of 600 milligrams (mg)/kilogram (kg).

2. An acute rabbit dermal toxicity study with an acute dermal LD_{50} of > 5,000 mg/kg.

3. A rabbit eye irritation study in which 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane is determined not to be an eye irritant.

4. An acute rat inhalation toxicity study with a 4-hour inhalation LC_{50} of 0.27 mg/L.

5. A guinea pig dermal sensitization study in which 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane is determined to be a positive sensitizer.

6. A 90-day rat oral toxicity study with a no-observed-effect level (NOEL) of 120 parts per million (ppm) or 12 mg/kg/day.

7. A 90-day oral toxicity study with a NOEL of 30 mg/kg/day or 1,200 ppm (highest dose tested).

8. A rat developmental effects study with a NOEL for maternal toxicity of 10 mg/kg/day and developmental toxicity of 75 mg/kg/day.

9. A rabbit developmental effects study with a NOEL for maternal toxicity of 10 mg/kg/day and developmental toxicity of 10 mg/kg/day.

10. Mutagenicity studies including Salmonella typhimurium/mammalian plate incorporation (Ames) assay, CHO/HGPRT gene mutation assay, DNA repair studies (rat hepatocytes), and Salmonella/mammalian activation gene mutation (Ames) assay were negative with and without activation.

11. Environmental fate studies including hydrolysis, photolysis, aerobic soil metabolism, leaching and soil adsorption/desorption and field dissipation.

A reference dose (RfD) has not been established for this chemical. The theoretical worst-case maximum residue contribution (TMRC) from the proposed tolerance is estimated to be 0.00000166775 mg/kg/bw (body weight)/day for the overall U.S. population.

This tolerance is being established as a time-limited tolerance because the Agency does not have data from two chronic feeding/carcinogenicity studies which are part of the toxicology data typically required to be submitted in support of a tolerance request. These studies will be required to be submitted to the Agency by April 31, 1997. When the Agency receives these chronic feeding/carcinogenicity studies it will reassess the tolerance. However, based upon 4-(dichloroacetyl)-1-oxa-4azaspiro[4.5]decane's lack of mutagenicity or extraordinary adverse effects in the subchronic or developmental toxicity studies, the low degree of dietary exposure and the restriction on exposure offered by a time limitation on the tolerance, the Agency does not believe that this proposed tolerance poses significant risks.

This tolerance will expire January 31, 1998. Residues not in excess of these

tolerances will not be considered actionable if a pesticide containing this inert ingredient is legally applied during the term of a conditional registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended and in accordance with the acceptable labeling under a conditional registration. This tolerance will be revoked if any data indicate such revocation is necessary to protect the public health.

An analytical method for determination of the nature of the residue, gas-liquid chromatography using an electron-capture detector, has been reviewed by the Agency, and upon successful completion of residue testing under FDA's multiresidue protocols, will be made available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. In the interim, the method will be available at the address given below. By mail: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5232.

Based upon the above information considered by the Agency, the regulation established for 4-(dichloroacetyl-1-oxa-4-azaspiro[4.5]decane would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Rodenticide, and Fungicide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 5F03272 and 6F03381/R1186]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticide and pests, Recording and recordkeeping requirements.

Dated: March 25, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be 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. In subpart C, by adding new § 180.465, to read as follows:

§ 180.465 4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane.

Tolerances, to expire January 31, 1998, are established for residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane (CAS Reg. No. 71526-07-3) when used as an inert ingredient (safener) in pesticide formulations applied to corn fields before the corn plants emerge from the soil with a maximum use level of 0.4 pound per acre per year in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, fodder (field)	0.005
Corn, forage (field)	0.005
Corn, grain (field)	0.005

[FR Doc. 93-8565 Filed 4-13-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1E3965/P557; FRL-4578-6]

RIN No. 2070-AC18

Pesticide Tolerance for Pendimethalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide pendimethalin and its metabolite in or on the raw agricultural commodity dry bulb onions. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [1E3965/P557], must be received on or before May 14, 1993.

ADDRESSES: By mail, submit written comments 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, bring comments to: Rm. 1132, 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. 1132 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: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: No. 1, Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 1E3965 to EPA on behalf of the Agricultural Experiment Stations of California, Michigan, New York, Tennessee, and Puerto Rico. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and

Cosmetic Act (21 U.S.C. 346a(e)) propose the establishment of a tolerance for residues of pendimethalin [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite 4-[(1-ethylpropyl)amino]2-methyl-3,5-dinitrobenzyl alcohol in or on the raw agricultural commodity dry bulb onions at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year feeding study in dogs with a no-observed-effect-level (NOEL) of 12.5 milligrams (mg)/kilogram (kg)/day based on an increase in serum alkaline phosphatase and increased liver weight and hepatic lesions.

2. A two-generation reproduction study in rats fed diets containing 500, 2,500, or 5,000 ppm (equivalent to 25, 125, or 250 mg/kg/day in males, and 35, 175, or 350 mg/kg/day in females) with a reproductive NOEL of 500 ppm based on decreased pup weight and a parental NOEL of 500 ppm based on a decrease in body weight gain and food consumption.

3. A developmental toxicity study in rabbits given gavage dosages of 1.5, 30, and 60 mg/kg/day was negative for developmental toxicity.

4. A developmental toxicity study in rats given gavage dosages of 125, 250, and 500 mg/kg/day was negative for developmental toxicity.

5. Mutagenicity studies including gene mutation (positive results in strains TA1538 and TA98 (frame-shift mutations) with metabolic (S9) activation); structural chromosomal aberrations (negative results with in vitro cytogenetic analysis using Chinese hamster ovary cells, with and without activation); and other genotoxic effects (negative results in DNA damage/repair test).

6. An 18-month carcinogenicity study in mice fed diets containing 0, 100, 500, or 5,000 ppm with no increases in neoplasms (tumors) observed under the conditions of the study.

7. A 2-year chronic feeding/carcinogenicity study in rats fed diets containing 0, 100, 500, or 5,000 ppm (approximately 0, 5, 25, or 250 mg/kg/day) with a NOEL for systemic effects of 100 ppm (5 mg/kg/day) based on pigmentation of the thyroid follicular cells in male and female rats. Pendimethalin was associated with a statistically significant increased trend in thyroid follicular cell adenomas (benign tumors) and a significant increase using pair wise comparisons between the controls and the groups fed diets containing 5,000 ppm. There was no statistically significant increase in carcinomas at any feeding level tested.

8. A second 2-year chronic feeding/carcinogenicity study in male rats fed diets containing 0, 1,250, 2,500, 3,750 or 5,000 ppm (approximately 0, 51, 103, 154 or 213 mg/kg/day) with a NOEL of less than 1,250 ppm for systemic effects based on nonneoplastic thyroid follicular cell changes and increased liver weight. Pendimethalin was associated with a statistically significant increased trend and pairwise comparison at 5,000 ppm for follicular cell adenomas of the thyroid.

Based on a weight-of-evidence determination, the Agency has classified pendimethalin as a Group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals). This decision, which is in accordance with proposed Agency guidelines published in the **Federal Register** of November 23, 1984 (49 FR 46294), was based on the following considerations:

1. There was positive evidence for benign thyroid tumors in rats at the high dose feeding level (5,000 ppm).

2. The chemical was not associated with increases in tumors when fed to mice at dose levels ranging from 100 to 5,000 ppm.

3. Pendimethalin induces gene mutation, but not chromosomal aberrations or DNA damage/repair.

4. Structurally related compounds showed evidence of tumorigenic activity; the thyroid follicular cell tumor response is also seen in two other members of this class of compounds. Differences in the chemical structures of pendimethalin and the related compounds that show evidence of tumorigenic activity limit the usefulness of structure-activity comparisons for pendimethalin.

Quantification of carcinogenic risk was considered inappropriate for pendimethalin based on the uncertain significance of an increased occurrence of benign thyroid tumors at the high dose level (5,000 ppm) in rats and the lack of other conclusive evidence of carcinogenicity. The Agency believes that the data do not indicate a likelihood that this chemical poses a significant human carcinogenic risk.

For purpose of risk characterization the Reference Dose (RfD) is used for quantification of human risk resulting from dietary exposure to residues of pendimethalin. The RfD is established at 0.4 mg/kg of body weight (bwt)/day based on a NOEL of 12.5 mg/kg bwt/day from the 2-year feeding study in dogs and an uncertainty factor of 300. The theoretical maximum residue contribution (TMRC) from published and proposed uses of pendimethalin utilize less than 1 percent of the RfD for the general population, or 2.0 percent of the RfD for the subgroup most highly exposed (children aged one through six years).

The nature of the residue is adequately understood for the purpose of the proposed tolerance, and an adequate analytical method, gas chromatography, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since dry bulb onions are not considered a livestock feed commodity. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.361 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E3965/P557]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: March 25, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be 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. In § 180.361, paragraph (a) table is amended by adding and alphabetically inserting the raw agricultural commodity dry bulb onions, to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Onions, dry bulb	0.1
* * * * *	

* * * * *

[FR Doc. 93–8570 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2E4108/P558; FRL–4578–7]

RIN No. 2070–AC

Pesticide Tolerance for N,N-Diethyl-2-(1-Naphthalenyloxy) Propionamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy) propionamide (also referred to as napropamide) in or on the raw agricultural commodity sweet potato. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 2E4108/P558], must be received on or before May 14, 1993.

ADDRESSES: By mail, submit written comments 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, bring comments to: Rm. 1132, 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. 1132 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: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 2E4108 to EPA on behalf of the Agricultural Experiment Stations of California, North Carolina, and Louisiana. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy)propionamide in or on the raw agricultural commodity sweet potato at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A chronic toxicity feeding study in dogs fed diets containing 10, 70, or 500 milligrams (mg)/kilogram (kg)/day with a no-observed-effect level (NOEL) of 70 mg/kg day based on decreased body weight gain and food consumption in male and female beagle dogs.

2. A development toxicity study in rats given gavage dosages of 100, 300, or 1,000 mg/kg with a maternal NOEL of 300 mg/kg/day based on decreased body weight gain and no developmental toxicity observed under the conditions of the study.

3. A developmental toxicity study in rabbits given gavage dosages of 100, 300, or 1,000 mg/kg with a maternal NOEL of 300 mg/kg/day based on decreased body weight gain and decreased food consumption at the highest dose tested (1,000 mg/kg/day) and no developmental toxicity observed under the conditions of the study.

4. A three-generation reproduction study in rats fed diets containing 10, 30, or 100 mg/kg/day with NOEL's for parental and fetal effects (decreased weight gain) at 30 mg/kg/day. No reproductive effects were observed under the conditions of the study.

5. A 2-year feeding/carcinogenicity study in rats fed diets containing 10, 30, or 100 mg/kg/day with a systemic NOEL of 30 mg/kg/day based on body weight inhibition at the 100 mg/kg/day dose. There were no carcinogenic effects observed under the conditions of the study at any dosage level tested.

6. A 2-year carcinogenicity study in mice fed diets containing 60, 450, 3,500 or 7,000 ppm with NOEL's for systemic effects of 450 ppm (equivalent to 55/70 mg/kg/day for male/female) based on decreased body weight gain. The study was negative for carcinogenic effects at all dosage levels tested.

7. Napropamide did not induce gene mutation in bacteria (Ames test). Napropamide did not induce forward mutations in Chinese hamster ovary cells, and no unscheduled DNA synthesis was noted in tests using primary hepatocytes from male rats. Napropamide did induce gene mutation in Chinese hamster lung cells with S9 activation, but was negative without S9 activation.

Data current lacking include other genotoxic effects, and a general metabolism study.

The reference dose (RfD), based on the three-generation reproduction study in rats with a NOEL of 30 mg/kg/day and using an uncertainty factor of 300, is calculated to be 0.1 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) from published tolerances and the proposed tolerance for sweet potatoes utilizes less than 1 percent of the RfD for the general population, and 2 percent of the RfD for the most highly exposed subgroup (nonnursing infants less than 1 year old).

The nature of the residue is adequately understood for the purpose of this tolerance. An adequate analytical method, gas chromatography, is available for enforcement purposes in the Pesticide Analytical Manual, Vol. II (PAM-II).

No secondary residues are expected to occur in meat, milk, poultry, or eggs since sweet potato is not considered a livestock feed item. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.328 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4108/P558]. All written comments filed in response to this petition will be available in the Public Response and Program Resource Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: April 2, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be 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. In § 180.328, paragraph (a) table is amended by adding and alphabetically inserting the raw agricultural commodity sweet potato, to read as follows:

§ 180.328 N,N-Diethyl-2-(1-naphthalenyloxy)propionamide; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Sweet potato	0.1
* * * * *	

* * * * *

[FR Doc. 93-8728 Filed 4-13-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 455

[FRL-4613-6]

Pesticides Chemicals Manufacturing Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comments.

SUMMARY: On April 10, 1992, EPA published proposed effluent limitations guidelines and standards under the Clean Water Act for the pesticides chemicals manufacturing industry. EPA is making available for public comment additional information that has been received since the time of the proposed regulations.

DATES: Comments on the new, post-proposal information must be received by May 14, 1993.

ADDRESSES: Comments are to be submitted to: Dr. Thomas E. Fielding, Engineering and Analysis Division (WH-552), U.S. EPA, 401 M Street SW., Washington, DC 20460. The record for this rulemaking is available for public review at the EPA Office of Water Docket, Waterside Mall Room L102, 401 M Street SW., Washington, DC. Members of the public who wish to review the record may schedule an appointment by telephone at (202) 260-3027. EPA regulations at 40 CFR Part 2 provide that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Fielding at (202) 260-7156.

SUPPLEMENTARY INFORMATION: On April 10, 1992, EPA published proposed regulations that would limit the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works by existing and new facilities that manufacture pesticide active ingredients ("PAIs") (57 FR 12560). These regulations, called effluent limitations guidelines and standards ("effluent guidelines"), were proposed under the authority of the Federal Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended.) These effluent guidelines would establish discharge limitations for existing sources based on best practicable control technology ("BPT"), best conventional control technology ("BCT"), best available technology economically achievable ("BAT"), new source performance standards ("NSPS") based on "best available demonstrated control technology," and pretreatment standards for new and existing indirect dischargers. EPA also proposed new test procedures for the analysis of pesticide pollutants in the Pesticide Chemicals category.

The purpose of today's notice is to inform the public that since the time of the proposed regulations, EPA has received additional information that it is considering in developing the final effluent guidelines for pesticides manufacturers. EPA is making this additional information available in the public record for this rulemaking (except for information that is claimed to be confidential business information), and EPA will accept public comments on this new information if the comments are submitted by the date given above. The new information that EPA is accepting comments on consists of the following:

A. *New Information Received.* EPA received comments on the April, 1992 proposed regulations from approximately 35 interested parties. A number of the commenters submitted new information to EPA consisting of the following:

1. Additional long-term treatment system performance data for control of discharges of PAIs. These new data

provide information on treatment system performance over a wider variety of conditions than was previously available.

2. Long-term treatment system performance data for new treatment systems to control discharges of PAIs. These new treatment systems were installed after the period for which EPA collected information for the proposed rulemaking; they replaced inadequate treatment or supplemented existing treatment. EPA expects that the new data will allow more of the limitations to be based on demonstrated performance of full-scale treatment systems instead of treatment system performance data transferred from other PAIs or estimates from treatability studies of the performance expected of full-scale treatment.

3. Analytical methods that are used by dischargers to monitor PAIs in discharges, where the commenter believes the proposed EPA methods are different from those currently in use.

Some of this new information was submitted to EPA after the close of the public comment period for the proposed regulations. The Agency is not required to consider those late submissions as a part of this rulemaking. However, EPA has determined that it is important to consider all of this new information in developing the final effluent guidelines for pesticides manufacturers, since much of this new information concerns some of the most toxic and voluminously produced PAIs being manufactured, and since the new information may result in significant changes to the limitations being developed. Therefore, EPA is accepting comments on the new information received both before and after the close of the public comment period, although the portions of this new information that have been claimed to be confidential business information are not being made available for public comment. EPA will use the new long-term treatment system performance data to calculate final limitations using the same methodology that was used to develop the limitations in the proposed regulations.

EPA is also adding to the record, and soliciting public comments on, reports of meetings with industrial parties held generally to discuss the above information, and related correspondence.

B. *Material That Is No Longer Confidential.* At the time of the proposal, EPA excluded from the public record all material that was claimed by the submitter to be confidential business information ("CBI"). Some submitters, however, have recently withdrawn their CBI claims. Therefore, EPA is putting into the public record and making available today for comment the following information that was previously excluded from the record as CBI:

- Questionnaire responses (both technical and economic) for 11 plants that withdrew their CBI claims;
- Related trip reports, sampling plans and reports, health and safety plans, sampling data, and correspondence for six of these 11 plants that were visited and/or sampled;
- Long-term treatment system performance data provided by five of these 11 plants;
- EPA's development of limitations based on this information previously claimed to be CBI, along with the analysis of the cost impacts on these 11 plants.

Information similar to the above has also been placed in the record with respect to a number of companies that only partially withdrew their previous CBI claims. In a few cases, these companies provided a new copy of their information to EPA that is suitable for inclusion in the public record because all information that is the subject of their CBI claims has been deleted.

C. *Conclusion.* EPA stresses that it is accepting comments at this time only on the information being added to the public record, as described in this notice. This additional information appears in a separate part of the files containing the public record for this rulemaking. EPA is not reopening the comment period and will not consider new comments with respect to any other information.

EPA believes that the time period of 30 days provided in this notice for comments affords the public a full and fair opportunity to comment on the new information described above. In addition, pursuant to a judicial consent order, EPA is required to promulgate the final effluent guidelines for pesticides manufacturers by July 31, 1993. This tight time frame restricts EPA from providing a longer period within which to submit public comments on this new information.

Dated: March 24, 1993.

Martha G. Prothro,

Acting Assistant Administrator for Water.

[FR Doc. 93–8703 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–62; FCC 93–142]

Radiofrequency Radiation Exposure Guidelines

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend and update the guidelines and methods it uses for evaluating the environmental effects of radiofrequency (RF) radiation. Specifically, the Commission is proposing to use the new guidelines for evaluating human exposure to RF energy developed by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) and adopted recently by the American National Standards Institute (ANSI). These guidelines have been designated IEEE C95.1–1991 by the IEEE and ANSI/IEEE C95.1–1992 by ANSI. The Commission is taking this action since the previous guidelines it has been using, ANSI C95.1–1982, have been withdrawn by ANSI and replaced by the new guidelines. Therefore, the Commission is following the lead of ANSI and the IEEE in proposing to adopt guidelines that are more up to date and scientifically supportable than those they replace. The Commission's use of the new guidelines will ensure that FCC-regulated transmitters and facilities comply with the latest safety standards for RF exposure.

DATES: Comments are due on August 13, 1993. Reply comments are due on September 13, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Cleveland, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554, (202) 653–8169.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, ET Docket 93–62, FCC 93–142, adopted March 11, 1993, and released April 8, 1993. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–

3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In order to fulfill its responsibilities under the National Environmental Policy Act (NEPA), the Commission has previously adopted rules (47 CFR 1.1301 *et seq.*) to provide for environmental processing of applications for facilities that might have a significant environmental impact. Potential environmental impact from FCC-regulated services is possible due to human exposure to radiofrequency (RF) radiation from transmitting sources. Therefore, in 1985, the Commission adopted a Report and order (50 FR 11151, March 20, 1985) to provide for evaluation for environmental RF radiation from certain FCC-authorized facilities and services. This was followed by a Second Report and Order (52 FR 13240, April 22, 1987) further defining FCC policy and providing for categorical exclusion of certain facilities. Several subsequent proceedings have also addressed this issue. The Commission's policies in this area are set forth in § 1.1307(b) of the FCC's Rules and Regulations (47 CFR 1.1307(b)).

2. Since 1985 the Commission has used the 1982 RF protection guides of the American National Standards Institute (ANSI), designated ANSI C95.1–1982, for evaluating potential environmental impact due to RF emissions from FCC-regulated transmitters. Recently, ANSI adopted new guidelines to replace the 1982 protection guides. The new guidelines, designated by ANSI as ANSI/IEEE C95.1–1992, were originally developed by the Institute of Electrical and Electronics Engineers, Inc. (IEEE). The IEEE designation is IEEE C95.1–1991. Complete copies of these guidelines can be purchased either from the IEEE, (800) 678–4333, or from ANSI, (212) 642–4900. Copies of the guidelines and related documents can also be reviewed at the FCC during regular business hours.

3. The new ANSI/IEEE guidelines contain a number of significant differences from the previous guidelines that they replace. For example, the new guidelines specify two sets of exposure recommendations, one for "controlled environments" (usually involving workers) and another, generally more restrictive, for "uncontrolled environments" (usually involving the general public). The 1982 ANSI guidelines specified only one set of exposure limits for everyone.

4. The 1992 ANSI/IEEE guidelines also, for the first time, include specific restrictions on currents induced in the human body by RF fields. Recommended exposure levels are given for both induced and contact RF currents. The guidelines also contain significant changes in exclusions and power levels permitted for low-power devices, such as hand-held radios and telephones.

5. In view of ANSI's adoption of these revised guidelines, the Commission believes that it is now necessary for the FCC also to update the RF exposure guidelines it uses in evaluating environmental impact from FCC-regulated transmitters and facilities. Therefore, the Commission is proposing to begin using the ANSI/IEEE C95.1–1992 standard for purposes of evaluating environmental RF radiation exposure due to FCC-regulated transmitters, facilities, and services. These new guidelines are more up to date with respect to scientifically-based criteria, and they should ensure that the FCC is using the latest RF safety standards in considering environmental impact.

6. The Commission recognizes that evaluating the biological effects of RF and microwave energy is a complex and controversial subject and that the adoption of new guidelines will raise a number of issues and implementation concerns. Examples of such issues are: Defining "controlled" and "uncontrolled" environments, the new requirements regarding induced and contact currents, discontinuities in exposure restrictions in the FM broadcast band, differences between the ANSI/IEEE guidelines and other RF exposure standards, evaluation of hand-held devices, and the impact on existing facilities and services. These matters are discussed in the Notice, and the Commission invites comments regarding them.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor. There may be significant economic impact on small regulated entities as a result of this action. However, the extent of this potential impact will depend on decisions made with respect to categorical exclusion of transmitters from environmental analysis with respect to radiofrequency radiation.

Ex Parte

This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally, 47 CFR 1.1202, 1.1203 and 1.1206(a).

Procedural Information

Accordingly, there is hereby instituted a Notice of Proposed Rule Making in this proceeding to amend part 1 of the Commission's Rules and Regulations. All interested parties may file comments on this proposal on or before August 13, 1993. Reply comments shall be filed on or before September 13, 1993. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants would like each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, National Environmental Policy Act, Radiofrequency radiation.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–8678 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–73, RM–8097]

Radio Broadcasting Services; Nogales, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Felix Corporation requesting the allotment of FM Channel 256A to Nogales, Arizona, as that community's second local FM service. Coordinates for this proposal are 31–20–

24 and 110–54–56. Mexican concurrence will be requested for the proposed allotment.

DATES: Comments must be filed on or before June 1, 1993, and reply comments on or before June 16, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Esq., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–73, adopted March 8, 1993, and released April 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–8629 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–74, RM–8153]

Radio Broadcasting Services; Yermo, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Antelope Broadcasting Co., Inc. ("petitioner"), permittee of Station KYHT(FM), Yermo, California, seeking the substitution of Channel 287B1 for Channel 287A and modification of its authorization accordingly to specify operation on the higher powered channel.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 287B1 at Yermo or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates for this proposal are 35–01–39 and 116–33–51. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before June 1, 1993, and reply comments on or before June 16, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Esq., Pepper & Corazzini, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–74, adopted March 8, 1993, and released April 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–8628 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–65, RM–6869]

Radio Broadcasting Services; New Port Richey and Sarasota, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WGUL–FM, Inc., requesting the substitution of Channel 288C3 for Channel 288A at New Port Richey, Florida, and the modification of Station WGUL(FM)'s license to specify operation on the higher class channel. In order to accommodate the upgrade at New Port Richey, petitioner also requested the substitution of Channel 282A for Channel 288A at Sarasota, Florida, and the modification of Station WKZM(FM)'s construction permit to specify Channel 282A at Sarasota. The coordinates for Channel 288C3 at New Port Richey are North Latitude 28–15–32 and West Longitude 82–43–54. The coordinates for Channel 282A at Sarasota are North Latitude 27–16–30 and West Longitude 82–28–54.

DATES: Comments must be filed on or before June 1, 1993, and reply comments on or before June 16, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Irving Gastfreund, Kaye, Scholer, Fierman, Hays, & Handler, The McPherson Building, 901 15th Street, NW., Washington, DC 20005 (Attorney for WGUL–FM, Inc.).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–65, adopted March 9, 1993, and released April 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–8630 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–76, RM–8196]

Radio Broadcasting Services; Chateaugay, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Vector Broadcasting Inc., seeking the substitution of channel 234C2 for Channel 234A at Chateaugay, New York, and the modification of Station WYUL's construction permit to specify operation on the higher class channel. Channel 234C2 can be allotted to Chateaugay in compliance with the Commission's minimum distance separation requirements with respect to domestic allotments at the site specified in Station WYUL's construction permit, at coordinates North Latitude 44–49–41 and West Longitude 73–58–43. The allotment would be short-spaced to Stations CIMF–FM, Channel 235C1, Hull, Quebec, CHWY, Channel 236B, Montreal, Quebec, unoccupied Channel 234C1, Trois Rivieres, Quebec, and proposed Channel 234C1 at Vianney, Quebec, Canada. Canadian concurrence in the allotment, as a specially negotiated allotment, has been requested. In accordance with 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 234C2 at Chateaugay or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 1, 1993, and reply comments on or before June 16, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filling comment with the FCC, interested parties should serve the petitioner, to its counsel or consultant, as follows: Brian M. Madden, Esq., Leventhal, Senter & Lerman, 2000 K Street, NW., suite 600, Washington, DC 20006–1809 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–76, adopted March 15, 1993, and released April 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger.

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

[FR Doc. 93–8632 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 93–60; RM–8028, FCC 93–140]

Private Land Mobile Radio Services; Co-Channel Protection Criteria Above 800 MHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has released a notice of proposed rule making that proposes to revise the co-channel protection criteria for Part 90 SMR and non-SMR radio systems operating above 800 MHz. This action is necessary to simplify the rules concerning these systems and reduce the workload burden on both the applicant and the Commission.

DATES: Comments must be submitted on or before May 28, 1993 and reply comments on or before June 14, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making (notice), in the Matter of Co-Channel Protection Criteria for part 90, Subpart S Stations Operating Above 800 MHz, PR Docket No. 93–60, FCC 93–140, adopted March 11, 1993, and released April 7, 1993. The full text of the notice is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS Inc. 2100 M St. NW., Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. This proceeding was initiated by a petition for rule making filed by the

National Association of Business and Educational Radio, Inc. (NABER) concerning the co-channel protection criteria for part 90 800/900 MHz private land mobile radio systems licensed on frequencies in the Business and General Categories.

2. Current rules specify different protection criteria for 800/900 MHz SMR and non-SMR systems. Because of the growth and development of 800/900 MHz systems, there is a narrowing of differences in the technical and operational parameters of these systems. Having separate rules for each type of system, therefore, appears no longer appropriate.

3. Accordingly, the notice proposes to establish the same co-channel interference protection criteria for all 800/900 MHz stations operating pursuant to part 90, subpart S. The protection criteria will be based upon 40 dBu desired/22 dBu undesired signal levels. Separation distances between co-channel stations will be determined from a Table that specifies 113 km (70 mi) as the minimum for higher power stations at high antenna heights. The Table also provides that stations requesting lower transmitter powers and antenna heights may locate closer than 113 km (70 mi) depending upon the power and antenna heights of the existing and proposed stations. Proposed stations will not be located closer than 80 km (50 mi) from an existing co-channel station.

4. Additionally, the Commission stated that, effective March 12, 1993 and until otherwise indicated, applications for 800/900 MHz systems that do not meet the conditions set forth in 47 CFR 90.621(b) will not be accepted.

Ex-Parte

5. This is a non-restricted notice and comment rulemaking proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Initial Regulatory Flexibility Analysis

6. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.

Paperwork Reduction

7. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

List of Subjects in 47 CFR Part 90

Private land mobile radio, 800/900 MHz station spacings, Radio.

Amendatory Text

Part 90 of chapter 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332 unless otherwise noted.

2. Section 90.621 is amended by revising paragraph (b) introductory text and the first sentence of paragraph (b)(3), revising (b)(4), removing paragraphs (b)(5), (b)(6), (c) and (d), and redesignating paragraphs (e), (f), (g), (h), (i), and (j) as paragraphs (c), (d), (e), (f), (g) and (h), respectively, to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Trunked and conventional systems authorized on frequencies listed in this Subpart, except for those systems authorized pursuant to § 90.621(g), will be afforded protection solely on the basis of fixed mileage separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with the following exceptions.

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, trunked systems located in the State of Washington at the following locations shall be separated from co-channel systems by a minimum of 169 km (105 miles). * * *

(4) Stations may be separated by less than 113 km (70 mi) by meeting certain transmitter ERP and antenna height criteria. The following Table indicates permissible separation distances to provide protection to existing co-channel stations for various transmitter power and antenna height combinations. The minimum separation permitted will be 80 km (50 mi).

STATION SEPARATION TABLE

Existing station ERP/DHAAT	Distance Between Stations (km)[1 2]											
	Proposed Station ERP (watts)/DHAAT (meters)[3 4]											
	1000/305	1000/150	1000/50	500/305	500/150	500/50	250/305	250/150	250/50	50/305	50/150	50/50
1000/305	113	113	113	113	113	105	113	109	97	108	96	83
1000/150	113	113	106	113	108	95	113	99	87	98	86	80
1000/50	113	113	94	113	96	83	104	87	80	86	80	80
500/305	113	113	112	113	113	101	113	105	93	104	92	80
500/150	113	113	103	113	105	92	113	96	84	95	83	80
500/50	113	113	89	110	92	80	100	83	80	82	80	80
250/305	113	113	108	113	110	97	113	101	89	100	88	80
250/150	113	111	98	113	100	87	108	91	80	90	80	80
250/50	113	100	86	107	89	80	97	80	80	80	80	80
50/305	113	111	98	113	100	87	108	91	89	90	80	80
50/150	113	103	89	110	92	80	100	83	80	82	80	80
50/50	113	96	82	113	85	80	93	80	80	80	80	80

[1] Separations for trunked systems on Santiago Peak, Sierra Peak, Mount Lukens, and Mount Wilson (CA) and the locations in the State of Washington listed in § 90.621(b)(3) are 56 km (35 mi) greater than those listed in the Table above. In the event of conflict between this table and the table of additional California high elevation sites shown in § 90.621(b)(2)(ii), the latter will apply.

[2] Distances shown were derived from the R–6602 curves and are based upon a non-overlap of the 22 dBu interference contour of the proposed station with the 40 dBu contour of the existing station(s). No consideration is given to the 40 dBu service contour of the proposed station and the 22 dBu contour of the existing station(s).

[3] When either the proposed or existing station's ERP and/or DHAAT are not indicated in the table, the next higher value(s) must be used.

[4] The directional height of the antenna above average terrain (DHAAT) is calculated from the average of the antenna heights above average terrain from 3 to 16 km (2 to 10 mi) from the proposed site along a radial extending in the direction of the existing station and the radials 15 degrees to either side of that radial.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–8546 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1816

Changes to NASA FAR Supplement Coverage on Cost-Plus-Award-Fee Contracts

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice amends the NASA Federal Acquisition Regulation Supplement (NFS) to replace current regulations with more extensive coverage on cost-plus-award-fee (CPAF) contracts. Consideration of a variety of types of contracts before selecting cost-plus-award-fee is emphasized. Cost control must be emphasized in all award fee evaluations. Use of base fees in CPAF contracts is restricted. On other than service contracts, all award fee is earned based on the final, comprehensive rating. "Rollover" of fee on service contracts is eliminated. Six months is established as a standard evaluation period. A NASA-wide, simplified scoring system is created. Both positive and negative performance incentives are to be required on all hardware contracts over $25 million.

DATES: Comments must be received on or before May 14, 1993.

ADDRESSES: Submit comments to the Associate Administrator for Procurement, NASA, Code HC, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Luedtke, Director, Contract Pricing and Finance Division (Code HC), Telephone: (202) 358–0003.

SUPPLEMENTARY INFORMATION:

Background

NASA began a cost-plus-award-fee (CPAF) initiative in August 1991. The goal was to seek ways to improve the CPAF process at NASA. This proposed coverage will implement the improvements generated by the initiative.

Impact

The Director, Office of Management and Budget (OMB), by memorandum, dated December 14, 1989, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it applies to a very limited number of contracts, which are generally not used with small entities; in fact, the policy will reduce even further the possibility that CPAF contracts will be used with small entities. This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1816

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

1. The authority citation for 48 CFR part 1816 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1816—TYPES OF CONTRACTS

2. Section 1816.404 is revised to read as follows:

1816.404 Cost-reimbursement incentive contracts.

1816.404–2 Cost-plus-award-fee (CPAF) contracts.

1816.404–270 Approval of CPAF contracts.

(a) Use of a cost-plus-award-fee (CPAF) contract shall be approved in writing by the Procurement Officer. The Procurement Officer's approval shall include a discussion of the other types of contracts considered and shall indicate why a CPAF contract is the appropriate choice.

(b) Normally, CPAF contracts are only used on contracts with a total estimated cost and fee greater than $1 million per

year. The Procurement Officer may authorize use of a CPAF contract for lesser valued acquisitions, but should do so only in exceptional situations, such as contracts having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

1816.404–271 Base fee.

(a) A base fee shall not be used on CPAF service contracts. Base fee normally shall not be used in other contracts, such as study, design, or hardware. However, the Procurement Officer may authorize the use of a base fee for contracts for other than services by making a written determination that such use is in the best interest of the Government. In such cases, a base fee of no more than 3 percent of the estimated contract cost may be included in the contract.

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is "satisfactory" or better. (See NFS 1816.404–273 and 1816.404–275 for information on final evaluations and evaluation rating categories, respectively.) Pending final evaluation, the base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is "poor/unsatisfactory," all provisional base fee payments shall be refunded to the Government.

1816.404–272 Award fee evaluation periods.

(a) Award fee evaluation periods should be at least 6 months in length. When appropriate, the Procurement Officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are balanced by benefits accruing to the Government. In some cases, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), the Procurement Officer may authorize evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates. In no case, however, shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee on a CPAF contract shall be allocated to each of the evaluation periods. This allocation may result in either an equal or unequal distribution of fee among the evaluation periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure. Allocation of fee on contracts for other than services is for provisional fee payment purposes only. See 1816.404–273(c).

1816.404–273 Award fee evaluations.

(a) Award fee evaluations are either interim or final. On service contracts where the contract deliverable is the performance of the service over any given time period, contractor performance is definitively measurable at each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) On contracts for other than services, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. Interim evaluations are also done to monitor performance prior to contract completion and provide feedback to the contractor on the Government's assessment of the quality of its performance. Interim evaluations are also used to establish the basis for making provisional award fee payments.

(c) Provisional award fee payments may be included in the contract and should be negotiated on a case by case basis. The amount of the provisional award fee payment is determined by applying the lesser of the interim evaluation score (see NFS 1816.404–275) or 80 percent to the fee allocated to that period. For other than services, provisional award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative provisional fee payment.

(d) The Fee Determining Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, provisional or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

1816.404–274 Award fee evaluation factors.

(a) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Normally, technical and schedule considerations will be included in all CPAF contracts as evaluation factors.

(b) Cost control shall be included as an evaluation factor in all CPAF contracts. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total fee (award and any base fee). The predominant consideration of the cost control evaluation should be an objective measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The contracting officer should take such situations into consideration when evaluating contractor cost control.

(d) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given a score of 0 for cost control when there is a significant overrun within its control. However, the contractor may receive higher scores for cost control if the overrun is insignificant. Scores should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government should consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum score allocated for cost control, provided the average numerical rating for all other award fee evaluation factors is 80 or greater. See 1816.404–275 for information on numerical scoring. The contractor will not be rewarded for an

underrun when the average numerical rating for all other factors is less than 80.

(3) The contractor may be rewarded for meeting the estimated cost of the contract, but not to the maximum score allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average numerical rating for all other award fee evaluation factors is 61 or greater.

(e) The Government may unilaterally modify the award fee performance evaluation factors and performance evaluation areas applicable to the evaluation period. The contracting officer shall notify the contractor in writing of any such changes prior to the start of the relevant evaluation period.

1816.404–275 Award fee evaluation scoring.

(a) A scoring system of 0–100 shall be used for all award fee ratings. Award fee earned is determined by applying the numerical score to the award fee pool. For example, a score of 85 yields an award fee of 85 percent of the award fee pool. No award fee shall be paid unless the total score is 61 or greater.

(b) The following standard adjectival ratings and the associated numerical scores shall be used on all award fee contracts.

Excellent (100–91): Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

Very good (90–81): Very effective performance, fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

Good (80–71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

Satisfactory (70–61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

Poor/Unsatisfactory (60 and below): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(c) As a benchmark for evaluation, in order to be rated *Excellent*, the contractor must be under cost, on, or ahead of schedule, and have provided excellent technical performance.

(d) A scoring system appropriate for the circumstances of the individual contract requirement should be developed. Weighted scoring is recommended. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totalling 100. During the award fee evaluation, each factor is scored from 0–100 according to ratings defined in 1816.404–275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80 × 60%). The weighted scores for each evaluation factor are then added to determine the total award fee score.

1816.404–276 Performance incentives on CPAF hardware contracts.

(a) A performance incentive shall be included in all CPAF contracts where the prime deliverable(s) is (are) hardware and where total estimated cost and fee is greater than $25 million. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in CPAF hardware contracts valued under $25 million at the discretion of the Procurement Officer.

(b) When a performance incentive is used, it shall be structured to allow for both positive and negative fees based on hardware performance after delivery and acceptance. In doing so, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive fee is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance both above and below the standard. Specific incentive fees shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, both positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for performance levels that are of no benefit to the Government.

(c) The final calculation of the positive or negative performance incentive shall be done when performance, as defined in the contract, ceases or when the maximum positive or negative incentive is reached. When the performance is below the standard established in the contract, the Government shall calculate the amount due and bill the contractor for payment of that amount. When performance exceeds the standard, the contractor may request payment on a provisional basis of the incentive fee associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(d) One example of how a performance incentive would work is on a contract requiring delivery of a spacecraft. In this case, the unit of performance incentive measurement could be useful months in orbit. If 12 months is the expected performance level, this period could be identified as standard performance for which no fee is earned. If 24 months is the maximum useful life for the spacecraft relative to the technical requirements, this period could be identified as the maximum performance level at which the contractor would earn the maximum positive incentive. Interim measures of spacecraft life from twelve to 24 months would then be identified with fees from $0 to the maximum positive incentive. The amounts associated with these interim measures should correspond to the relative value to the Government of each additional month in orbit. A similar scale would be established for the negative fee ranging from the standard performance, $0, to total and immediate system failure, the maximum negative incentive.

(e) The definitions of standard performance, maximum positive and negative performance, and the units of measurement may be negotiated and will vary from contract to contract. Care must be taken, however, to ensure that the performance incentive structure is both reflective of the value to the Government of the various performance levels and a meaningful incentive to the contractor.

(f) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. In addition, when the contract requires the sequential delivery of several hardware items (e.g., multiple

satellites), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables. In either case, the total potential performance incentives and the total contract fee shall be in accordance with the structure and limitations specified in NFS 1816.404–276(g).

(g) In determining the value of the maximum performance incentive available under the contract, the contracting officer shall follow the following rules.

(1) The total potential contract fee may not exceed the limitations in FAR 15.903(d). The total potential contract fee is the sum of the maximum positive performance incentive and the total potential award fee (including any base fee).

(2) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and performance incentive at the discretion of the contracting officer.

(3) The maximum negative performance incentive for research and development hardware shall be equal to the total earned award fee (including any base fee). The maximum negative performance incentives for production hardware shall be equal to the total potential award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

[FR Doc. 93–8682 Filed 4–13–93; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90–Day Finding for a Petition to List the Kootenai River Population of the White Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) under the Endangered Species Act of 1973, as amended (Act). The petition has been found to present substantial information indicating listing may be warranted for this species. Through issuance of this notice, the Service now requests additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of the Kootenai River population of the white sturgeon.

DATES: The finding announced in this notice was made on April 8, 1993. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address below until further notice.

ADDRESSES: Data, information, comments or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, Fish and Wildlife Service, Boise Field Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. The complete file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Duke at the above address (208/334–1931).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned action is warranted within one year of the receipt of a petition that presents substantial information.

On June 11, 1992, the Service received a petition from the Idaho Conservation League (ICL), Northern Idaho Audubon, and Boundary Backpackers for a rule to list the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) as threatened or endangered under the Act. A letter acknowledging receipt of the petition was mailed to the petitioners on July 1, 1992.

The Kootenai River population of the white sturgeon is restricted to approximately 270 river kilometers in the Kootenai River, primarily upstream of Corra Linn Dam from Kootenay Lake, British Columbia through the northeast corner of the Idaho panhandle to Kootenai Falls, 50 kilometers below Libby Dam, Montana. Kootenai Falls represents an impassable barrier to the upstream migration of the sturgeon. A natural barrier at Bonnington Falls downstream of Kootenay Lake has isolated the Kootenai River population of the white sturgeon from other white sturgeon populations in the Columbia River basin for approximately 10,000 years (Apperson and Anders 1991).

Recent genetic analysis indicates that the Kootenai River population of the white sturgeon is a unique stock and constitutes a distinct interbreeding population (Setter and Brannon 1990). The electrophoretic analysis found ample evidence to describe these fish as a genetically distinct, isolated population based on differences in allele frequencies, genetic distance calculations and the overall quantity of variation displayed.

In general, individual sturgeon are broadly distributed and may move widely throughout their range in the Kootenai River and Kootenay Lake, although they are not commonly found upstream of Bonners Ferry into Montana (Apperson and Anders 1991). During the summer, sturgeon appear to inhabit water deeper than 12 meters (m) when remaining relatively sedentary, while individuals found in shallower water were exhibiting more extensive or seasonal movements. Kootenai River sturgeon feed on a variety of prey items, including bottom dwelling macroinvertebrates and fish.

Based on recent studies, the Kootenai River population of the white sturgeon has declined to less than 1,000 individuals (Apperson and Anders 1991). This translates to an average abundance of seven sturgeon per river kilometer from Kootenay Lake upstream to Bonners Ferry. The population is considered reproductively mature, with approximately 80 percent of the sturgeon over 20 years old. There has been an almost complete lack of recruitment of juveniles into the population since 1974, soon after Libby Dam began operation (Partridge 1983 Apperson and Anders 1991). The youngest fish sampled in the most recent study was from the 1977 year class.

The lack of natural flows in the Kootenai River below Libby Dam is considered the primary reason for the Kootenai River sturgeon's declining population (Apperson and Anders 1991). Since 1972 when Libby Dam began operating, spring flows in the Kootenai River have been reduced an average 50 percent and winter flows

have increased by 300 percent over normal. As a consequence, natural high spring flows rarely occur during the May–July sturgeon spawning season. In addition, elimination of side channel slough habitat in the Kootenai River floodplain due to diking to protect agricultural lands from flooding is likely a contributing factor to the sturgeon decline. The former slack water areas were considered important rearing and foraging habitat for early age sturgeon and their prey (Partridge 1983).

The petition and supporting information have been reviewed by staff of the Boise Field Office. The Service finds that the petition presents substantial information indicating that listing of the Kootenai River population of the white sturgeon may be warranted. This decision is based on information contained in the petition and scientific and commercial information otherwise available to the Service at this time.

The Service first initiated review of this population for listing in 1991. The Service now requests additional data, information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species.

References Cited

Apperson, K.A. and P.J. Anders. 1991. Kootenai River white sturgeon investigations and experimental culture. Annual progress report FY 1990. Prepared for Bonneville Power Administration, Portland, Oregon. 67 pp.

Partridge, F. 1983. Kootenai River fisheries investigations. Idaho Department Fish and Game. Job completion report. Project F–73–R5, Subproject IV, Study VI, Boise. 85 pp.

Setter, A. and E. Brannon. 1990. Report on Kootenai River white sturgeon, Electrophoretic studies—1989. Annual progress report FY 1990. Prepared for Bonneville Power Administration, Portland, Oregon. 7 pp.

Author

This notice was prepared by Steve Duke of the Boise Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: April 8, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–8663 Filed 4–13–93; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition to List the Buff-Breasted Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition failed to present substantial scientific or commercial information indicating that listing the buff-breasted flycatcher (*Empidonax fulvifrons*) as an endangered species may be warranted.

DATES: The finding announced in this notice was made on April 8, 1993. The Service will accept information on the status of the buff-breasted flycatcher at any time.

ADDRESSES: Information, comments, or questions concerning the buff-breasted flycatcher petition may be submitted to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sam Spiller, Field Supervisor at the above address (telephone 602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practical, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

On June 2, 1992, Mr. Elmer Richardson submitted a letter to the Service, requesting the Service to list the buff-breasted flycatcher (*Empidonax fulvifrons*) as an endangered species (Richardson 1992). On June 12, 1992, the Service informed the petitioner that his letter had been accepted as a petition.

This finding is based on various documents, including published and unpublished studies, and agency documents. All documents on which this finding is based are on file in the Fish and Wildlife Service Field Office in Phoenix, Arizona.

A species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. A species that is likely to become an endangered species (as defined above) within the foreseeable future throughout all or a significant portion of its range may be declared a threatened species under the Act. Section 3(15) of the Act includes under the term species "* * * any subspecies * * * and any distinct population segment of any species * * * which interbreeds when mature."

The buff-breasted flycatcher ranges from central Arizona and southwestern New Mexico, south through Mexico to Honduras and El Salvador. It occurs in open, montane pine or pine-oak forests, generally above 5,500 feet elevation. This flycatcher also occurs in montane canyon riparian groves of sycamore and other deciduous trees at similar elevations (Bailey 1928, Bent 1963, Phillips *et al.* 1964, Davis 1972, Peterson and Chalif 1973, American Ornithologists' Union 1983). The buff-breasted flycatcher appears to prefer relatively open forests, where it forages in the grassy or herbaceous understory (Bent 1963, Hubbard 1972, Phillips *et al.* 1964).

Section 4(a)(1) of the Act lists five factors to be considered in determining whether a species may be threatened or endangered. These five factors are:

1. The present or threatened destruction, modification, or curtailment of its habitat or range.
2. Overutilization for commercial, recreational, scientific or educational purposes.
3. Disease or predation.
4. The inadequacy of existing regulatory mechanisms.
5. Other natural or manmade factors affecting its continued existence.

The petitioner presented information on the first of these factors, contending that extensive loss of habitat has occurred, and that remaining habitat continues to face threats of destruction and modification. In support of this

contention, the petitioner provided a single reference, to the Arizona Game and Fish Department's (AGFD) "List of threatened native wildlife in Arizona" (AGFD 1988). That source makes a summary statement that population declines have occurred in Arizona since 1920, possibly due to changes in forest stand densities and control of forest fire. Neither the petition nor AGFD (1988) presented substantiating information or references.

Although the petition presented no other information to support the need to list, the Service reviewed other information not presented by the petitioner. The AGFD and New Mexico Department of Game and Fish (NMDGF) consider the buff-breasted flycatcher as endangered (NMDGF 1979, AGFD 1988). Phillips *et al.* (1964) suggested that, in Arizona, unspecified "ingenious programs of misuse" have modified buff-breasted flycatcher habitat by eliminating grassy ground cover in montane forests, and allowing encroachment by brushy juniper and young trees. The AGFD (1988) also suggested that control of wildfire and other manipulation of forests had modified buff-breasted flycatcher habitat. However, some authors believe the causes of the decline are poorly understood. They note that some areas formerly occupied by the bird remain unchanged, but these areas are not now occupied (Phillips 1968, Hubbard 1972, NMDGF 1979).

The range and numbers of the buff-breasted flycatcher may have declined in the southern portions of Arizona and New Mexico (Phillips *et al.* 1964, Phillips 1968, Hubbard 1972 and 1978, NMDGF 1979). However, the magnitude of this decline is difficult to determine. Several authors believed the bird may have once been locally common in the United States portion of its range (Phillips *et al.* 1964, Hubbard 1978). Others describe this flycatcher as rare, uncommon or little known in the region, even prior to the declines (Bailey 1928, Ligon 1961, Swarth 1904 *in* Bent 1963). In 1991, the buff-breasted flycatcher was recorded near Flagstaff, Arizona (Keller 1992), an area considered the extreme northern limit of the bird's range.

Information on the status of the flycatcher and its habitat in Mexico and Central America was not presented by the petitioner. The species has been considered common in Mexico, long after declines in the U.S. were noted (Phillips *et al.* 1964, NMDGF 1979, Monson and Phillips 1981). Monroe (1968) considered the buff-breasted flycatcher common in suitable habitat in Honduras. No information has been found on the status of the buff-breasted flycatcher in Guatemala or El Salvador.

After a review of the petition, the single reference cited, and other available information to the Service, the Service concludes the petition did not present substantial scientific or commercial information indicating that listing the buff-breasted flycatcher as a threatened or endangered species may be warranted. Information otherwise available to the Service indicates that the numbers and range of the buff-breasted flycatcher have declined in Arizona and New Mexico, probably partly due to modification of habitat. However, these areas of decline do not constitute a significant portion of the range of the species. The status of the buff-breasted flycatcher in the majority of its range is either unknown (Central America) or apparently stable (Mexico).

This notice acknowledges that declines are known in part of the species' range, possibly due to modification of habitat. However, sufficient information is not available to support listing, and the Service is seeking conclusive data on biological vulnerability and threats. The Service would appreciate any additional data, information or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of the buff-breasted flycatcher.

References Cited

American Ornithologists' Union. 1983. Checklist of North American birds, 6th edition. Allen Press, Lawrence, Kansas. 877 pp.

Arizona Game and Fish Department. 1988. List of threatened native wildlife in Arizona. Arizona Game and Fish Commission, Phoenix, Arizona. 32 pp.

Bailey, F.M. 1928. Birds of New Mexico. New Mexico Department of Game and Fish. Santa Fe, New Mexico. 807 pp.

Bent, A.C. 1963. Life histories of North American flycatchers, larks, swallows and their allies. Dover Press, New York, New York. 555 pp.

Hubbard, J.P. 1978. Revised checklist of the birds of New Mexico. New Mexico Ornithological Society, Publication No. 6.

_____. 1972. Notes on Arizona birds. Nemouria, Occasional Papers, Delaware Museum of Natural History 5:1–22.

Keller, R. 1992. Effects of ponderosa pine overstory and snags on the songbird community, northern Arizona. February 1992. Report presented to The Wildlife Society, Thatcher, Arizona. 18 pp.

Ligon, J.S. 1961. New Mexico birds and where to find them. University of New Mexico Press, Albuquerque, New Mexico. 360 pp.

Monroe, B.L. 1968. A distributional survey of the birds of Honduras. American Ornithologists' Union, Ornithological Monographs No. 7. Allen Press, Inc., Lawrence, Kansas. 458 pp.

Monson, G. and A.R. Phillips. 1981. Annotated checklist of the birds of Arizona. The University of Arizona Press, Tucson, Arizona. 240 pp.

New Mexico Department of Game and Fish. 1979. Handbook of species endangered in New Mexico. Santa Fe, New Mexico.

Peterson, R.T. and E. Chalif. 1973. A field guide to Mexican birds. Houghton Mifflin Company, Boston, Massachusetts. 432 pp.

Phillips, A.R. 1968. The instability of the distribution of land birds in the southwest. Pages 129–162. *In* Collected papers in honor of Lyndon Lane Hargrave. Papers of the Archaeological Society of New Mexico.

_____., J. Marshall, and G. Monson. 1964. The Birds of Arizona. University of Arizona Press, Tucson, Arizona. 212 pp.

Richardson, E. 1992. Petition to list the buff-breasted flycatcher (*Empidonax fulvifrons*) under the endangered Species Act of 1973. Letter to Fish and Wildlife Service Regional Director, Region 2, Albuquerque, New Mexico. June 2, 1992. 1 pg.

Author

The primary author of this notice is Timothy Tibbitts of the Fish and Wildlife Service's Ecological Services Field Office in Arizona (See **ADDRESSES** above).

Authority: The authority citation for this action is 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: April 8, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–8664 Filed 4–13–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 70
Wednesday, April 14, 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

Southern Region; Exemption From Appeal of Salvage Timber Sale Project on the Chattahoochee-Oconee National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decisions from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the six decisions to salvage uprooted, damaged, or broken trees within 300 feet of Forest roads on the Chattahoochee-Oconee National Forest on six Ranger Districts. The damage was caused by the March 13–14, 1993, snowstorm which dropped between five and thirty-three inches of snow followed by wind gusts up to fifty miles per hour. Most roads are blocked with downed timber. Safety of Forest visitors is reduced and access for recreation, administration, and protection is denied. Quick salvage is needed to protect Forest visitors, restore recreation access, reduce the risk of beetle outbreaks, and recover timber values. Daytime temperatures above 50 degree Fahrenheit will result in bark-boring beetles spreading fungi in the affected trees. If not salvaged quickly, these trees will have reduced value as wood products.

EFFECTIVE DATE: April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this exemption should be directed to Jean P. Kruglewicz, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347–4867.

SUPPLEMENTARY INFORMATION: On March 13, 1993, a snowstorm with high winds swept across the entire Southeastern United States. North Georgia was particularly hard hit with snowfalls of from five to thirty-three inches. On March 14 there were wind gusts of up to 50 miles per hour. Trees already burdened by heavy weights of snow could not withstand the stress of wind and broke off or uprooted. As these trees fell they damaged others nearby. Pines, such as Virginia pine, white pine, shortleaf, and loblolly, were affected much more than hardwoods. The general pattern was the uprooting of trees within stands rather than entire stands. Roads were totally or partially blocked and are also at risk from leaning, damaged, and broken trees. On six Ranger Districts on the Chattahoochee-Oconee, the specific road mileages affected by this exemption are:

Ranger district	Miles
Armuchee	86
Chattooga	138
Chestatee	155
Cohutta	116
Oconee	177
Tallulah	78

Storm-damaged trees need to be salvaged to protect public safety on Forest roads, restore access to historically-open areas of the Forest, recover economic values, and reduce the risks of insect outbreak or wildfire. The risk of accident for forest visitors is increased by leaning, damaged, or broken trees being near Forest roads; roads being partly or fully blocked; and sight distances being restricted. Trout and turkey seasons have begun and access to trout streams, wildlife management areas, and recreation sites is blocked. Rapidly warming temperatures and high moisture content of the wood are favorable to the quick growth of several fungi causing a condition known as 'blue stain' in the dead timber. The presence of blue stain in the wood greatly reduces its value as wood products. The fungi causing blue stain will begin to infect dead trees within days. Within two months fungi and wood-boring beetles could make trees unmarketable as sawtimber. Within about three months they will have no value as pulpwood. Bark-boring beetles may be flying on days with temperatures above 50 degrees Fahrenheit and may seek out stressed and damaged trees. Blue-stain fungi may be carried on their bodies as they fly from tree to tree. With an abundant food supply, populations of insects will increase quickly. Insect infestations of black turpentine beetle, Ips beetles, and Southern Pine Beetle are likely to occur and could increase tree damage by attacking nearby healthy trees. Southern pine beetle populations are increasing in Georgia even without the abundant food source created by the storm damaged trees. As temperatures increase and trees dry out, the fire hazard, in affected areas, will increase greatly.

Any delay in carrying out a salvage operation will reduce the safety of Forest visitors and limit or prohibit access for recreation, administration, and forest or visitor protection. Timber values will be reduced and the likelihood of being able to market the salvaged timber will steadily decrease. Populations of insects attacking weakened or dying trees will increase. Large amounts of fuel will remain on the ground through the spring fire season.

Analyses are being done on proposed actions to salvage uprooted, broken, or severely damaged trees. The analyses include the methods of harvest and any associated special measures needed to reduce or avoid undesirable effects. The environmental documents, biological evaluation, and cultural resource inventory being prepared will disclose the effects of the proposed actions on the environment, document public involvement, and address issues raised by the public. Given the present condition of the affected timber and the weather conditions expected, the need for action is critical.

Dated: April 8, 1993.

Ralph F. Mumme,

Acting Deputy Regional Forester.

[FR Doc. 93–8667 Filed 4–13–93; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for farm

products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by John Kennedy, Secretary of State, for an additional farm product produced in that State as follows: Cabbage.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: April 7, 1993.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 93–8704 Filed 4–13–93; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held May 11, 1993, 10:30 a.m., Herbert C. Hoover Building, room 1617–M2, 14th St. & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to materials or technology.

Agenda:

General Session

1. Opening remarks by the Chairman.
2. Introduction of members and visitors.
3. Presentation of papers or comments by the public.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, presentation materials should be forwarded two weeks prior to the meeting to the address below: Ms. Lee Ann Carpenter, ODAS/EA/BXA room 1621, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 1, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call (202) 482–2583.

Dated: April 9, 1993.

Lee Ann Carpenter,

Acting Director, TAC Unit.

[FR Doc. 93–8729 Filed 4–13–93; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 11–93]

Proposed Foreign-Trade Zone; County of Mercer, NJ; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Mercer, New Jersey, requesting authority to establish a general-purpose foreign-trade zone in Mercer County, New Jersey, adjacent to the Consolidated Philadelphia Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 26, 1993. The applicant is authorized to make the proposal under New Jersey Statutes Annotated 12:13–1.

The proposed foreign-trade zone would cover 70 acres on 5 parcels within the 450-acre Mercer County Airport complex on Scotch Road, West Trenton, New Jersey, which is owned by the County of Mercer. The County plans to contract the zone operation to a private company.

The application contains evidence of the need for zone services in the Mercer County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as apparel and toys. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on May 6, 1993, at 11 a.m., Mercer County Administration Building, room 211, 640 South Broad Street, Trenton, New Jersey.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 14, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 28, 1993.

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

U.S. Department of Commerce District Office, 3131 Princeton Pike, Bldg. 6, suite 100, Trenton, NJ 08648.

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

Dated: April 6, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–8634 Filed 4–13–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Amended Final Results or Antidumping Duty Administrative Review

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

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On November 27, 1992, the Department of Commerce (the Department) submitted to the United States—Canada Binational Panel (the

Panel) its final remand redetermination pursuant to a remand order from the Panel. On December 28, 1992, the Panel affirmed the above-noted results and ordered the Department to publish an amended final results notice.

EFFECTIVE DATE: April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Prosser, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1990, the Department published in the **Federal Register** its final results of antidumping duty administrative review on replacement parts for self-propelled bituminous paving equipment from Japan (55 FR 20175). We determined the dumping margin for Allatt Paving Equipment Division of Ingersoll-Rand Canada, Inc. (formerly Fortress Allatt, Ltd., and later amalgamated into Northern Fortress, Ltd.) (Northern Fortress) to be 9.47 percent.

On June 14 1990, Northern Fortress filed a timely request for binational panel review of the 1987–1988 final results (55 FR 25685 (June 22, 1990)). On May 24, 1991, the Panel issued its first remand order In The Matter of Replacement Parts For Self-Propelled Bituminous Paving Equipment From Canada, USA–90–1904–01, Pub. Doc. No. 90 (as designated by the Panel). The remand ordered the Department to: (1) Recalculate the dumping margins for approximately seventy-five (75) percent of total sales, (2) verify whether Northern Fortress had paid the Canadian federal sales tax (FST) on its home market sales so as to warrant any price adjustments, (3) if requested by petitioner, verify any constructed value (CV) or third-country prices used by the Department, and (4) reconsider its selection of best information available (BIA) rates and provide an explanation for the selection.

The Department submitted its first remand redetermination to the Panel on December 20, 1991, Pub. Doc. No. 119. In that redetermination the Department: (1) Recalculated the dumping margins for approximately seventy-five (75) percent of total sales, (2) verified that Northern Fortress had paid the Canadian FST on its home market sales, thereby warranting a price adjustment, (3) determined on the basis of verification findings that (a) Northern Fortress had sold but not reported similar merchandise in the home market and (b) Northern Fortress had failed verification with respect to its CV data, thereby requiring the Department to apply a BIA rate to those U.S. sales which would have been matched to either a Canadian sale of similar merchandise or CV. In addition, the Department provided a detailed explanation for its BIA rate selection. We determined that the final dumping margin for Northern Fortress for the September 1, 1987 through December 31, 1988 period was 19.57 percent.

Both Northern Fortress and Blaw Knox Construction Equipment Corp. (Blaw Knox), the petitioner in the underlying administrative review, challenged our first remand results (Pub. Doc. Nos. 126 and 127). On May 15, 1992, the Panel remanded in part the Department's first remand redetermination, ordering the Department to: (1) Reconsider record evidence concerning the country of origin of sixty-four (64) parts included in the Department's first remand results and (2) if requested by petitioner, verify the accuracy of the information on which the Department relies to make the country of origin determination. The Panel affirmed the Department's redetermination in all other respects (Pub. Doc. No. 172).

The Department submitted its second remand redetermination on July 30, 1992, concluding that thirty-one (31) of the above-noted sixty-four (64) parts are the Canadian origin and, therefore, within the scope of the antidumping finding. We determined that the final dumping margin for the Northern Fortress for the September 1, 1987 through December 31, 1988 period was 19.50 percent (Pub. Doc. No. 198).

On October 28, 1992, the Panel concluded that the Department's redetermination concerning the above-noted thirty-one (31) parts was not supported by substantial evidence (Pub. Doc. No. 231). The Panel remanded the Department's July 30, 1992, redetermination and ordered the Department to render a revised redetermination consistent with the Panel's opinion.

On November 27, 1992, the Department submitted its third and final redetermination. We excluded the thirty-one (31) parts noted above from the scope of the antidumping finding. We determined that the final dumping margin for Northern Fortress for the September 1, 1987 through December 31, 1988 period was 17.97 percent (Pub. Doc. No. 247). On December 28, 1992, the Panel affirmed the Department's redetermination and ordered the Department to publish an amended final results notice.

Amended Final Results of Review

We determine that the final dumping margin for Northern Fortress for the September 1, 1987 through December 31, 1988 period is 17.97 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries based on the margin analysis detailed above. Individual differences between United States price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service. This notice does not affect cash deposit rates.

This notice is published pursuant to 19 U.S.C. 1516a(g)(5)(B) (1992).

Dated: April 6, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–8734 Filed 4–13–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–001]

Sorbitol From France; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of Intent to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on sorbitol from France. Interested parties who object to this revocation must submit their comments in writing no later than April 30, 1993.

EFFECTIVE DATE: April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Doug Campbell or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1982, the Department of Commerce published an antidumping duty order on sorbitol from France (47 FR 15391). The Department of Commerce has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by

§ 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than April 30, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by April 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: April 6, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–8736 Filed 4–13–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–086]

Spun Acrylic Yarn From Japan; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on spun acrylic yarn from Japan. Interested parties who object to this revocation must submit their comments in writing no later than April 30, 1993.

EFFECTIVE DATE: April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–0090.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1980, the Department of Commerce published an antidumping duty order on spun acrylic yarn from Japan (45 FR 24127). The Department of Commerce has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than April 30, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by April 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: April 6, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–8737 Filed 4–13–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–779–601]

Standard Carnations From Kenya; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on standard carnations from Kenya. Interested parties who object to this revocation must submit their comments in writing no later than April 30, 1993.

EFFECTIVE DATE: April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Anna Snider or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987, the Department of Commerce published an antidumping duty order on standard carnations from Kenya (52 FR 13490). The Department of Commerce has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity To Object

No later than April 30, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by April 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: April 6, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–8738 Filed 4–13–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–085]

Sugar and Syrups From Canada; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on

sugar and syrups from Canada. Interested parties who object to this revocation must submit their comments in writing no later than April 30, 1993.

EFFECTIVE DATE: April 14, 1993.

FOR FURTHER INFORMATION CONTACT: David Dirstine or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1980, the Department of Commerce published an antidumping duty order on sugar and syrups from Canada (45 FR 24126). The Department of Commerce has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity To Object

No later than April 30, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by April 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: April 6, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–8735 Filed 4–13–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Permits

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

ACTION: Notice of Application for a Scientific Research Permit To Take Marine Mammals (P771#68).

Notice is hereby given that the Alaska Fisheries Science Centers, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Building 4, Seattle WA 98115, has applied in due form for a Permit to take marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Applicant seeks authorization to conduct aerial, boat and ground surveys, and scat collections for harbor seals (*Phoca vitulina*) at haulouts and rookeries in Alaska over a four-year period. This research would involve the potential harassment of up to 119,000 harbor seals per year while carrying out the surveys.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7234, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700—Building 1, Seattle, WA 98115–0070 (206/526–6150); and

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Road, Suite 6, Juneau, AK 99802 (907/586–7221).

Dated: April 8, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–8666 Filed 4–13–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

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

ACTION: Issuance of Public Display Permit No. 816.

SUMMARY: On October 26, 1989, notice was published in the **Federal Register** (54 FR 43602) that an application (P332A) had been filed by Kamogawa Sea World, 1464–18, Higashi-cho, Kamogawa-shi, Chiba 296, Japan. A public display permit was requested to obtain the care and custody of two (2) northern elephant seals (*Mirounga angustirostris*) rehabilitated from beached/stranded stock, currently in the custody of Sea World, San Diego.

The public comment period closed on November 24, 1989. No comments were received from the public. As a result of several significant issues raised by the Marine Mammal Commission and after internal review of the application, additional information was required prior to issuance. This information was obtained over a three year period, and included a report and recommendation by a qualified U.S. veterinarian following an onsite inspection. In addition, during this period of number of general questions were raised by the Marine Mammal Commission concerning the export of marine mammals to foreign facilities.

During its efforts to research and address these questions, the National Marine Fisheries Service established an interim export policy requiring that an applicant seeking authority to take and transport marine mammals to a foreign facility state, with supporting documentation, that the source facility(ies) in the United States have been unsuccessful in attempts to place such animals in U.S. facilities. As it concerns the marine mammals that are the subject of this application, Sea World, Inc., has indicated that they have been unsuccessful in their attempts to place these two northern elephant seals at facilities in the United States.

Notice is hereby given that on April 1, 1993, as authorized by the provisions of the Marine Mammal Protection Act, the National Marine Fisheries Service issued a permit for the above activities subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that Kamogawa Sea World offers an acceptable program for education or conservation purposes. Kamogawa Sea World facilities are open to the public on a regularly scheduled basis and access to the facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy, Room 7324, Silver Spring, MD 20910; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Long Beach, CA 90802–4213.

Dated: April 1, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–8665 Filed 4–13–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC), DoD.

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, 12586, 12708, and 12767. The proposed changes are part of the 1993 annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes would amend the following rules in Part II (Rules for Courts-Martial): R.C.M. 202(a): Persons subject to the jurisdiction of courts-martial (Amend the Discussion and Analysis in light of the FY93 DoD Authorization Act change to Article 3, Uniform Code of Military Justice (UCMJ), which made service members amenable to trial by court-martial for offenses committed in a prior enlistment without regard to a break in service); R.C.M.s 203 and 307: Jurisdiction over the offense and preferral of charges (Amend Discussions and Analyses in light of holding in *Solorio* versus *United States*, 483 U.S. 435 (1987)); R.C.M. 810: Procedures for rehearings, new trials, and other trials (Amend Rule, Discussion, and Analysis in light of FY93 DoD Authorization Act change to Article 63, UCMJ, which established that sentencing limitations at rehearings and new trials only affect the sentence that may be approved by the convening or higher authority); R.C.M. 902: Disqualification of military judge (Amend Discussion re procedures for voir dire of military judge to clarify that the military judge may reasonably limit counsel's presentations concerning possible disqualification of the military judge); R.C.M. 924: Reconsideration of findings (Amend the Rule and the Analysis to limit reconsideration of findings by court-martial members to findings not yet announced in open court); R.C.M.s 1003, 1103, 1104, 1107, 1113, 1301, and 1305, and Appendix 11: Punishments, preparation of record of trial, records of trial: Authentication; service; loss; correction; forwarding, and forms of sentences (Amend Rules, Discussions, Analyses, and Appendix to eliminate confinement on bread and water or diminished rations as a court-martial punishment); R.C.M. 1003(b)(3): Punishments (Amend Rule, Discussion, and Analysis to establish criteria to determine the appropriateness of a fine and a fine enforcement provision); R.C.M. 1009: Reconsideration of sentence (Amend Rule and Analysis to prohibit a sentencing authority from reconsidering a sentence announced in open court); R.C.M.s 1105 and 1106: Matters submitted by the accused, and recommendation of the staff judge advocate or legal officer (Amend Rules, Discussions and Analyses to require the staff judge advocate or legal advisor to inform the convening authority of a recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence, absent a written request to the contrary by the accused; R.C.M. 1107(d)(2): Action by the convening authority (Amend the Discussion and the Analysis to clarify that forfeitures adjudged at courts-martial take precedence over other pay stoppages or deductions); R.C.M.s 1107(d)(3) and 1113(d)(2): Action by the convening authority, and execution of sentences (Amend Rules, Discussions, and Analyses in light of FY93 DoD Authorization Act change to Article 57(e), UCMJ, which permits a military sentence to be served consecutively, rather than concurrently, with a sentence adjudged by a civilian or foreign sovereign); R.C.M. 1107(e): Action by the convening authority (Amend Rule and Analysis to provide that the convening authority may approve a sentence of no punishment in appropriate cases if the convening authority determines that a rehearing on sentence is impractical); R.C.M. 1107(f): Action by the convening authority (Amend Rule, Discussion and Analysis to authorize a convening authority to correct minor errors in the convening authority's action detected prior to forwarding of a case for appellate review); R.C.M 1108: Suspension of execution of sentence; remission (Correct typographical error in the Rule); R.C.M. 1113(d)(3): Execution of sentences (Amend Rule, Discussion and Analysis to establish the authority and required procedures for ordering execution of a fine enforcement provision); R.C.M. 1201: Action by the Judge Advocate General (Amend the Discussion and Analysis to conform with Article 69(a), UCMJ, which permits direct petition to the U.S. Court of Military Appeals by the accused). The proposed changes would also amend the following rules in Part III (Military Rules of Evidence): M.R.E. 311: Evidence obtained from unlawful searches and seizures (Clarify standard for review of search authorizations based on false statements in accordance with *Franks* versus *Delaware*, 438 U.S. 154 (1978)); M.R.E. 506: Government information other than classified information (Amend Rule and Analysis to improve procedures concerning handling and admissibility of Government information other than classified information); M.R.E. 611: Mode and order of interrogation and presentation (Amend Analysis to address Victim of Child Abuse Act and recent case law concerning alternative forms of testimony for child witnesses). The proposed changes would also amend the following paragraphs of Part IV (Punitive Articles): Para. 30a c(1): Espionage (Amend the paragraph and Analysis to clarify that the intent element of espionage is not satisfied merely because the accused acted without lawful authority); Para. 35: Drunken or reckless driving (Amend the paragraph and Analysis in light of FY93 DoD Authorization Act change to Article 111, UCMJ, which extended proscription against drunken or reckless

driving to operation of a vehicle, aircraft, or vessel, and also made punishable actual physical control of a vehicle vessel or aircraft while drunk or impaired or in a reckless fashion. The amendment also reflects the Article 111 provision of a blood/alchohol blood/breath concentration of 0.10 or greater as a per se standard for illegal intoxication; Para. 35c: Drunken or reckless driving (Amend the paragraph and Analysis to clarify that with regard to the additional element of causing personal injury, the Government must prove proximate causation and not merely cause-in-fact); Para. 43: Murder (Amend paragraph and Analysis in light of FY93 DoD Authorization Act change to Article 118, UCMJ, which replaced the word "others" with "another" in reference to acts inherently dangerous to a person other than the murder victim); Para. 45: Rape (Amend paragraph and Analysis in light of FY93 DoD Authorization Act change to Article 120, UCMJ, which eliminated the spousal exemption to rape prosecutions and made rape a gender neutral offense); Para. 89c: Indecent language (Amend the paragraph and Analysis to incorporate the test for indecent language adopted by the U.S. Court of Military Appeals in *U.S.* versus *French*, 31 M.J. 57, 60 (C.M.A. 1990)).

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon", May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial", January 23, 1985. This notice is intended only to improve the internal management of the Federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESSES: Copies of the proposed changes may be examined at Military Law Branch, Judge Advocate Division, Headquarters United States Marine Corps, Washington, DC 20380. A copy of the proposed changes may be obtained by mail upon request from the foregoing address, ATTN: Major Ralph H. Kohlmann.

DATES: Comments on the proposed changes must be received no later than June 30, 1993 for consideration by the Joint Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major Ralph H. Kohlmann, USMC, Executive Secretary, Joint Service Committee on Military Justice, Headquarters, U.S. Marine Corps (Code JAM), Washington, DC 20380. (703) 614–4250.

Dated: April 8, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–8622 Filed 4–13–93; 8:45 am]

BILLING CODE 3810–01–M

Joint Service Committee on Military Justice: Public Meeting

AGENCY: Joint Service Committee on Military Justice (JSC), DOD.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a public meeting of the JSC. This notice also describes the functions of the JSC.

DATES: May 6, 1993, 10 a.m. to 12 p.m.

ADDRESSES: Building 111, Washington Navy Yard, Washington, DC.

FUNCTION: The JSC was established by the Judge Advocates General in 1972. The JSC currently operates under Department of Defense Directive 5500.17 of January 23, 1985. It is the function of the JSC to improve Military Justice through the preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the Manual for Courts-Martial.

AGENDA: The JSC will receive public comment concerning its 1993 Annual Review of Manual for Courts-Martial, United States, 1984, as published on April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Major Ralph H. Kohlmann, USMC, Executive Secretary, Joint Service Committee on Military Justice, Headquarters, U.S. Marine Corps (Code JAM), Washington, DC 20380. (703) 614–4250.

Dated: April 8, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–8623 Filed 4–13–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Education Commission on Time and Learning; Hearing

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public Hearing of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this Hearing is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE, TIME AND LOCATION: *April 29, 1993 from 1 p.m. to 4:30 p.m.* Eastern Michigan University, EMU Board Room, 202 Welch Hall, Ypsilanti, MI 48197. *April 30, 1993 from 9 a.m. to 4 p.m.* Corporate Education Center, 1275 South Huron Street, Ypsilanti, MI Telephone: Ron Miller, (313) 487–0447.

FOR FURTHER INFORMATION CONTACT: Julia Anna Anderson, Deputy Executive Director, 1255 22d Street NW., Suite 502, Washington, DC 20202–7591. Telephone: (202) 653–5063.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221–1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, if appropriate a model for adopting a longer day or year, suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

The Hearing of the Commission is open to the public. The proposed agenda for April 29 includes: A site visit to the Cornerstone Schools in Detroit, Michigan and a panel discussion with parents, administrators, practitioners, and the general public on "Teachers Professional Development". The proposed agenda for April 30 includes: Discussions with researchers, union representatives, practitioners and the general public on teachers' needs for on-going professional development and the other mandates as outlined in Public Law 102–62. Records are kept of all

Commission proceedings, and are available for public inspection at the Office of the Commission at 1255 22d Street, NW., Suite 502, Washington, DC 20202–7591 from the hours of 9 a.m. to 5:30 p.m.

Dated: April 9, 1993.

John Hodge Jones,

Chairman, National Education Commission on Time and Learning.

[FR Doc. 93–8713 Filed 4–13–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

San Francisco Field Office; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy.

ACTION: Notice of Intent to make a Financial Assistance award to East-West Center, Resource Systems Institute on a sole-source basis.

SUMMARY: Pursuant to 10 CFR 600.7(b), the U.S. DOE announces it is restricting eligibility for award of Grant No. DE–FG03–92SF19167/A001 to the East-West Center, Resource Systems Institute to conduct a study and workshop to address thermal coal trade and clean technology requirements in the Asia-Pacific region within the scope of the "Asian-Pacific Project," an ongoing research project at the Resource Systems Institute.

FOR FURTHER INFORMATION CONTACT: James H. Solomon, DOE San Francisco Field Office, 1333 Broadway, Oakland, CA 94612, (510) 273–7117.

SUPPLEMENTARY INFORMATION: Senior government and industry officials from the U.S. and many of the Asia-Pacific countries are to be brought together to strengthen their relationship through cooperation and dialogue over the issues associated with the expansion of thermal coal trade and regional energy inter-dependence. Options and opportunities for both coal and clean coal technology trade for the U.S. industry will be identified. The East-West Center's Trade Model will enable its users to quickly and easily project the potential reaction of the international market to shifts to in the supply and demand for thermal coal and/or from changes in the capacity of the logistical system to handle the anticipated coal export level.

Issued in Oakland April 2, 1993.

Aundra Richards,

Chief, NE/SF Branch.

[FR Doc. 93–8724 Filed 4–13–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

CE-Support Office, Boston; Solicitation

AGENCY: Department of Energy.

ACTION: Notice of solicitation.

SUMMARY: Pursuant to 10 CFR 600.9, The Office of Alternative Fuels of the Department of Energy is issuing a solicitation numbered DE–PS41–93R110543 to evaluate alternative fuels in transportation in response to the Alternative Motor Fuels Act of 1988 (AMFA). With the assistance of the Office of Alternative Fuels, the Office of Technical and Financial Assistance (OTFA), has the opportunity to introduce an alternative fuel program through state energy offices. A favorable application for introducing alternative fuels at the state or local level is in heavy duty municipal vehicles which are good candidates for the use of alternative fuels because of their high fuel consumption, regular driving routes, and operation from a centralized location.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is issuing a solicitation to state energy offices inviting them to apply for the Heavy Duty State/Municipal Vehicle Alternative Fuel Demonstration. Only one application will be accepted from each state. The participating state energy offices will coordinate and conduct a heavy duty municipal vehicle project to introduce alternative fuel Original Equipment Manufacturer (OEM) vehicles for operation by state governments, local school districts, and municipalities. The incremental costs over conventional vehicles for up to four (4) OEM alternative fuel heavy duty vehicles per project will be funded by DOE. The types of vehicles to be considered are those used directly by state or local agencies or for the sole purpose of supporting a state or local agency. Transit buses are excluded. Vehicles will be fueled with ethanol, methanol, natural gas, propane or biodiesel. The DOE Support Offices will coordinate this program's activities in conjunction and cooperation with the state energy offices, providing assistance and direction to interested participants. The state energy offices, municipalities, and local school districts will ensure that refueling facilities are identified. They are encouraged to invite local utilities or fuel suppliers to participate by investing in the development of refueling facilities. The award recipients will be responsible for the collection and reporting of data/information as specified by DOE on alternative fuel and "control" vehicles over a five year period.

FUND AVAILABILITY: Up to $700,000 is available to fund approximately ten (10) financial assistance awards. Only one application will be accepted from each State. The initial project and budget period will be twelve months from the date of award.

RESTRICTED ELIGIBILITY: The Department of Energy, Office of Conservation and Renewable Energy, Office of Alternative Fuels, is restricting eligibility for a national demonstration of heavy duty municipal alternative fuel vehicles to the State Energy Offices in the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico and any territory or possession of the United States. Interested municipalities, and local school districts should contact the appropriate state energy office for applications for subawards. Financial Assistance for this solicitation is authorized by the DOE Reorganization Act, Public Law 95–91, CFDA No. 81.502, and the DOE Financial Assistance Regulations, 10 CFR part 600.

REVIEW AND EVALUATION: Initial review for completeness will be performed at the Support Offices. The applications will be evaluated by the Office of Technical Assistance and the Office of Alternative Fuels according to the criteria set forth in the solicitation.

DATES: Applications are due by June 30, 1993. Awards will be issued by September 30, 1993.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office, Attention: Louise S. Urgo, One Congress Street, Boston, MA 02114–2021, Telephone: 617–565–9709.

Issued at: Chicago, IL.

Dated: March 31, 1993.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 93–8725 Filed 4–13–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP93–226–000]

Columbia LNG Corporation; Intent To Prepare an Environmental Assessment for the Cove Point LNG Terminal Peakshaving Project and Request for Comments on Its Scope

April 8, 1993.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory

Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced docket pertaining to the Cove Point LNG Terminal Peakshaving Project.

On February 26, 1993, Columbia LNG Corporation (Columbia LNG) filed an application requesting the following: (1) Authorization to construct a liquefaction unit at its liquefied natural gas (LNG) import terminal located at Cove Point, Calvert County, Maryland (Cove Point Terminal) to liquefy natural gas for storage; (2) authorization to recommission its Cove Point Terminal; (3) issuance of a blanket certificate with pre-granted abandonment to provide a peaking service, firm, and interruptible transportation LNG terminalling services, and firm and interruptible transportation services; and (4) a waiver of the definition of eligible facilities and issuance of a blanket construction certificate.

By this notice, the FERC staff is requesting written comments on the scope of the issues to be addressed in the EA. All comments will be reviewed prior to the preparation of the EA. Comments should focus on potential environmental effects and measures to mitigate adverse impact. Written comments must be submitted by May 13, 1993 in accordance with the "Comment Procedures" discussed at the end of this notice.

Proposed Facilities

Columbia LNG proposes to construct a liquefaction unit and recommission its existing facilities at its Cove Point Terminal in Calvert County, Maryland. The liquefaction unit would be capable of liquefying up to 20.0 MMcfd of natural gas for storage. Existing LNG vaporizers would provide up to 1.0 Bcfd of sendout during the winter season—December 15 through March 15. Additionally, Columbia LNG proposed to provide LNG terminalling services where it would unload LNG tankers at its existing offshore facilities and transfer the LNG to its onshore storage facilities. The total project would cost approximately $40.0 million for peakshaving services only, and approximately $54.4 million for both peaking and terminalling services.

In Opinion No. 622, Columbia LNG's existing Cove Point Terminal was certificated by the Federal Power Commission (predecessor agency of the FERC) on June 28, 1972 in Docket No. CP71–68, *et al.* Major facilities at the site include two LNG tanker berths 1 mile offshore, four 375,000-barrel LNG storage tanks, ten 100-MMcfd submerged combustion vaporizers, two 100-MMcfd intermediate fluid vaporizers, and three 8,450-kilowatt gas-turbine generators. The facility also includes an 87-mile pipeline extending from the Cove Point Terminal to points of interconnection with the facilities of Columbia Gas Transmission Corporation and CNG Transmission Corporation in Fairfax and Loudoun Counties, Virginia. The Cove Point Terminal has not received any shipments of LNG since April, 1980. However, the Cove Point pipeline is currently being used to provide a transportation service to Washington Gas Light Company. The existing site and proposed liquefaction facilities are shown in Figure 1.[1]

Construction Procedures

The major construction activities would consist of constructing the new liquefaction plant and adding an extension to the existing administration building to provide additional training and office space. All construction would occur within a 318-acre area zoned for light industrial use which is surrounded by a 699-acre undeveloped buffer zone. The new liquefaction plant would be located on 0.7 acre within the existing developed terminal area and would take from 14 to 18 months to construct. Three temporary construction staging areas and two temporary storage areas, totaling approximately 16 acres, are within the existing terminal or were cleared in conjunction with original terminal construction. All construction, staging, and storage areas are shown in Figure 2.[1] Access to construction and staging areas would be either through the main gate of the terminal or an existing unpaved road.

Current Environmental Issues

The EA will address the environmental concerns identified by the FERC staff, intervenors, and concerned resource agencies and individuals. The following issues have been identified for consideration in the EA:

Biological Resources—Potential impact on threatened, endangered, or sensitive plant and animal species and their habitats.

Cultural Resources—Potential impact on properties listed on or eligible for listing on the National Register of Historic Places.

Land Use—Potential impact on residences, state areas of critical environmental concern, and conservation lands.

Soils Resources—Erosion control.

Air and Noise Quality—Potential impact associated with the reactivation of the gas-turbine generators on noise sensitive areas and regional air quality.

Reliability and Safety—

Recommissioning of the existing LNG facilities.

—Construction and operation of the proposed liquefaction facilities in compliance with the Department of Transportation regulations in 49 CFR part 193.

—Reactivation of LNG shipping operations in compliance with U.S. Coast Guard operating plans (Chesapeake Bay—LNG OPLAN and the LNG unloading guide) and requirements in 33 CFR part 127.

Comment Procedures

A copy of this notice and request for comments on environmental issues has been sent to Federal, state and local environmental agencies, parties to this proceeding, and the public. Comments on the scope of the EA should be filed as soon as possible but no later than May 13, 1993. All written comments must reference Docket No. CP93–226–000 and be addressed to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the comments should also be sent to: Mr. Hugh Thomas, Environmental Project Manager, room 7307, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The EA will be based on the FERC staff's independent analysis of the proposal and, together with the comments received, will constitute part of the record to be considered by the Commission in this proceeding. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

[1] The figure referred to in this notice is not being printed in the **Federal Register**, but has been included in the mailing to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, Room 3104, 941 North Capitol Street, N.E., Washington, DC 20426 or call (202) 208–1371.

Additional information about the proposal is available from Mr. Hugh Thomas, telephone (202) 208–0116.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8649 Filed 4–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10615–001 Michigan]

Wolverine Power Supply Cooperative, Inc.; Availability of Environmental Assessment

April 8, 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 a minor license for the proposed Tower and Kleber Hydropower Project located on the Black River in Forest and Waverly Counties, Michigan and has prepared a draft Environmental Assessment (EA) for the proposed project.

Copies of the EA are available for review in the Public Reference Branch, Room 3308 the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. Please affix Project No. 10615–001 to all comments. For further information, please contact Nancy M. Beals, Environmental Assessment Coordinator, at (202) 219–2178.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8648 Filed 4–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–06880T Louisiana–21]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 8, 1993.

Take notice that on April 7, 1993, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Haynesville Formation underlying a portion of the East Haynesville Field, in Claiborne Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers the SE/4 of Section 7, Township 23 North, Range 6 West.

The notice of determination also contains Louisiana's findings that the referenced part of the Haynesville Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8653 Filed 4–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–06836T Texas–131]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 8, 1993.

Take notice that on April 5, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that portions of the Wilcox Formation (Reagan D Sand), underlying a portion of Duval County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 4 and consists of a portion of the G.B. & C.N.G. RR. Survey A–668.

The notice of determination also contains Texas' findings that the referenced portions of the Wilcox Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8650 Filed 4–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–149–005]

Boston Edison Company; Filing

April 8, 1993.

Take notice that on March 23, 1993, Boston Edison Company tendered for filing its compliance refund report pursuant to the Commission order issued in this docket on February 8, 1993.

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 April 22, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8654 Filed 4–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–279–000]

CNG Transmission Corporation; Application

April 8, 1993.

Take notice that on March 29, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93–279–000 an application, as supplemented March 31, 1993, pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales and related standby services performed under CNG's Rate Schedule ACD for five of CNG's local distribution company customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to abandon the sale of a total of 43,209 dt equivalent of natural gas per day to The Peoples Natural Gas Company (Peoples), New York State Electric and Gas Corporation (NYSEG), Hope Gas, Inc. (Hope), Washington Gas Light Company (WGL), and The River Gas Company (River). CNG proposes to abandon the sale of 23,000 dt equivalent per day to Peoples, 3,300 dt equivalent per day to NYSEG, 4,409 dt equivalent per day to Hope, 10,000 dt equivalent

per day to WGL, and 2,500 dt equivalent per day to River. It is stated that the abandoned sales would be replaced partially by storage service for Peoples and NYSEG, partially by conversion to firm transportation service for Peoples, WGL and River. It is further stated that Hope and Peoples have elected to make permanent reductions in their daily sales entitlements from CNG. It is asserted that the proposed abandonments reflect the restructuring of sales services agreed to in CNG's Settlement in Docket No. RP88–211, *et al.* and the replacement services authorized in Docket No. CP91–554, *et al.*

Any person desiring to be heard or to make any protest with reference to said application should on or before April 29, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8652 Filed 4–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–22–005]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

April 8, 1993.

Take notice that on April 5, 1993, Panhandle Eastern Pipe Line Company filed Original Sheet Nos. 1 through 653 to its FERC Gas Tariff, First Revised Volume No. 1, to become effective May 1, 1993.

Panhandle states that these tariff sheets are being submitted to comply with Ordering Paragraph (A) of the Federal Energy Regulatory Commission's March 26, 1993 order in Docket No. RS92–22–003, *et al.* As more fully described in the filing, the proposed tariff sheets represent the terms and conditions under which Panhandle proposes to implement restructured services in compliance with Order Nos. 636, 636–A, and 636–B.

Panhandle states that copies of its filing were served on all parties to this proceeding, jurisdictional customers, and interested regulatory agencies.

Any person desiring to be heard or to protest said filing should file their comments or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. All such comments or protests should be filed on or before April 19, 1993. Comments and protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8651 Filed 4–13–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 93–08—Certification Notice—118]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Freehold Cogeneration Associates, L.P. has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Freehold Cogeneration Associates, L.P.
Operator: Freehold Cogeneration Associates, L.P.
Location: Freehold Township in Monmouth County, NJ
Plant Configuration: Combined cycle cogeneration
Capacity: 128.4 megawatts
Fuel: Natural gas
Purchasing Utilities: Jersey Central Power and Light Company
Expected In-Service Date: Winter of 1995

Issued in Washington, DC on April 7, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–8720 Filed 4–13–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of March 5 Through March 12, 1993

During the week of March 5 through March 12, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice

were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 8, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
3/2/93	Gulf/C.O. Thompson Petroleum Co., Inc., Brea, CA.	RR300–246	Request for modification/rescission in the Gulf refund proceeding. If Granted: The July 2, 1991 Dismissal Letter (Case No. RF300–11498) issued to C.O. Thompson Petroleum Company, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
3/3/93	Shell/The Atchison, Topeka & Santa Fe Railway Company, Washington, DC.	RR315–6	Request for modification/rescission in the Shell refund proceeding. If Granted: The February 3, 1993 Decision and Order (Case No. RF315–10018) issued to the Atchison, Topeka & Santa Fe Railway Company would be modified regarding the firm's application for refund submitted in the Shell refund proceeding.
3/4/93	Arco/W.N. Tetrault, Memphis, TN	RR304–57	Request for modification/rescission in the Arco refund proceeding. If Granted: The October 4, 1990 Decision and Order (Case No. RF304–9465) issued to W.N. Tetrault would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
3/9/93	Northeast Petroleum Industries/Massachusetts, Boston, MA.	RM25–261	Request for modification/rescission in the Northeast Petroleum Industries proceeding. If Granted: The September 27, 1984 Decision and Order (Case No. RQ25–107) issued to Massachusetts would be modified regarding the state's application for refund submitted in the Northeast Petroleum Industries refund proceeding.
3/10/92	International Brotherhood of Electrical Workers, Local Union 1579, Atlanta, GA.	LFA–0275	Appeal of information request denial. If Granted: The February 8, 1993 Freedom of Information Request Denial issued by the Field Office, Savannah River would be rescinded, and International Brotherhood of Electrical Workers Local Union 1579 would receive access to copies of certified payroll records of H.A. Sack Company, Inc. and Bryant Electric Company for work at the Savannah River Plant.

REFUND APPLICATIONS RECEIVED

Date	Name of refund proceeding/Name of refund applicant	Case No.
3/5/93 thru 3/12/93	Gulf Oil Refund Applications Received	RF300–21708 thru RF300–21721
3/5/93 thru 3/12/93	Crude Oil Refund Applications Received	RF272–94518 thru RF272–94565
3/5/93 thru 3/12/93	Atlantic Richfield Applications Received	RF304–13697 thru RF304–13713
3/8/93	Blu-Gas Service, Inc	RF265–2886
3/8/93	Blu-Gas Service, Inc	RF220–492
3/8/93	Blu-Gas Service, Inc	RF225–11097
3/8/93	Blu-Gas Service, Inc	RF7–170
3/8/93	Blu-Gas Service, Inc	RF299–88
3/8/93	Coastal States Trading, Inc	RF321–179
3/8/93	ARA Service, Inc	RF321–19648
3/9/93	Melton Truck Lines, Inc	RC272–174
3/10/93	Foamex Products, Inc	RC272–175
3/10/93	Mani Pineapple Company, Ltd	RC272–176
3/10/93	Quick Pit Stop #4	RF321–19649
3/10/93	Quick Pit Stop #5	RF321–19650
3/11/93	Auto Teria	RF304–13700
3/11/93	Quick Pit Stop #9	RF321–19651
3/11/93	Anthony Trorano & Sons, Inc	RF321–19652
3/11/93	R.R. Guerra, Jr	RF321–19653
3/11/93	Henry's Super 100	RF342–320
3/11/93	John's Texaco Service	RF321–19654
3/11/93	Howard Oil Company, Inc	RF339–17
3/11/93	Exxon Company, USA	RF339–18
3/12/93	James River Corporation	RF321–19655
3/12/93	Capital Cab Company	RC272–177
3/12/93	Cerutti Brothers	RF304–13701

REFUND APPLICATIONS RECEIVED—Continued

Date	Name of refund proceeding/Name of refund applicant	Case No.
3/12/93	John Pool	RF304–13702
3/12/93	Kenwood Texaco	RF321–19656

[FR Doc. 93–8723 Filed 4–13–93; 8:45 am]
BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of March 15 Through March 19, 1993

During the week of March 15 through March 19, 1993, the decision and order summarized below was issued with respect to an application for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Application

Texaco Inc./Deer Trail Truckline, 3/16/93, RF321–15125, RF321–18309

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding on behalf of Deer Trail Truckline, a livestock trucking company located in Deer Trail, Colorado. Both applicants claimed the right to receive the refund for the firm's Texaco purchases during the refund period. The DOE found that Catherine M. Woodard (RF321–18309), the applicant who had owned the firm for the portion of the refund period during which the Texaco purchases were made, was the appropriate recipient of the refund for the Texaco purchases. Don Peppel (RF321–15125), the applicant who purchased the firm after the Texaco purchases were made, provided no convincing reason why he should receive the refund. Therefore, the refund of $197 ($146 in principal and $51 in interest) was granted to Mrs. Woodard.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/ Henry's Arco, *et al.*	RF304–12789	03/17/93
Atlantic Richfield Company/ Race Car Engineering.	RF304–13696	03/17/93
Bellevue Community School District, *et al.*	RF272–79486	03/15/93
Borough of Naugatuck, *et al.*	RF272–83616	03/15/93
E.A. Mariani Asphalt Company.	RF272–77721	03/16/93
Edward M. Chadbourne, Inc.	RF272–17354	03/18/93
Edward M. Chadbourne, Inc.	RD272–17354	.....
Foamex Products, Inc.	RC272–175	03/19/93
Gulf Oil Corporation/BB Stout Grocery & Service, *et al.*	RF300–17071	03/16/93
Gulf Oil Corporation/ Burrell's Fuel Company.	RF300–14858	03/15/93
Steve Foster Gulf.	RF300–14881	.....
Interstate Gulf ...	RF300–14882	.....
Columbus Gulf #1.	RF300–14883	.....
Columbus Gulf #2.	RF300–14884	.....
Laughter Gulf	RF300–14885	.....
Durham Gulf	RF300–14886	.....
Columbus Gulf #3.	RF300–14891	.....
Hutches Gulf	RF300–14892	.....
Morris Pace Gulf	RF300–14893	.....
Moss Gulf	RF300–14894	.....
Sittons Gulf	RF300–14895	.....
Lohrville Community School District, *et al.*	RF272–84901	03/18/93
Maui Pineapple Company, Ltd.	RC272–176	03/19/93
Shell Oil Company/Kingman Truck Terminal.	RR315–3	03/17/93
Shell Oil Company/Paul A. Heinzelmann.	RF315–294	03/17/93
Murphy's Service Station.	RF315–1622	.....
Texaco Inc./ Coast Gas, Inc., *et al.*	RF321–3060	03/19/93
Texaco Inc./Davidson Oil & Supply Co.	RF321–19647	03/18/93
Texaco Inc./ Delta Air Lines, Inc.	RF321–8844	03/17/93
Texaco Inc./Fill-It-Up, Please Inc., *et al.*	RF321–10103	03/15/93
Texaco Inc./ Heurkamp's Texaco Service.	RF321–19640	03/19/93
Texaco Inc./ John's Texaco Service, Inc.	RF321–19654	03/17/93
Texaco Inc./ Montaup Electric Company.	RF321–19641	03/15/93
Texaco Inc./ Sand Lake Texaco, *et al.*	RF321–11672	03/19/93
Texaco Inc./ Tackett's Texaco, *et al.*	RF321–2336	03/16/93
Texaco Inc./ Union Carbide Chemicals & Plastics Co., Inc.	RF321–9733	03/17/93
Ti-Caro, Inc	RF272–38240	03/19/93
White Oak Corporation.	RF272–52235	.....
City of Hampton, Virginia.	RF272–55949	.....
Town of Windham.	RF272–83311	03/15/93
City of Baldwin Park.	RF272–83338	.....
City of Raytown	RF272–83362	.....
City of Bakersfield.	RF272–83467	.....
Union Grove U.H.S. District, *et al.*	RF272–84783	03/17/93
William Floyd School District, *et al.*	RF272–84668	03/15/93

Dismissals

The following submissions were dismissed:

Name	Case No.
American Auto Service, Inc	RF300–17785
Anton's ARCO Service Station .	RF304–12803
Bill Guenther's Texaco	RF321–11273

Name	Case No.
Bozo White Gulf	RF300–17402
Cue Pullen Gulf	RF300–15925
Curtis Adams Farm Supplies	RF300–15668
E. Williams & Sons	RF304–13219
East End Texaco	RF321–18396
Mathews Gulf Service	RF300–20566
Morris Oil Co	RF300–15547
Ortego Services, Inc	RR300–236
Pete & Bill's Atlantic Service	RF304–13172
Richard W. Dyke	RF300–19999
Rusty's Gulf	RF300–15867
Sim J. Harris Co	RF300–15658
Transeastern Associates, Inc	RF272–67224
Weisenfluh Service Center	RF300–15890
West's Gulf Super Service	RF300–15559
Wilsons Grocery	RF300–15801

Copies of the full text of this decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: April 8, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–8721 Filed 4–13–93; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of February 22 Through February 26, 1993

During the week of February 22 through February 26, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Oil, Chemical & Atomic Workers International Union, 02/22/93, LFA–0268

The Oil, Chemical & Atomic Workers International Union (OCAW) filed an Appeal from a determination issued by the DOE's Albuquerque Field Office (DOE/AL) in response to a request from OCAW under the Freedom of Information Act (FOIA). OCAW sought the salary data of certain EG&G Mound Applied Technologies (EG&G) employees. DOE/AL withheld the salary data under Exemption 4 of the FOIA. In considering the Appeal, the DOE found that DOE/AL properly withheld the salary data under Exemption 4. Accordingly, the Appeal was denied.

Structural Dynamics Research Corporation, 02/22/93, LFA–0257

Structural Dynamics Research Corporation (SDRC) filed an Appeal from a partial denial by the DOE's Albuquerque Field Office (DOE/AL), of a request for information submitted under the Freedom of Information Act (FOIA). In response to SDRC's request, DOE/AL withheld portions of three responsive documents pursuant to 5 U.S.C. 552(b)(4) (FOIA Exemption 4). An additional four responsive documents were not released to the appellant and were not addressed in DOE/AL's determination. After conducting a *de novo* review of all of the documents in question, the DOE found that the information contained therein revealing unit price and discount information, names and descriptions of products and services, and the names of subcontractors of the submitter of the information, was entitled to Exemption 4 protection, but that the remainder of information in the documents was not exempt from disclosure. Accordingly, the matter was remanded to DOE/AL for a determination releasing the non-exempt material. In all other respects the Appeal was denied.

Implementation of Special Refund Procedures

Walter J. Scott & Benjamin J. Agajanian, Oil Producers, et al., 02/25/93, LEF–0053

The DOE issued a Decision and Order implementing procedures for the disbursement of $340,000, plus accrued interest, remitted to the DOE by Walter J. Scott & Benjamin J. Agajanian Oil Producers, William J. Scott and Walter J. Scott d/b/a Scott Oil Company, pursuant to a Consent Order and Settlement Agreements entered into by the DOE, the DOJ, and the three firms. The DOE determined that these funds would be disbursed to the federal government, the states, and eligible applicants in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

Protective Order

The following firm filed an Application for Protective Order. The application requested the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the application and issued the requested Protective Order as an Order of the Department of Energy.

Chevron U.S.A. Inc., 02/22/93, LRJ–0003

Refund Applications

Atlantic Richfield Company/Greg's ARCO, 02/26/93, RF304–13617

The DOE issued a Supplemental Decision and Order rescinding a refund granted to Greg's ARCO, Case No. RF304–10115, in the Atlantic Richfield Company (ARCO) subpart V special refund proceeding. The refund was based on an application submitted by Federal Refunds, Inc. (FRI), a self-styled filing service, on behalf of Mr. Gregory D. Christensen. The decision to rescind the refund was based on the DOE's discovery that Mr. Christensen did not own the ARCO outlet. Additionally, due to the misrepresentations in the Application, the DOE held FRI and Mr. Christensen jointly liable for repayment of the refund. Accordingly, the two parties were ordered to remit a refund check of $497 to the DOE.

Peckham Materials Corporation, 02/26/93, RF272–28095, RD272–28095

The DOE issued a Decision and Order granting an Application for Refund filed by Peckham Materials Corporation, a manufacturer of road building materials, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the Application on the ground that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that, except with respect to certain products resold by Peckham and its purchases subject to price escalation clauses, the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence

sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $75,789.

Texaco Inc./George's Texaco, Gurnee Texaco, 02/25/93, RF321–19101, RF321–19464

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of George's Texaco and Gurnee Texaco, two indirect purchasers of Texaco products, in the Texaco Inc. special refund proceeding. The owner of the two outlets submitted estimated purchase figures for each outlet's purchases during the consent order period but used no specific methodology in determining the estimated figures and could provide no further information substantiating each outlet's estimated figures. The DOE held that there was not enough information by which it could determine whether the gallonage estimations were reasonable. Consequently, the DOE denied both applications.

Texaco Inc./Laraway Oil Co., 02/25/93, RF321–19612

The DOE issued a Decision and Order concerning an Application for Refund that was filed in the Texaco refund proceeding by Laraway Oil Co. and its owner, Harold Laraway (Case No. RF321–3760). In the Decision, the DOE rescinded in part a refund that had been granted to Mr. Laraway in a prior decision. That refund was based upon the premise that Mr. Laraway owned and operated this distributorship during the entire period from March 1973 through February 1979. Subsequently, DOE learned that another applicant filed a refund application for purchases made by this distributorship after January 1, 1979 and Mr. Laraway admitted that he sold the distributorship effective on that date. Consequently the DOE determined that Mr. Laraway was not entitled to a refund for purchases made by the distributorship after January 1, 1979, and required him to remit $144 to the DOE.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Agway Inc./ Moran Oil Company.	RF324–54	02/22/93
Atlantic Richfield Company/ Baileyton Butane Service, Inc., *et al.*	RF304–12977	02/25/93
Atlantic Richfield Company/Herkimer ARCO, *et al.*	RF304–13503	02/25/93
Atlantic Richfield Company/Joe & Sam's ARCO, *et al.*	RF304–13433	02/23/93
C.A. Beard Memorial School Corp.	RA272–53	02/25/93
Conneaut School District.	RF272–81799	02/25/93
Denver Community School Dist.	RF272–81712	02/26/93
Gulf Oil Corporation/ Floyd's Gulf, *et al.*	RF300–17747	02/26/93
Gulf Oil Corporation/P & A Gulf.	RF300–15061	02/25/93
Gulf Oil Corporation/York Aero, Inc., *et al.*	RF300–16041	02/23/93
Lowndes County School District, *et al.*	RF272–81103	02/26/93
Maine School Administrative District #48.	RF272–81765	02/25/93
Northwest Tri-County IU School, *et al.*	RF272–81137	02/23/93
Oregon Asphaltic Paving Co.	RF272–21551	02/23/93
Oregon Asphaltic Paving Co.	RD272–21551	.....
Payne County, Oklahoma, *et al.*	RF272–88001	02/26/93
Shell Oil Company/Agway Petroleum Corporation.	RF315–7636	02/22/93
Burien Auto Mart	RF315–7673	.....
Enterprise Products Company.	RF315–7985	.....
John Robinson, Jr.	RF315–8028	.....
Forward Tire Center.	RF315–8120	.....
South Kitsap School District, *et al.*	RF272–81550	02/26/93
Summerville R–2 Schools.	RF272–81767	02/23/93
Texaco Inc./ Artim Transportation System, *et al.*	RF321–14753	02/22/93
Texaco Inc./ Cubby Oil Co., Inc.	RF321–2798	02/26/93
B.E. and C.E. Carroll.	RF321–17401	.....
Texaco Inc./Doctor John's Texaco, *et al.*	RF321–5609	02/26/93
Texaco Inc./Marina Texaco.	RF321–19577	02/23/93
Texaco Inc./ Montaup Electric Company.	RF321–18463	02/25/93
Texaco Inc./ Moore's Service Station, *et al.*	RF321–16863	02/25/93
Town Realty Co	RF272–58452	02/25/93
Warner Company.	RF272–67949	02/23/93
Warner Company.	RD272–67949	.....
Westbook School Department.	RF272–81740	02/25/93
White Poultry Company.	RF272–90386	02/25/93

Dismissals

The following submissions were dismissed:

Name	Case No.
A.D. Cole	RF321–16915
American Rent-All, Inc	RF272–90563
Art's ARCO	RF304–13342
Asa's Gulf	RF300–16802
Barrow County	RF272–87878
Borough of Mount Oliver	RF272–88073
City of Marked Tree	RF272–88042
City of Northwoods	RF272–88093
City of Ojai	RF272–88091
City of Old Bridge	RF272–88090
City of Zilwaukee	RF272–88009
Darland Gulf	RF300–16442
Dave's Texaco	RR321–65
Dorchester County Career School.	RF272–89402
Ft. Huachuca Accommodation	RF272–78830
G&J Freight	RF272–80175
Greater Johnston Area Vo-Tech Schools.	RF272–87527
Huling Texaco	RF321–11693
Johnson's ARCO	RF304–3780
Knight's Gulf	RR300–227
Knight's Gulf	RR300–219
L&W Market	RF300–16744
Lansing School District # 158	RF272–87616
Moraga Elementary	RF272–78984

Name	Case No.
Oshkosh Area School District ..	RF272–87596
Pacific Construction Co	RF272–90537
Pekin Comm. High School District 303.	RF272–78950
R.J. Pelc & C. Barone	RR300–226
Roley's Gulf	RF300–16995
Saleninvest A.B	RD272–27768
Saleninvest A.B	RF272–27768
Scott County	RF272–88003
Spanish Fort Gulf	RF300–16273
Sponge Rubber Company	RF300–13345
The Marble Cliff Quarries Co ...	RF272–90394
Town of Milo	RF272–88060
Town of North Providence	RF272–88075
Town of Williamstown	RF272–88018
Town of Willington	RF272–88017
University Texaco	RR321–51
Village of Millersburg	RF272–88061
Village of Norridge	RF272–88079
Village of North Riverside	RF272–88067
West Northfield School District No. 31.	RF272–80065
Westwood Unified	RF272–88056

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: April 8, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–8722 Filed 4–13–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4613–7]

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; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 14, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Prohibition of Hexavalent Chromium Chemicals in Comfort Cooling Towers–Information Requirements (EPA ICR No. 1420.03; OMB No. 2060–0193). This is a request for reinstatement of a previously approved information collection for which approval has expired.

Abstract: Under 40 CFR Part 749, subpart D, the use of hexavalent chromium-based chemicals in comfort cooling towers and the distribution in commerce of these chemicals for use in comfort cooling towers are prohibited. Commercial distributors of hexavalent chromium-based water treatment chemicals for use in cooling systems are required to label containers of the chemicals and to keep records of chemical shipments to cooling system users for two years from the date of shipment. These distributors must report their office locations to EPA, so that enforcement personnel can review the required records to identify sites for inspection to determine compliance with this rule.

Burden Statement: The public reporting burden for this collection of information is estimated to average 2 hours per response for reporting, and .4 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Commercial distributors of hexavalent chromium-based water treatment chemicals.

Estimated Number of Respondents: 72 for reporting and 200 for recordkeeping.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 220 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency,Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget,Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: April 8, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–8700 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00134; FRL–4581–9]

Training Grants for Lead-Based Paint Abatement Workers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for preproposals.

SUMMARY: The purpose of this notice is to announce the availability of funds to form cooperative agreements for the purpose of providing support to organizations demonstrating experience in lead-based paint training activities. Any nonprofit organization with such experience is eligible to apply. This notice also describes the eligibility requirements and the selection criteria for the grants.

DATES: All preproposals must be submitted to EPA no later than May 14, 1993.

ADDRESSES: Preproposals should be sent to the following address: Karen Hoffman, Chemical Management Division (TS–798), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen Hoffman at the address listed under the ADDRESSES unit or by telephone at (202) 260–7849.

SUPPLEMENTARY INFORMATION: The safety issues surrounding the activities of lead-based paint abatement workers are a major concern of EPA. Appropriate worker safety training is essential if lead-based paint abatement activities are to be done in a manner that assures the safety of building occupants, the public, the environment, and abatement workers. To ensure that the number of well-trained lead-based paint abatement workers increases at an acceptable rate, EPA has received congressional add-on funds to provide training grants to

nonprofit organizations already engaged in lead-based paint abatement worker training and education activities. Only nonprofit organizations with demonstrated experience in the implementation and operation of health and safety training for lead-based paint abatement workers will be considered for funding.

For the purposes of this notice, lead-based paint abatement activities mean activities engaged in by workers that include the removal, disposal, handling, and transportation of lead-based paint and materials containing lead-based paint from public and private dwellings, public and commercial buildings, and bridges and other structures or superstructures where lead-based paint presents or may present an unreasonable risk to health or the environment.

I. Administrative Requirements

This program is subject to matching share requirements. Awards shall be given only to applicants who can fund at least 30 percent of their programs from non-Federal sources, excluding in-kind contributions. (In-kind contributions are defined as the value of a non-cash contribution to meet a recipient's cost-sharing requirements. An in-kind contribution may consist of charges for real property and equipment, or the value of goods and services directly benefiting the EPA-funded project.) The recipient's matching share may exceed 30 percent.

II. Evaluation Criteria

Preproposals submitted in response to this notice will be evaluated on a competitive basis by an EPA review panel. The following factors, which are weighted by percentage as to their relative importance, will be considered in evaluating the preproposals:

1. *Program Experience (25 percent)*

a. Experience in the development of adult education courses, with emphasis on training individuals with limited education.

b. Experience in the delivery of health and safety course materials to individuals with limited or no English language skills.

c. Demonstrated ability to target the worker population.

2. *Lead-Based Paint Abatement Worker Course Experience (30 percent)*

a. Experience in the delivery of courses to lead-based paint abatement workers.

b. Experience in providing hands-on training to lead-based paint abatement workers.

c. Demonstrated experience in the implementation and operation of health and safety training for lead-based paint abatement workers.

d. Qualifications of key personnel.

e. The number of students expected to be trained during the project period.

3. *Project Management (25 percent)*

a. Applicant's ability to provide appropriate program staff to the project.

b. Applicant's ability to provide space, equipment, staff time, and other resources required to carry out project responsibilities.

c. Extent to which the applicant has considered a management plan for the project, including the designation of a qualified program administrator.

4. *Budget (20 percent)*

Preproposals should include a detailed budget that specifies the amount of money to be used in all aspects of the proposed worker training, as well as the amount that is to be the non-Federal share (at least 30 percent of the total budget, excluding in-kind contributions). The ability of the applicant to derive a budget estimate that is appropriate to the scope of the project will be considered in the evaluation process. The proposed budget should be clearly justified and consistent with the intended use of the funds set forth in this notice.

III. Application Procedures

The following materials must be provided by all applicants:

1. Documentation that proves the nonprofit status of the applicant.

2. A summary of any lead-related courses already being taught by the applicant and a description of the materials being used to teach those courses. In addition, any applicants who have received EPA funds for lead worker training in any previous year's program must include in their preproposal a description of how those funds were used.

IV. Acceptable Expenditures

Funds awarded must be spent on activities that directly result in increased numbers of well trained lead-based paint abatement workers. Since EPA is funding the development of a model course curriculum for workers, the agency does not wish to fund the development of new courses through this program.

The following lists provide examples of activities that will and will not be considered for funding. The list of acceptable activities is for guidance only; projects may be funded for acceptable activities other than those on the list.

Award recipients may use the monies for the following:

a. Delivery of lead-based paint abatement worker courses.

b. Delivery of train-the-trainer courses.

c. Enhancement of hands-on training programs.

d. Monitoring and evaluating courses.

e. Limited purchasing of supplies.

f. Speakers' fees (expenses and travel).

g. Slide duplication.

h. Rental of facilities.

i. Limited purchase of audio/visual equipment.

j. Workers' tuition.

k. Limited printing and reproduction of materials and manuals.

l. Transporting workers to training sites.

m. Innovative training systems.

Monies may *not* be used for the following:

a. Development of new training course curricula for workers.

b. Stipends to students for room, board, and salaries.

V. Notification of Selection

Preproposals are due no later than May 14, 1993. Preproposals shall be no more than 10 pages in length. Each applicant is requested to provide seven copies of the preproposal to EPA.

EPA plans to award a total of $500,000 through cooperative agreements to eligible nonprofit organizations. EPA will not allot all of the available award money to any one group or necessarily fund all of the groups. EPA expects to award no fewer than five grants.

Dated: April 7, 1993.

John W. Melone,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–8732 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4613–9]

Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Coast Guard Concerning the Enforcement of § 311 of the Clean Water Act, as Amended by the Oil Pollution Act of 1990

The U.S. Environmental Protection Agency is publishing the text of the following interagency agreement in order to inform the public of its agreement with the U.S. Coast Guard in implementing Section 311 of the Clean Water Act, 33 U.S.C. 1321, as amended by the Oil Pollution Act of 1990.

Dated: April 2, 1993.

Scott C. Fulton,

Acting Assistant Administrator for Enforcement, U.S. Environmental Protection Agency.

Section I—Introduction

As a result of the amendment of Section 311 of the Clean Water Act (Act) by Section 4301 of the Oil Pollution Act of 1990 (OPA) the United States Coast Guard and the United States Environmental Protection Agency (EPA) hereby agree to establish means of coordination and cooperation respecting the enforcement of Section 311 of the Act, and procedures pursuant to which decisions may be made to determine which agency has primary responsibility for:

(1) A civil penalty enforcement action for a violation of Section 311(b)(3) of the Act, 33 U.S.C. 1321(b)(3), which prohibits discharges of oil or designated hazardous substances in quantities which may be harmful;

(2) A civil penalty enforcement action for a violation of Section 311(j) of the Act, 33 U.S.C. 1321(j), and its implementing regulations, which concern, *inter alia*, requirements for discharge prevention and response plans;

(3) Referring to the Department of Justice a civil penalty action for a failure to properly carry out removal of a discharge pursuant to an order issued under Section 311(c), 33 U.S.C. 1321(c), or a failure to comply with an administrative order issued pursuant to Section 311(e)(1)(B) of the Act, 33 U.S.C. 1321(e)(1)(B);

(4) Referring to the Department of Justice for prosecution a criminal violation of Section 311(b)(3) of the Act, or Section 311(b)(5) of the Act, 33 U.S.C. 1321(b)(5), which requires notification of discharges regulated under Section 311 of the Act; and

(5) Consolidating referrals to the Department of Justice for causes of action against a person subject to Section 311 of the Act or its implementing regulations from both agencies that may arise under Section 311 of the Act.

EPA and the Coast Guard agree that in conformance with the terms of OPA this Memorandum of Understanding (MOU) governs the inter-agency enforcement relationship for violations of Section 311 of the Act, 33 U.S.C. 1321, occurring after enactment of OPA on August 18, 1990. The Memorandum of Understanding between the agencies, published at 44 FR 50785 (August 29, 1979), continues to apply to the inter-agency enforcement relationship for violations of Section 311(b)(3) of the Act occurring before August 18, 1990.

This MOU establishes policies, procedures, and guidelines concerning the responsibilities of the Coast Guard and EPA in carrying out the following agreement. The agencies agree that this MOU may be modified or terminated as provided below in Section II.

Section II—General Provisions

Notwithstanding any provision in this MOU, EPA and the Coast Guard may supersede this MOU by agreement in any matter and at any time. By mutual agreement, either agency may refer to the other agency primary responsibility for any matter addressed in this MOU for which they share jurisdiction under the Act.

The Coast Guard and EPA agree to give full consideration to requests in writing by the other agency to modify this MOU. The agencies also agree that this MOU may be terminated by joint agreement, or unilaterally by either party upon six months written notice.

EPA and the Coast Guard agree to keep the other agency advised of the names of their officials charged with carrying out the provisions of this MOU.

EPA reserves all rights provided to it under Section 506 of the Act, 33 U.S.C. 1366, which governs the attorney/client relationship between EPA and the Department of Justice in enforcement cases under the Clean Water Act.

The policies and procedures set forth in this MOU are intended exclusively for the guidance of federal government personnel. Since these policies and procedures may be superseded, modified, or terminated at any time without public notice, they are not intended, and may not be relied upon, to create, modify in any way, or terminate any rights, duties, or obligations, whether substantive or procedural, which may be enforced by any person, judicially or otherwise. The Coast Guard and EPA reserve the right to change the terms of this MOU without prior public notice.

EPA and the Coast Guard agree that this MOU does not affect their existing authorities under other laws, including cost or damage recovery authorities under Title I of OPA, Section 311(f) of the Act, 33 U.S.C. 1321(f), or under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*

This MOU is effective upon the date of execution by its signatories.

Section III—Interagency Coordination

The Coast Guard and EPA, respectively, agree to cooperate on requests by the other agency for available information, documents or testimony that may be useful in carrying out its responsibilities under this MOU.

EPA and the Coast Guard agree that each lead agency, in making the determinations and taking the actions referenced in Section IV of this MOU, shall give full consideration to written comments provided by the other agency concerning specific events subject to this MOU. The commenting agency shall provide its comments to the other agency's official charged with making the particular determination or referral, and to any other agency official specified to receive such written comments.

The Coast Guard and EPA agree that in the event that any disagreement arises under this MOU, the agencies will attempt to resolve their differences at the level at which they have arisen. Should that attempt fail, the agencies agree to elevate the issue for resolution by appropriate supervisory officials within the respective agencies.

EPA and the Coast Guard agree to cooperate in developing consistent enforcement policies in order to harmonize the agencies' enforcement policies for events arising under Section 311 of the Act.

The Coast Guard and EPA agree on the importance of keeping each other informed to the extent practicable of enforcement actions subject to this MOU. To this end, the agencies agree:

(1) To conduct quarterly meetings to discuss enforcement activities and actions;

(2) To conduct, as appropriate, workshops involving enforcement and administrative adjudication personnel; and,

(3) To establish an interagency notification agreement for certain classes or categories of incidents, as well as means by which such notification shall be accomplished.

Section IV—Primary Enforcement Authority

Each agency is authorized by Sections 311(b)(6) and (7) of the Act, 33 U.S.C. 1321(b)(6) and (7), to bring an administrative or judicial civil penalty action for any violation of Section 311(b)(3) or Section 311(j) of the Act, 33 U.S.C. 1321(b)(3) or (j), as amended by OPA. The agencies are each authorized to refer to the Department of Justice a criminal case pursuant to Section 309(c) of the Act, 33 U.S.C. § 1319(c) (respecting a violation of Section 311(b)(3) of the Act), and Section 311(b)(5) of the Act, 33 U.S.C. 1321(b)(5). The authority of the agencies to act under Section 311(c) and (e) of the Act, 33 U.S.C. 1321(c) and (e), is

determined by Sections 3 and 6(b) of Executive Order 12777 (October 18, 1991). The authority of the agencies to seek a judicially imposed penalty for any violation of an order issued by either agency pursuant to Section 311(c) or Section 311(e)(1)(B) of the Act is determined by Section 311(b)(7)(B) of the Act, 33 U.S.C. 1321(b)(7)(B), and the authority of the Attorney General to represent the agencies is described in Section 10(a) and (c) of Executive Order 12777. The authority of the agencies to seek judicial relief when there may be an imminent and substantial threat to the public health and welfare of the United States because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of Section 311(b) of the Act is determined by Section 311(e) of the Act and Sections 6(b), 10(a) and 10(c) of Executive Order 12777.

Both agencies agree that it is in the public interest for one agency to take the lead in making and in consolidating referrals to the Department of Justice for initiating a civil or criminal judicial case in the event of a violation of Section 311(b)(3) or 311(b)(5) of the Act, in the event of a violation of an order issued by either agency pursuant to Section 311(c) or Section 311(e)(1)(B) of the Act, or in the event of the need for a judicial referral to the Department of Justice in the case of an imminent and substantial threat to the public health and welfare of the United States because of an actual or threatened discharge of oil or a hazardous substance in violation of Section 311(b) of the Act. Both agencies agree that it is in the public interest to exempt from consolidation any referral to the Department of Justice by either agency that seeks as judicial relief a temporary restraining order, a preliminary injunction, or any similar expedited judicial process.

1. Determination of Lead Enforcement Agency

(a) Except as otherwise mutually agreed, in the case of any alleged violation of Section 311(b)(3) or Section 311(b)(5) of the Act, the lead enforcement agency shall be:

(1) That federal agency which provides an On-Scene Coordinator respecting the event in question pursuant to the National Contingency Plan, and, with respect to the discharge of hazardous substances, the DOT/EPA Instrument of Redelegation of May 27, 1988; or

(2) That federal agency which, if no federal On-Scene Coordinator was provided respecting the event in question, is charged with providing such a coordinator pursuant to the National Contingency Plan, and, with respect to the discharge of hazardous substances, the DOT/EPA Instrument of Redelegation of May 27, 1988.

(b) In the case of any alleged failure to carry out removal under an order issued pursuant to Section 311(c) of the Act, or in the case of any alleged failure to comply with an administrative order issued pursuant to Section 311(e)(1)(B) of the Act, the lead enforcement agency shall be the agency under whose authority the order was issued.

(c) In the case of any action taken pursuant to Section 311(e) of the Act that may be necessary to protect the public health and welfare, the lead enforcement agency shall be the agency under whose authority the Section 311(e) action was undertaken.

(d) In the case of any alleged violation of Section 311(j) of the Act and its implementing regulations, the lead enforcement agency shall be the agency which issued the regulation alleged to have been violated.

2. Responsibilities of Lead Enforcement Agency

(a) Taking into account the coordination procedures set forth in this MOU, EPA and the Coast Guard agree that the lead enforcement agency will be responsible for:

(1) Determining what enforcement remedy under Section 311 of the Act to seek for the alleged violation, in accordance with applicable statutory authority and any enforcement policy which may be adopted by the agency;

(2) Determining the amount of any administratively assessed civil penalty for a violation of Section 311 of the Act or its implementing regulations, in accordance with applicable statutory authority;

(3) In accordance with the Clean Water Act and Executive Order 12777, referring to the Department of Justice cases seeking judicial remedies available under the provisions of law cited in Section I; and

(4) In a civil judicial referral to the Department of Justice, periodically informing, consulting and, as needed, coordinating with the other agency regarding the referral.

(b) In all cases where a lead enforcement agency refers a Section 311 enforcement action to the Department of Justice, that agency shall forward a copy of the referral letter to the other agency. The lead enforcement agency shall also advise the Department of Justice of any known federal cost or damage recovery claim arising out of the same incident against the same violator.

3. Determination of Judicial Referral Agency

If the Coast Guard and EPA share enforcement responsibilities within the scope of this MOU for causes of action against a person alleged to have violated the law, and each agency has determined to refer its cause of action to the Department of Justice for judicial relief, the two agencies agree to consolidate such judicial claims in one referral to the Department of Justice, subject to the following guidelines:

(a) Civil and criminal causes of action shall not be consolidated in one referral to the Department of Justice;

(b) Any referral by either agency seeking as judicial relief a temporary restraining order, a preliminary injunction, or any similar expedited judicial process, shall not be consolidated in one referral to the Department of Justice; and

(c) The consolidating and referring agency for a civil referral shall be:

(1) In the event of a violation of Section 311(b)(3) of the Act, that agency with lead enforcement responsibility pursuant to Section IV.1.(a) of this MOU; or otherwise,

(2) That agency with lead enforcement responsibility pursuant to Section IV.1.(b) or (c) of this MOU, whichever applies.

Dated: March 23, 1993.

Scott C. Fulton,

Acting Assistant Administrator for Enforcement, U.S. Environmental Protection Agency.

Dated: March 18, 1993.

Rear Admiral A.E. Henn,

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

[FR Doc. 93-8662 Filed 4-13-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4614-3]

National Drinking Water Advisory Council; Open Meeting

Under section (1)(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (Pub. L. 99-339), will be held at 9 a.m. on May 6, 1993 and at 8:30 a.m. on May 7, 1993, at the El Paso Convention and Tourist Center, One Civic Center Plaza, El Paso, Texas 79901. Council Subcommittees will hold their meetings on May 3 and 4, 1993, at the Westin Paso Del Norte, 101 South El Paso Street, El Paso, Texas 79901.

The purpose of the meeting will be to seek Council advice and comments on major program issues. These will include the State Revolving Fund and Reauthorization of the Safe Drinking Water Act. The Council will be briefed on the progress of the Chafee/Lautenberg Study; the Regulatory Negotiation Process currently underway for Disinfection/Disinfection-By-Products; State Primary; and current legislative activities impacting the safe drinking water program.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be only one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before April 30, 1993.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH–550A), 401 M Street SW., Washington, DC 20460 or at (202) 260–2285.

Dated: April 8, 1993.

Robert Blanco,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 93–8702 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100119; FRL–4578–4]

Southwest Research Institute, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Southwest Research Institute, Inc. (SRI) has been awarded a contract to perform work for the EPA Region VII, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRI consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2). This transfer will enable SRI to fulfill the obligations of the contract and serves to notify affected persons.

DATES: SRI will be given access to this information no sooner than April 19, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–D1–0150, through a delivery order the Region VII Environmental Collection and Analysis Program (RECAP), SRI will assist EPA to complete a chemical composition and a physical characterization of herbicides containing either 2,4,5-T or silvex. SRI will also assist in a analysis of the possible formulations and/or associated materials that could be grouped because of chemical and physical similarities for either incineration or chemical destruction. This task involves no subcontractor.

The Office of Pesticide Programs and Region VII have determined that access by SRI to information on 2,4,5,-T and silvex products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA. In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with SRI prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Technical Project Manager for this contract in the EPA Region VII.

All information supplied to SRI by EPA for use in connection with this contract will be returned to EPA when SRI has completed its work.

Dated: April 1, 1993.

Daniel Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–8726 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100118; FRL–4578–3]

Science Applications International Corp. and Computer Sciences Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corp. (SAIC) and its subcontractor Computer Sciences Corp. (CSC) have been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC and its subcontractor CSC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2). This transfer will enable SAIC and its subcontractor CSC to fulfill the obligations of the contract and serves to notify affected persons.

DATES: SAIC and its subcontractor CSC will be given access to this information no sooner than April 19, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division

(H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W1–0055, through a delivery order SAIC and its subcontractor CSC will provide technical and operational support services to the Office of Pesticide Programs in support of a wide variety of system information management efforts. SAIC and subcontractor CSC employees will have access to all data and software within the system environment. This access is incidental to their work, which involves loading and maintenance of all system and applications software, system performance tuning, data file backup services, diagnosis and remedy of system hardware and software failures, routing and distribution of printed system output, production of system utilization statistics, and implementation of EPA-directed security protocols within the system environment. While SAIC and its subcontractor CSC employees may have complete access to all data within the systems environment, they do not use the data within its subject-matter contexts.

The Office of Pesticide Programs has determined that access by SAIC and its subcontractor CSC to information on all pesticide chemicals is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with SAIC and its subcontractor CSC prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC and its subcontractor CSC are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Delivery Order Manager for this contract in the EPA Office of Pesticide Programs.

All information supplied to SAIC and its subcontractor CSC by EPA for use in connection with this contract will be returned to EPA when SAIC and its subcontractor has completed its work.

Dated: April 1, 1993.

Daniel Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–8733 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50758; FRL–4576–8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

62719–EUP–22. Issuance. Dow Elanco, 9002 Purdue Road, Quad IV, Indianapolis, IN 46268–1189. The experimental use permit allows the use of 10,175.33 pounds of the herbicides 2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide and N-(2,6-difluorophenyl)-5-methyl-1,2,4-triazolo-[1,5a]-pyrimidine-2-sulfonamide on 3,859 acres of soybeans to evaluate the control of various broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from February 25, 1993 to September 4, 1994. A temporary tolerance for residues of the active ingredients in or on soybeans has been established. (Joanne Miller, PM 23, rm. 237, CM #2, (703–305–7830)).

62719–EUP–23. Issuance. Dow Elanco, 9002 Purdue Road, Quad IV, Indianapolis, IN 46268–1189. The experimental use permit allows the use of 12,787.81 pounds of the herbicides 2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide and N-(2,6-difluorophenyl)-5-methyl-1,2,4-triazolo-[1,5a]-pyrimidine-2-sulfonamide on 4,850 acres of corn to evaluate the control of various broadleaf weeds. The program is authorized in the States of Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from February 25, 1993 to February 25, 1995. A temporary tolerance for residues of the active ingredients in or on corn has been established. (Joanne Miller, PM 23, rm. 237, CM #2, (703–305–7830)).

62719–EUP–24. Issuance. Dow Elanco, 9002 Purdue Road, Quad IV, Indianapolis, IN 46268–1189. The experimental use permit allows the use of 145.05 pounds of the herbicide N-(2,6-difluorophenyl)-5-methyl-1,2,4-triazolo-[1,5a]-pyrimidine-2-sulfonamide on 2,140 acres of corn to evaluate the control of various broadleaf weeds. The program is authorized in the States of Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from February 25, 1993 to February 25, 1995. A temporary tolerance for residues of the active ingredient in or on corn has been established. (Joanne Miller, PM 23, rm. 237, CM #2, (703–305–7830)).

59639–EUP–3. Issuance. Valent U.S.A. Corporation, 1333 N. California Blvd., Suite 600, Walnut Creek, CA 94596. This experimental use permit allows the

use of 39.6 pounds of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate on 740 acres of field corn to evaluate the control of various broadleaf weeds. The program is authorized only in the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, and Wisconsin. The experimental use permit is effective from March 1, 1993 to March 1, 1995. A temporary tolerance for residues of the active ingredient in or on field corn has been established (Joanne Miller, PM 23, rm. 237, CM #2, (703–305–7830)).

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: March 30, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–8388 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–575; FRL–4579–9]

Monsanto Co.; Filing of Pesticide Petition for 3-Pyridinecarboxylic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Monsanto Co. the filing of pesticide petition (PP) 3F4187, which proposed to amend 40 CFR part 180 by establishing a regulation to permit residues of the pesticide 3-pyridinecarboxylic acid in or on citrus, whole fruit, at 0.05 part per million (ppm), cotton seed at 0.05 ppm, and cotton forage at 0.2 ppm.

ADDRESSES: By mail, submit written comments identified by the document control number, [PF-575], 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, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) 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(s) 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. Information on the proposed test and any written comments will be available for public inspection in rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller (PM-23), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-7830.

SUPPLEMENTARY INFORMATION: EPA has received from the Monsanto Co., suite 1100, 700 14th St., NW., Washington, DC 20005, a filing of a pesticide petition (PP 3F4187) under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) proposing that 40 CFR part 180 be amended to establish a tolerance for the combined residues of the herbicide 3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difluoromethyl)-4-(2-methylpropyl)-6-trifluoromethyl)-, methyl ester and 3-pyridinecarboxylic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-5-{[(2-sulfoethyl)amino] carbonyl}-6-(trifluoromethyl) and expressed as parent equivalents, in/on the following raw agricultural commodities: Citrus, whole fruit (group tolerance) at 0.05 ppm; cotton seed at 0.05 ppm and cotton forage at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography with mass spectrometry.

Authority: 21 U.S.C. 346a and 348.

Dated: April 2, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–8727 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00327; FRL–4072–6]

Nosema Locustae; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient nosema locustae, and the start of a 60–day public comment period. The RED for nosema locustae is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of nosema locustae are eligible for reregistration.

DATES: Written comments on the RED must be submitted by June 14, 1993.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00327" should be submitted to: By mail: 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. 1132, 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. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources

Branch, in Rm. 1132, CM #2, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Sue Rathman, at (703) 308–8069.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredient: nosema locustae. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical nosema locustae is substantially complete. EPA has determined that all currently registered products containing nosema locustae as an active ingredient are eligible for reregistration.

All registrants of products containing nosema locustae have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendement to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: April 7, 1993.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 93–8566 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180889; FRL 4581–6]

Receipt of Application for Emergency Exemption to use Certain Chemical; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Nebraska Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide methyl 3-chloro-5-(4,6 dimethoxypyrimidin-2-yl carbamoylsulfamoyl)-1-methyl pyrazole-4 carboxylate (trade name - *Permit*, hereafter referred to as *Permit*) (CAS 100784–20–1) to treat up to 293,396 acres of grain sorghum to control broadleaf weeds. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 29, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180889," should be submitted by mail 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. 1132, Crystal Mall #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." 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, 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 Highway, Arlington, VA, (703–308–8791).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of *Permit* on grain sorghum to control broadleaf weeds. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Nebraska sorghum growers have long used atrazine for control of broadleaf weeds, which is one of the most economical herbicides available. Atrazine is also widely used in Nebraska on a great deal of corn acreage. These uses have led to atrazine residues being found in ground and surface waters. The Applicant states that other phenoxy herbicides, which are cheaper than atrazine, have not been used because of their leading to excessive crop injury. The Applicant claims that these two factors have resulted in an emergency situation for grain sorghum growers in Nebraska, in that there are no other acceptable alternatives available for broadleaf weed control.

The Applicant proposes to apply *Permit* at a maximum rate of 0.512 oz. active ingredient (0.681 oz. of product) per acre with a maximum of 1 application on up to 293,396 acres of grain sorghum. This amounts to a total of 9,388.7 pounds of active ingredient, or 12,616 lbs. of product. This is the first time that the Applicant has applied for the use of *Permit* on grain sorghum. This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Nebraska Department of Agriculture.

Dated: April 6, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–8730 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

[PP 2G4149/T637; FRL 4577–6]

Flumetsulam; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide flumetsulam (DE-498), in or on certain raw agricultural commodities. These temporary tolerances were requested by DowElanco.

DATES: These temporary tolerances expire February 25, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–7850.

SUPPLEMENTARY INFORMATION: DowElanco, Quad IV, 9002 Purdue Rd., Indianapolis, IN 46268–1189, has requested in pesticide petition (PP) 2G4149, the establishment of temporary tolerances for residues of the herbicide *N*-(2,6-difluorophenyl)-5-methyl-1, 2, 4-triazolo[1, 5a]-pyrimidine-2-sulfonamide (coded Flumetsulam) in or on the raw agricultural commodities corn, field, grain; corn, field, fodder; and corn, field, forage at 0.05 parts per million (ppm). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permits 62719–EUP–23 and 62719–EUP–24, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. DowElanco must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire February 25, 1995. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

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

Authority: 21 U.S.C. 346a(j).

Dated: April 2, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–8731 Filed 4–13–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4612–9]

NPDES General Permit for Storm Water Discharges Associated With Industrial Activity Located in the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency, Region II.

ACTION: Notice of proposed NPDES general permit modification.

SUMMARY: The Director, Water Management Division, of the Environmental Protection Agency (EPA), Region II (the "Director") has prepared a draft permit modification incorporating changes in the National Pollutant Discharge Elimination System (NPDES) general permit (PRR000000) for storm water discharges associated with industrial activity (except discharges from construction activity) located in the Commonwealth of Puerto Rico. In this action, EPA proposes to delete existing quarterly monitoring and reporting requirements established in the general permit. This notice requests comments on proposed changes to existing monitoring frequency and reporting requirements, certain permit format/organization changes, sampling protocol and corrections to Pollution Prevention Plan deadlines.

DATES: Comments on this proposed permit modification must be received on or before May 12, 1993.

ADDRESSES: The public should send an original and one copy of their comments addressing any aspect of the proposed permit modifications to José A. Rivera, Regional Storm Water Coordinator, Water Permits and Compliance Branch (2WM–WPC), Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278. In addition, the public is required to submit a copy of their comments to the Chief of the Water Management Staff of the EPA Region II Caribbean Field Office at the address specified below. The public record is located at the above address. Appointments to view the record can be made by contacting José A. Rivera or Anne K. Reynolds at the above address. In addition, copies of the public record are also available at the EPA Region II Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernández Juncos Avenue, Santurce, Puerto Rico, 00907 and may be inspected and copied at that office between 9 a.m. and 4 p.m., Monday through Friday or by calling (809) 729–6843. A reasonable fee may be charged for copying. To obtain copies of the September 14, 1992 and November 10, 1992 General Water Quality Certificates, please contact the Environmental Quality Board, Water Quality Area, Banco Nacional Plaza Building, 431 Ponce de León Avenue, Hato Rey, Puerto Rico, 00910.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed NPDES general permit modification contact the EPA's Storm Water Hotline at (703) 821–4823 or José A. Rivera or Anne K. Reynolds of EPA's New York Office at (212) 264–2911.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section 401 Certifications
III. Reopener Clause
IV. Fact Sheet for Proposed Permit Modifications
V. Economic Impact
VI. Paperwork Reduction Act
VII. Regulatory Flexibility Act

I. Background

On August 16, 1991, a draft NPDES general permit for storm water discharges associated with industrial activity located in the Commonwealth of Puerto Rico was published in the **Federal Register** (see 56 FR 40948), and that notice served as a request for State 401 Certification (see 56 FR 40991). In addition, a specific formal request for State 401 Certification from the Region and a copy of the draft general permit were sent to the Environmental Quality Board (EQB) of Puerto Rico on November 1, 1991.

On April 29, 1992, EQB transmitted to the Region a draft 401 Certification for storm water discharges associated with industrial activity. EQB provided opportunity for public comment on this draft Certification and held a public hearing on July 21, 1992.

EQB issued on September 14, 1992 the 401 Certification known as the "General Water Quality Certificate" (GWQC) for storm water discharges associated with industrial activity in accordance with section 401 of the Clean Water Act (CWA). The special conditions included in the GWQC were intended to assure that a permittee of the general permit would comply with the applicable requirements of the Commonwealth of Puerto Rico Law and sections 301(b)(1)(c) and 401(d) of the CWA. This GWQC provided, in part, that all permittees of the general permit conduct quarterly monitoring and report such results quarterly.

On September 16, 1992, the Region issued the final NPDES general permit for storm water discharges associated with industrial activity located in the Commonwealth of Puerto Rico. This permit was published in the **Federal Register** on September 25, 1992 (see 57 FR 44438). The general permit will expire on midnight, September 25, 1997. The focus of this general permit is the development and implementation of Pollution Prevention Plans to minimize the discharge of pollutants. In order to incorporate the 401 Certification special conditions which were included in the GWQC of September 14, 1992, EPA included Part XI in the general permit (see 57 FR 44459). Part XI revised, among others, the monitoring and reporting requirements of the general permit consistent with the GWQC's Special Condition Number 13. (For more details, please refer to the Fact Sheet pertaining to 401 Certification at (57 FR 44440) of the September 25, 1992 **Federal Register**).

However, under Commonwealth procedures, the 401 Certification issued on September 14, 1992 was reconsidered, and a revised and final 401 Certification ("revised GWQC") was issued and submitted to EPA on November 10, 1992. That action finalized the State 401 Certification process. Although the revised GWQC contains all previous 19 Special Conditions included in the September 14, 1992 Certification, the revised GWQC changed the Special Condition Number 13 deleting and adding certain requirements.

Today's notice explains the rationale of the proposed general permit modification (see Fact Sheet section below). The proposed modifications may be found in Appendix A (Proposed General Permit Modifications) of this notice.

II. Section 401 Certifications

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. Today's proposed general permit modification implements the revised 401 Certification for the general permit.

III. Reopener Clause

Part VIII.B of the general permit (see 57 FR 44456) established that permit modifications be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5. In accordance with 40 CFR 122.62(a)(3)(iii), EPA has determined a cause for modification of the general permit. EPA's determination to modify the general permit is based on a modified State 401 Certification. 40 CFR 124.55(b) states that if a certification is received after final Agency (EPA) action on the permit, the Director may modify the permit on request of the permittee only to the extent necessary to delete any conditions based on a condition in a certification invalidated by an appropriate State board, in this instance EQB. On November 18, 1992, a formal request for permit modification was made.

IV. Fact Sheet for Proposed Permit Modifications

A. Basis for Today's Action

Only those conditions of Part XI.B.3 and 5 (State 401 Certification Requirements for Puerto Rico) of the general permit discussed in this section are reopened. Parts XI.B.1, 2, 4 and 6 are not reopened for comments by this action.

For EPA's NPDES general permit actions, a public notice is required to be published in the **Federal Register** (see 40 CFR 124(c)(2)(i)). Therefore, today's notice is being published in the **Federal Register**. However, the reader is advised that due to the **Federal Register** printing format, what EPA underlines in portions of the Fact Sheet will be highlighted in "italics" in the **Federal Register** notice.

This Fact Sheet describes a number of proposed changes, which fall into five broad categories. First, certain changes are necessary to incorporate substantive changes to the EQB's revised GQWC (i.e., deletion of quarterly monitoring, and addition of conditions regarding access to Pollution Prevention Plans, revision of the Pollution Prevention Plans, right of entry, and establishment of monitoring on a case-by-case basis). Second, certain permit format/organization changes are necessary to retain the requirements established by EQB's 401 Certification Special Conditions No. 14 and 16 (rain gauge and volume estimates). Third, EPA is proposing to keep the sample type conditions established in Part XI.B.5 of the general permit. Fourth, EPA is proposing to modify the permit to include the EQB and EPA Caribbean Field Office addresses. And fifth, EPA is proposing to modify the permit to correct Pollution Prevention Plans deadlines established in Part XI.B.3 of the general permit.

To facilitate the reader's understanding of today's action, EPA is providing the full texts of Special Condition No. 13 from EQB's original September 14, 1992 GWQC and from the revised November 10, 1992 GWQC. The September 14, 1992 Special Condition No. 13 is set forth below. This is incorporated as Part XI.B.5 of the general permit. (The reader is advised that Part XI of the September 25, 1992 general permit included State-specific requirements which revised certain portions of EPA's baseline general permit. For Puerto Rico, the Part XI.B requirements revised portions of Parts I, III, IV, V, VI and VII of EPA's baseline general permit.) The text of the September 14, 1992 Special Condition 13 which is found below has been annotated with references (italic) which

indicate the portions of EPA's baseline general permit which were revised by this provision:

13. *Monitoring and Reporting Requirements:*

For all storm water discharges associated with industrial activity covered by this GWQC, quarterly monitoring shall be performed. The parameters to be sampled are the following:

[Part VI.2 and 3 (Monitoring and Reporting Requirements)]

a. For the industries identified in the final GP applicable to Puerto Rico, the parameters established for each specific industry. *[Part VI.B.2]*

b. For all other industries covered by the final GP, but not specifically identified in the final GP applicable to Puerto Rico the parameters are: oil and grease (mg/l); pH; biochemical oxygen demand (mg/l); chemical oxygen demand (mg/l); total suspended solids (mg/l); total phosphorus (mg/l); total Kjeldahl nitrogen (mg/l); nitrate plus nitrite as nitrogen (mg/l); and any pollutant limited in an effluent limitation guideline to which the process wastewater stream at the facility is subject to. *[Part VI.B.3]*

Monitoring results obtained during the previous three months must be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the month following the completed reporting period. The reports are due the 28th day of January, April, July and October. The first report may cover less than three months. *[Part VI.D]*

Facilities subject to monitoring requirements should sample the discharge during normal business hours. In the event that the discharge commences during normal business hours, the permittee shall attempt to meet the sampling requirements specified in this permit even if this requires sampling after normal business hours. *[Part VI.B.4 (Sample Type)]*

A minimum of forty-eight (48) hours without measurable precipitation (greater than 0.1 inch rainfall) shall precede the storm event/runoff that is sampled. *[Note—not incorporated in Part VI.B.4 since 48 hours is less stringent than 72 hours]*

The permittee must document the conditions under which the storm water samples were taken, how many manual grab samples were taken for the composite sample, and the date of sampling, and must attach this documentation to the sampling results. *[Part VI.B.4 (Sample Type)]*

The permittee should attempt to meet the above protocol and collect samples beginning on the first day of the reporting period in order to ensure compliance with the specified sampling protocol and requirements. *[Part VI.B.4 (Sample Type)]*

The following is the revised GWQC Special Condition No. 13 from EQB's November 10, 1992 GWQC:

13. The following terms and conditions should be complied for all Storm Water discharges associated with industrial activities covered by this GWQC:

a. EQB retains the authority to request from facilities covered by this GWQC copy of the Storm Water Pollution Prevention Plan (the Plan) certified by a professional, as requested by Special Condition No. 7, when deemed necessary.

b. If EQB request copy of said Plan, it will be reviewed. In this case EQB may notify the owner of the Plan if it complies or not with one or more of the permit conditions. After receiving a notification from EQB requiring modifications to the Plan, the petitioner will have a maximum of sixty (60) days to make the necessary changes and submit a written certification stating that the changes were realized.

c. EQB reserves the right to inspect the implementation of the Plans, on a case-by-case basis.

d. For those industries specifically identified in the final GP applicable to Puerto Rico, for which there are particular monitoring requirements established in the final GP, compliance with the final GP conditions will be required.

e. For all other industries not specifically identified in the final GP applicable to Puerto Rico, but subject to the permit requirements, EQB may require monitoring of all those substances deemed necessary after a case-by-case determination.

This revised Special Condition No. 13 replaced the Special Condition No. 13 in EQB's September 14, 1992 GWQC. In order to eliminate the September 14, 1992 GWQC Special Condition No. 13 from the general permit, EPA proposes to revise part XI.B.5 of the general permit (see September 25, 1992 **Federal Register** (57 FR 44460)) and is proposing new language that will incorporate the revised GWQC Special Condition No. 13.

EQB's Special Conditions No. 14 and 16 were not changed by the revised GWQC. However, EPA is proposing to revise part XI.B.5 of the general permit which incorporates these two Special Conditions. These changes are necessary to retain the requirements in part XI.B.5. which refer to parts VI.B.2 and 3 (volume estimates) and part VI.B.1 (rain gauge) of the general permit.

B. Proposed Changes Related to the Revised GWQC

In order to implement the new Special Conditions No. 13.a and b, EPA proposes to incorporate the conditions in current Part XI.B.3 of the general permit. This proposed change to Part XI.B.3 would revise Parts IV.B.2 and 3 of the general permit by adding (italic) the special condition. Parts IV.B.2 and 3 will read as follows:

2. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system. *In addition, EQB has the authority to request from facilities covered by this permit a copy of the Plan certified by a professional, as requested in Part IV, when deemed necessary.*

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Within 30 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made. *In addition, EQB may request a copy of the Plan and may review it. EQB may notify the owner of the Plan that it complies or does not comply with one or more of the permit conditions. After receiving a notification from EQB requiring modifications to the Plan, the permittee will have a maximum of sixty (60) days to make the necessary changes and submit a written certification to EQB and the Regional Office stating that the changes were realized.*

In order to implement Special Condition No. 13.c, EPA proposes to incorporate the condition in Part XI.B.7 in such that the general permit Part VII.Q would be revised to add (underline) a new paragraph (number 4), to delete the word "and" at the end of paragraph 2 and to include the word "and" at the end of paragraph 3. Part VII.Q will read as follows:

Q. *Inspection and Entry.* The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment); and

4. EQB reserves the right to inspect the implementation of the Pollution Prevention Plans (see Part IV), on a case by case basis.

In order to implement Special Condition No. 13.d and e, EPA proposes that the current Part XI.B.5 of the general permit be re-written and that new language be added to revise Part VI.B.1.b of the general permit. The first italic sentence below incorporates Special Condition No. 13.e. However, EPA has added a clarifying statement (second sentence—italic) to ensure that the permit assigns EPA the appropriate authority to implement permit requirements. This section of the permit will read as follows:

b. The Director can provide written notice to any facility otherwise exempt from the sampling requirements of Parts VI.B.2 (semi-annual monitoring requirements) or VI.B.3 (annual monitoring requirements), that it shall conduct the annual discharge sampling required by Part VI.B.3.d (additional facilities), or specify an alternative monitoring frequency or specify additional parameters to be analyzed. For all other industries not specifically identified in the final GP applicable to Puerto Rico, but subject to the permit requirements, EQB may require monitoring of all those substances deemed necessary after a case by case determination. However, any EQB action to establish such monitoring requirements shall not become effective unless and until EPA Region II provides written notice to the facility in accordance with this paragraph.

In addition, in order to maintain the requirements of the Special Condition No. 14 (volume estimates) which are included in the current Part XI.B.5 of the general permit, EPA is proposing new language for Part XI.B.5 to revise Part VI.B.2 and VI.B.3 (italic) of the general permit. These sections of the permit will read as follows:

2. *Semi-Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.2.a through f must monitor those storm water discharges identified below at least semi-annually (2 times per year) except as provided in VI.B.5 (sampling waiver), VI.B.6 (representative discharge), and VI.C.1 (toxicity testing). Permittees with facilities identified in Parts VI.B.2.a through f (below) must report in accordance with Part VI.D (reporting: where to submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event. *For permittees identified in Part VI.B.2.a through f, an estimate of the total volume (in gallons) of the discharge sampled shall be provided. For permittees identified in Part VI.B.2.b, d, e and f, an estimate of the size of the drainage area [in square feet] and an estimate of the runoff coefficient of the drainage area [e.g. low (under 40%), medium (40% to 65%) or high (above 65)] shall also be provided;*

3. *Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.3.a through d. (below) must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.B.5 (sampling waiver), and VI.B.6 (representative discharge). Permittees with facilities identified in Parts VI.B.3.a through d. (below) are not required to submit monitoring results, unless required in writing by the Director. However, such permittees must retain monitoring results in accordance with Part VI.E (retention of records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; an estimate of the total volume (in gallons) of the discharge sampled; *and an estimate of the size of the drainage area [in square feet] and an estimate of the runoff coefficient of the drainage area [e.g. low (under 40%), medium (40% to 65%) or high (above 65)];*

EPA is proposing to re-locate the Special Condition No. 16 (rain gauge) included in the current Part XI.B.5 of the general permit. Part VI.B.9 is being created to maintain the condition and to avoid confusion. This proposed re-location may be found in the new proposed Part XI.B.5. Comments are only solicited for the relocation and not for the requirements of the rain gauge special condition. This section of the permit will read as follows:

9. *Rain Gauge:*

a. All permittees with storm water discharges associated with industrial activity that have begun on or before October 1, 1992, should install a rain gauge by November 1, 1992.

b. For permittees where industrial activity has begun after October 1, 1992, the rain gauge must be installed on or before the date of submission of the NOI.

c. The permittee must keep daily records of the rain, indicating the date and amount of rainfall (inches in 24 hours). A copy of these records shall be submitted to EQB with copies to the Regional Office and EPA Caribbean Field Office, in accordance with Part VI.D of this permit. The reports are due the 28th day of January, April, July and October. The first report may cover less than three months and shall be attached to the Discharge Monitoring Reports (DMRs) when appropriate.

C. EPA's Proposals Not Related To The Revised GWQC

1. EQB and EPA Caribbean Field Office Addresses

EPA proposes to revise Parts IV and VI.D of the general permit to incorporate the EQB and EPA Caribbean Field Office addresses. (Underline means language addition.) This proposed revision may be found in the new proposed Part XI.B.5. This section of the permit will read as follows:

D. *Reporting: Where to Submit.*

1.d. Signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications, reports of daily records of rain and all other reports required herein, shall be submitted to the Regional Office, *EQB and EPA Caribbean Field Office* at the following addresses:

United States EPA, Region II, Water Management Division, (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278.

Water Quality Area, P.R. Environmental Quality Board, P.O. Box 11488, Santurce, Puerto Rico 00910.

EPA Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernández Juncos Avenue, Santurce, Puerto Rico 00907.

2. Sampling Protocol

As explained elsewhere in this notice, the revised Special Condition No. 13 replaced the Special Condition No. 13 in EQB's September 14, 1992 GWQC. Among others, the following conditions from the September 14, 1992 GWQC were deleted from the revised GWQC Special Condition No. 13:

Facilities subject to monitoring requirements should sample the discharge during normal business hours. In the event that the discharge commences during normal business hours, the permittee shall attempt to meet the sampling requirements specified in this permit even if this requires sampling after normal business hours.

A minimum of forty eight (48) hours without measurable precipitation (greater than 0.1 inch rainfall) shall precede the storm event/runoff that is sampled.

The permittee must document the conditions under which the storm water samples were taken, how many manual grab samples were taken for the composite sample, and the date of sampling, and must attach this documentation to the sampling results.

The permittee should attempt to meet the above protocol and collect samples beginning on the first day of the reporting period in order to ensure compliance with the specified sampling protocol and requirements.

EPA incorporated the above conditions into the general permit at Part XI.B.5, which revised Part VI.B.4 of the general permit. The following is the sample type conditions (Part VI.B.4, italic) as established in the general permit (see 57 FR 44461):

4. *Sample Type. Facilities should sample the discharge during normal business hours. In the event that the discharge commences during normal business hours, the permittee shall attempt to meet the sampling requirements specified in this permit even if this requires sampling after normal business hours.* For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that

occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Grab samples only must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, fecal coliform, and oil and grease. *The permittee must document the conditions under which the storm water samples were taken, how many manual grab samples were taken for the composite sample, and the date of sampling, and must attach this documentation to the sampling results. The permittee should attempt to meet the above protocol and collect samples beginning on the first day of the reporting period in order to ensure compliance with the specified sampling protocol and requirements.*

EPA proposes to retain the above sample type condition, but to change the timetable to collect the storm water sample from the storm water event that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event to 48 hours. Other than this one change, retaining the conditions as shown above is necessary to clarify the storm water sampling protocol. This proposed action is based on Best Professional Judgement (BPJ) using the "Region II Revised Guidance for Cooling Water and Storm Water Runoff". In addition, by retaining some specific language from EQB's September 14, 1992 Special Condition No. 13, EPA has considered existent weather conditions (dry and wet areas) in Puerto Rico, and many telephone conversations of EPA's staff with the regulated community regarding weather conditions and the difficulty of collecting samples due to the 72 hours condition.

3. Pollution Prevention Plan Certifications

EQB's GWQC and revised GWQC Special Condition No. 9 require facilities that commence industrial activity after October 1, 1992, to develop and implement the Pollution Prevention Plan in accordance with the general permit requirements within thirty (30) days after the Notice of Intent (NOI) submittal.

The Special Condition No. 9 is more stringent than the baseline general permit requirement when it is applied to facilities that commence industrial activity after October 1, 1992 but on or before December 31, 1992. Therefore, EPA is proposing to revise Part IV.A.2.a to establish that the Pollution Prevention Plan shall be developed and implemented within thirty (30) days of NOI submittal. (The reader is advised that EPA's baseline general permit requires facilities that commence industrial activity after October 1, 1992 but on or before December 31, 1992 to provide for compliance with the terms of the Pollution Prevention Plan and the permit on or before the date sixty (60) calendar days after commencement of industrial activity.) In addition, as established in EQB's Special Condition No. 9, facilities are required to certify within thirty (30) days of NOI submittal that the Pollution Prevention Plan was developed and implemented in accordance with the permit.

The Special Condition No. 9 is less stringent than the baseline general permit requirement when it is applied to facilities that commence industrial activity after January 1, 1993. Therefore, EPA is proposing to revise Part IV.A.2.b to establish that the Pollution Prevention Plan shall be developed and implemented and shall provide for compliance on or before NOI submittal for facilities which commence industrial activity after January 1, 1993. In addition, as established in EQB's Special Condition No. 9, facilities are required to certify within thirty (30) days of NOI submittal that the Pollution Prevention Plan was developed and implemented in accordance with the permit. Part XI.B.3 revises Parts IV.A.2.a and b to read as follows:

2. a. The plan for any facility where industrial activity commences after October 1, 1992, but on or before December 31, 1992 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before thirty (30) days after NOI submittal (and updated as appropriate);

i. Within thirty (30) days of NOI submittal, the permittee shall submit to EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating that the Plan has been *developed and implemented* in accordance with the conditions and requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VII.G of this permit.

b. The plan for any facility where industrial activity commences on or after January 1, 1993 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit, on or before the date of submission of a NOI to be covered under this permit (and updated as appropriate);

i. Within thirty (30) days of NOI submittal, the permittee shall submit to EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating that the Plan has been *developed and implemented* in accordance with the conditions and requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VII.G of this permit.

Finally, in order to implement the above proposed changes, EPA is proposing to re-write the language included in Part XI.B.3 of the general permit. In Part XI.B.3, EPA revised Parts IV.A.1, IV.A.2, IV.A.3, and Part IV.C. of the general permit. EPA is only soliciting comments on proposed revisions to Parts IV.A.2 and IV.A.3. (The reader is advised that EPA solicited already comments on Parts IV.B.2 and 3 of the general permit elsewhere in today's notice.)

V. Economic Impact (Executive Order 12291)

Although the Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of the Order. All proposed general permit modifications will lower the burden on the Federal Government, Commonwealth of Puerto Rico Government and the regulated community by reducing the frequency of sampling and reporting.

VI. Paperwork Reduction Act

EPA Region II has reviewed the proposed requirements on regulated facilities in this general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The Region did not prepare an Information Collection Request (ICR) document for today's proposed general permit modifications because the information collection requirements in this general permit has been already approved by the Office of Management and Budget in submission made for the NPDES permit program under the provisions of the Clean Water Act.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA Region II is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's proposed modifications to the general permit will make the general permit more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these permit modifications, when issued, will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: March 31, 1993.

William J. Muszynski,

Acting Regional Administrator.

Appendix A—Proposed General Permit Modifications

[NPDES Permit Number PRR000000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges "associated with industrial activity", located in the Commonwealth of Puerto Rico are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit modification shall become effective on Effective Date of Permit Modification (EDPM).

This permit and the authorization to discharge shall expire at midnight, September 25, 1997.

Signed and Issued this ___day of _____, 1993.

_____

Richard L. Caspe, P.E.
Director
Water Management Division
U.S. Environmental Protection Agency
Region II

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located in the Commonwealth of Puerto Rico.

Part XI. State Specific Conditions

* * * * *

B. Puerto Rico. Puerto Rico 401 Certification special permit conditions revise the permit as follows:

* * * * *

3. Part IV. Storm Water Pollution Prevention Plans

* * * * *

A. Deadlines for Plan Preparation and Compliance

1. Except as provided in paragraphs IV.A.3 (oil and gas operations), 4 (facilities denied or rejected from participation in a group application), 5 (special requirements) and 6 (later dates) the plan for a storm water discharge associated with industrial activity that is existing on or before October 1, 1992:

a. Shall be prepared on or before April 1, 1993 (and updated as appropriate);

i. No later than April 1, 1993, the permittee shall submit to the EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating that the Plan was *developed* in accordance with the requirements established in this permit. All certifications, except those prepared by a professional engineer licensed in Puerto Rico, shall be submitted with a sworn statement attesting to the professional qualifications of the individual who developed the Plan.

b. Shall provide for implementation and compliance with the terms of the plan on or before October 1, 1993;

i. No later than October 1, 1993, the permittee shall submit to EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating that the Plan was *implemented* in accordance with the conditions and requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with part VII.G of this permit.

2. a. The plan for any facility where industrial activity commences after October 1, 1992, but on or before December 31, 1992 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before thirty (30) days after NOI submittal (and updated as appropriate);

i. Within thirty (30) days of NOI submittal, the permittee shall submit to EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating that the Plan has been *developed and implemented* in accordance with the conditions and requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VII.G of this permit.

b. The plan for any facility where industrial activity commences on or after January 1, 1993 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit, on or before the date of submission of a NOI to be covered under this permit (and updated as appropriate);

i. Within thirty (30) days of NOI submittal, the permittee shall submit to EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating that the Plan has been *developed and implemented* in accordance with the conditions and requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VII.G of this permit.

3. The plan for storm water discharges associated with industrial activity from an oil and gas exploration, production, processing, or treatment operation or transmission facility that is not required to submit a permit application on or before October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but after October 1, 1992 has a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, shall be prepared and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date thirty (30) calendar days after the first knowledge of such release (and updated as appropriate);

a. Within thirty (30) days of the first knowledge of such release, the permittee shall submit to EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating that the Plan has been *developed and implemented* in accordance with the conditions and requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VII.G of this permit.

* * * * *

B. Signature and Plan Review

* * * * *

2. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system. In addition, EQB has the authority to request from facilities covered by this permit, a copy of the Plan certified by a professional, as requested in Part IV., when deemed necessary.

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Within 30 days of such notification from the Director (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made. In addition, EQB may request a copy of the Plan and may review it. EQB may notify the owner of the Plan that it complies or does not comply with one or more of the permit conditions. After receiving a notification from EQB requiring modifications to the Plan, the permittee will have a maximum of sixty (60) days to make the necessary changes and submit a written certification to EQB, the Regional Office and EPA Caribbean Field Office stating that the changes were realized.

* * * * *

C. Keeping Plans Current

1. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water

discharges associated with industrial activity. Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B (above).

2. In addition to Part IV.C.1 (above), the Plan should be reviewed at least once every three (3) years to determine the need to update the Plan:

a. If no event occurs which requires the modification of the Plan, the engineer or qualified professional who performs the corresponding review must submit to EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating the Plan has been reviewed and based upon such review no modification of the Plan has been necessary, or;

b. If events have occurred which require the modification of the Plan, the engineer or qualified professional who performs the corresponding revision must submit to EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating the modifications performed to the Plan. As soon as the modifications performed to the Plan are implemented, the person who fulfills the signatory requirements in accordance with Part VII.G of this permit, shall submit to EQB with copies to the Regional Office and EPA Caribbean Field Office, a certification stating that the modifications of the Plan have been implemented.

c. All certifications, except those prepared by a professional engineer licensed in Puerto Rico, shall be submitted with a sworn statement attesting to the professional qualifications of the individual who developed the Plan.

* * * * *

5. Part VI. Monitoring and Reporting Requirements

* * * * *

B. Monitoring Requirements.

1. *Limitations on Monitoring Requirements.*

* * * * *

b. The Director can provide written notice to any facility otherwise exempt from the sampling requirements of Parts VI.B.2 (semi-annual monitoring requirements) or VI.B.3 (annual monitoring requirements), that it shall conduct the annual discharge sampling required by Part VI.B.3.d (additional facilities), or specify an alternative monitoring frequency or specify additional parameters to be analyzed. For all other industries not specifically identified in the final GP applicable to Puerto Rico, but subject to the permit requirements, EQB may require monitoring of all those substances deemed necessary after a case by case determination. However, any EQB action to establish such monitoring requirements shall not become effective unless and until EPA Region II provides written notice to the facility in accordance with this paragraph.

* * * * *

2. *Semi-Annuol Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.2.a through f must monitor those storm water discharges identified below at least semi-annually (2 times per year) except as provided in VI.B.5 (sampling waiver), VI.B.6 (representative discharge), and VI.C.1 (toxicity testing). Permittees with facilities identified in Parts VI.B.2.a through f (below) must report in accordance with Part VI.D (reporting: where to submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event. For permittees identified in Part VI.B.2.a through f, an estimate of the total volume (in gallons) of the discharge sampled shall be provided. For permittees identified in Part VI.B.2.b, d, e and f, an estimate of the size of the drainage area [in square feet] and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40%), medium (40% to 65%) or high (above 65)] shall also be provided;

* * * * *

3. *Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.3.a through d. (below) must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.B.5 (sampling waiver), and VI.B.6 (representative discharge). Permittees with facilities identified in Parts VI.B.3.a through d. (below) are not required to submit monitoring results, unless required in writing by the Director. However, such permittees must retain monitoring results in accordance with Part VI.E (retention of records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40%), medium (40% to 65%) or high (above 65)];

* * * * *

4. *Sample Type.* Facilities should sample the discharge during normal business hours. In the event that the discharge commences during normal business hours, the permittee shall attempt to meet the sampling requirements specified in this permit even if this requires sampling after normal business hours. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected), a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 48 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Grab samples only must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, fecal coliform, and oil and grease. The permittee must document the conditions under which the storm water samples were taken, how many manual grab samples were taken for the composite sample, and the date of sampling, and must attach this documentation to the sampling results. The permittee should attempt to meet the above protocol and collect samples beginning on the first day of the reporting period in order to ensure compliance with the specified sampling protocol and requirements.

* * * * *

9. Rain Gauge

a. All permittees with storm water discharges associated with industrial activity that have begun on or before October 1, 1992, should install a rain gauge by November 1, 1992.

b. For permittees where industrial activity has begun after October 1, 1992, the rain gauge must be installed on or before the date of submission of the NOI.

c. The permittee must keep daily records of the rain, indicating the date and amount of rainfall (inches in 24 hours). A copy of these records shall be submitted to EQB with copies to the Regional Office and EPA Caribbean Field Office, in accordance with Part VI.D of this permit. The reports are due the 28th day of January, April, July and October. The first report may cover less than three months and shall be attached to the Discharge Monitoring Reports (DMRs) when appropriate.

D. Reporting: Where to Submit

1.

* * * * *

d. Signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications, reports of daily records of rain and all other reports required herein, shall be submitted to the Regional Office, EQB and EPA Caribbean Field Office at the following addresses:

United States EPA, Region II, Water Management Division (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278.

Water Quality Area, P.R. Environmental Quality Board, P.O. Box 11488, Santurce, Puerto Rico 00910.

EPA Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernández Juncos Avenue, Santurce, Puerto Rico 00907.

* * * * *

7. Part VII. Standards Permit Conditions

* * * * *

Q. *Inspection and Entry.* The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment); and

4. EQB reserves the right to inspect the implementation of the Pollution Prevention Plans (see Part IV), on a case by case basis.

* * * * *

[FR Doc. 93-8468 Filed 4-13-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 7, 1993.

The Federal Communications Commission has submitted the following information collection requirement of 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) 632-7513. 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: 3060-0061.

Title: Annual Report of Cable Television Systems, Schedule A.

Form Number: FCC Form 325.

Action: Extension of a currently approved collection.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Annual reporting.

Estimated Annual Burden: 14,000 responses; 2 hours average burden per response; 28,000 hours total annual burden.

Needs and Uses

FCC Form 325 Schedule A is a pre-printed form with the most current information of a cable television system on file with the Commission. The operator of every operational cable television system shall verify, correct and/or furnish the FCC with the most current information on their cable systems. FCC Form 325 Schedule A will collect ownership, community unit, statistical information, technical and services information on a physical system basis. The data is used by FCC staff to update our computer databases concerning cable systems. The data is then used by both the FCC and the public in various reports and information concerning cable systems.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-8633 Filed 4-13-93; 8:45 am]

BILLING CODE 6712-01-M

Application Designated for Hearing

1. The Chief, Mass Media Bureau, has before him the following application for a construction permit to change community of license:

Applicant, City and state	File No.	MM docket No.
A. Americom, a California limited partnership; Truckee, CA.	BMP-871007AI	93-102

(Seeking a major change for Station KHTZ(AM))

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon whose issues are set forth below:

1. To determine whether a transmitter site is available to the applicant which would allow the applicant to serve its present community of license.
2. To determine whether, pursuant to section 307(b) of Communications Act of 1934, as amended, a grant of the application would provide a fair, efficient, and equitable distribution of radio service.
3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202-857-3800).

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-8625 Filed 4-13-93; 8:45 am]

BILLING CODE 6712-01-M

Application for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM Station:

Applicant, City and state	File no.	MM docket
	I	
A. Raymond W. Clanton; El Rio, California.	BPH-911216MC	93-87
B. Loren F. Selznick; El Rio, California.	BPH-911216MD	
Issue Heading and Applicants 1. Comparative, A,B 2. Ultimate, A,B		
	II	
A. Adam D. Gearheart; Harold, KY.	BPH-920102MC	93-96
B. Robert G. Picklesimer; Harold, KY.	BPH-920109MB	
Issue Heading and Applicants 1. Comparative, A, B 2. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986.

The letter shown before each applicant's name, above, is used above to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–8624 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

Applications; Hilding, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/ state	File No.	MM docket No.
	I	
A. Eric R. Hilding; Windsor CA.	BPH–911115MR	93–85
B. Judy Yep Hughes; Windsor, CA.	BPH–911115MT	
Issue Heading and Applicants 1. Comparative, A & B 2. Ultimate, A & B		
	II	
A. Aurio A. Matos; Culebra, Puerto Rico.	BPH–911114MS	93–89
B. Lloyd Santiago-Santos and Lourdes Rodrigues Bonet; Culebra, Puerto Rico.	BPH–911115MP	
Issue Heading and Applicants 1. Comparative, A, B 2. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 Telephone 202 857–3800.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–8626 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new noncommercial educational FM station:

Applicant, city and state	File No.	MM docket No.
A. Rural Initiatives for Shelter and Education; Hartford, MI.	BPED–870817MC	93–44
B. American Indian Broadcast Group, Inc.; Hartford, MI.	BPED–870820MB	
Issue Heading and Applicants 1. Environmental, A,B 2. Air Hazard, A,B 3. Comparative, A,B 4. Ultimate, A,B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–8627 Filed 4–13–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of San Francisco/Blue Star Line et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200126–002.

Title: Port of San Francisco/Blue Star Line/Columbus Lines Terminal Revenue Sharing Agreement.

Parties:

San Francisco Port Commission,
Blue Star Line,
Columbus Lines, Inc.

Synopsis: The amendment extends the term of the Agreement among the parties upon the existing terms and conditions through June 30, 1 993.

Dated: April 8, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–8647 Filed 4–13–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Carnival Cruise Lines, Inc., 3655 NW. 87th Avenue, Miami, Florida 33178–2428. Vessel: Fiestamarina.

Dated: April 8, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–8656 Filed 4–13–93; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 93–08]

New York Export Co., Inc. v. Puerto Rico Maritime Shipping Authority, Filing of Complaint and Assignment

(Served April 8, 1993.)

Notice is given that a complaint filed by New York Export Co., Inc. ("Complainant") against Puerto Rico Maritime Shipping Authority ("Respondent") was served April 8, 1993. Complainant alleges that Respondent has violated sections 14 Fourth, 16 First, 17 and 18(a) of the Shipping Act, 1916, 46 U.S.C. app. 812, 815, 816 and 817, and sections 2, 4 and 5 of the Intercoastal Shipping Act of 1933, 46 U.S.C. app. 844, 845a, and 845b, by engaging in the assessment and collection of unfiled rates and charges, by enforcement of unlawful tariff provisions, by unlawfully publishing and collecting "Time Volume Rates" and "Proportional Rates," by unlawfully preferring certain shippers, by failing to disclose shipping alternatives to complainant, by proffering of unlawful Time Volume Rate agreements, and by failing to provide necessary equipment to complainant.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by April 8, 1994, and the final decision of the Commission shall be issued by October 10, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 93–8658 Filed 4–13–93; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 93–09]

Sun Lee, Inc. v. Asia North America Eastbound Rate Agreement; Filing of Complaint and Assignment

April 8, 1993.

Notice is given that a complaint filed by Sun Lee, Inc. ("Complainant") against Asia North America Eastbound Rate Agreement ("Respondent") was served April 8, 1993. Complainant alleges that Respondent engaged in violations of sections 8(a), 8(c), 10(b)(1) and 10(b)(3) of the Shipping Act of 1984, 46 U.S.C. app. 1707 (a) and (c) and 1709 (b)(1) and (b)(3) by attempting to collect deadfreight under an unlawful service contract.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by April 8, 1994, and the final decision of the Commission shall be issued by October 10, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 93–8657 Filed 4–13–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[File No. 912 3063]

DeMert & Dougherty, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Illinois-based corporation, that sells consumer hair-care products, from making unsubstantiated environmental benefit representations about any product it markets, whether under its own name or a private label, in the future.

DATES: Comments must be received on or before June 14, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or John Hallerud, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of DeMert &

Dougherty, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between DeMert & Dougherty, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent DeMert & Dougherty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at Five Westbrook Corporate Center, Suite 900, Westchester, Illinois 60154.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

1. The term "Volatile Organic Compound" ("VOC") means any compound of carbon which participates in atmospheric photochemical reactions as defined by the U.S. Environmental Protection Agency at 40 CFR 51.100 (s), and as subsequently amended. When the final rule was promulgated, 57 FR 3941 (February 3, 1992), the EPA definition excluded carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate and certain listed compounds that the EPA has determined are of negligible photochemical reactivity.

2. The term "product" means any product that is offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the "All Set" brand name or any other brand name of respondent, its successors and assigns; and also means any product sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

3. The term "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the professional to yield accurate and reliable results.

I.

It is Ordered That respondent DeMert & Dougherty, Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product containing any volatile organic compound, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, through the use of such terms as "environmentally safe," or any other term or expression, that any such product will not harm the atmosphere or the environment, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is Ordered That respondent DeMert & Dougherty, Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product offers any environmental benefit, unless at the time making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered That nothing in this Order shall prohibit respondent from using any of the terms cited in Part I, or similar terms or expressions, or from making representations cited in Part II, if necessary to comply with any

federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV

It is further ordered That nothing in this Order shall prohibit respondent from depleting its inventory of products bearing labeling otherwise prohibited by this Order and existing on the date that this Order is signed, in the normal course of business, including converting existing inventory to finished goods, provided that no such existing inventory is shipped later than 120 days after the date that this Order becomes final; *Provided, however,* that nothing in this paragraph shall prohibit respondent from shipping existing inventory of products bearing labeling claims otherwise prohibited by this Order, so long as stickers are placed over such claims or the prohibited claims are obscured in some other way; *Provided further* That nothing in this paragraph shall create any obligation on behalf of respondent to remove or to obscure labeling claims from products shipped in conformity with this paragraph that are no longer in the possession, custody, or control of respondent.

V.

It is further ordered That for five years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon in disseminating such representation; and

2. All tests, reports, studies, surveys, or other materials in respondent's possession or control that contradict, qualify, or call into question any such representation or the basis relied upon for such representation, including complaints from consumers.

VI.

It is further ordered That respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

VII.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VIII.

It is further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from DeMert & Dougherty, Inc., an Illinois corporation, ("DeMert" or "respondent"). Under this agreement, the respondent will cease and desist from claiming that its All Set hair spray, other aerosol hair sprays, and other products containing volatile organic compounds are "environmentally safe" unless it possesses competent and reliable scientific evidence in support of the claim. The respondent also agrees to cease and desist from claiming that any product offers any environmental benefit unless it possesses competent and reliable scientific evidence that substantiates the claim.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the proposed order contained in the agreement.

This matter concerns claims made for DeMert & Dougherty's hair spray products. The Complaint accompanying the proposed Consent alleges, in part, that the respondent engaged in deceptive acts and practices in violation of section 5 of the Federal Trade Commission Act. According to the Complaint, DeMert represented both that its hair spray products do not contain any ingredients that harm or damage the environment and that it had a reasonable basis for this claim. DeMert's hair spray products contain the VOC's propane, butane, isobutane and alcohol, chemicals that under many atmospheric conditions contribute to the formation of ground level ozone, a major component of smog. The Complaint therefore alleges that DeMert lacked a reasonable basis for claiming that the products were environmentally safe.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

The proposed consent defines two terms that are central to the coverage of the Consent order. First, the term "product" is defined to encompass All Set hair spray and other goods sold by DeMert both under its own name and under private label agreements.

Second, the term "volatile organic compound" or "VOC" is given the meaning that the United States Environmental Protection Agency ("EPA") has given the term in a February 3, 1992, rulemaking. To assist the public and the industry in understanding the breadth of the order, those compounds that the EPA expressly excluded from the definition of VOC at the time the definition was promulgated are listed in the Consent. The term VOC used in the Order will vary depending upon EPA's use of the term. Those compounds that the EPA decides should be excluded from the definition of VOC, because of negligible reactivity, will be excluded under the Consent Order. Likewise any compounds that the EPA decides should be included will be encompassed by the term as used in the Order.

Paragraph I of the proposed Consent requires DeMert & Dougherty to cease representing that any product, as defined in the consent, containing a VOC is environmentally safe or will not harm the atmosphere or the environment unless DeMert possesses and relies upon competent and reliable scientific evidence in support of the claim.

Paragraph II of the proposed Order provides that if the respondent represents that its products offer any environmental benefit, it must have competent and reliable scientific evidence to support the representation. The Commission is also issuing proposed consent orders with Mr. Coffee, Inc., BPI Environmental, Inc., and North American Plastics Corporation settling charges regarding environmental claims made by those companies. The orders in those cases contain certain differences with respect to requirements for environmental benefit claims, which are discussed in the analyses to aid public comment for those cases.

Paragraph III expressly allows DeMert to use terms and make representations

necessary to comply with applicable federal law.

Paragraph IV provides three limitations related to the company's existing inventory. The first is a "run-out" provision that allows DeMert to deplete its existing inventory of products, including products with prohibited label claims, over a period of one hundred twenty days after the date the Order is signed. Second, Paragraph IV specifically permits DeMert to place stickers over the prohibited labeling claims or to obscure the claims in some other way. Finally, the paragraph protects DeMert from liability for labeling claims on products over which it no longer has control.

The remainder of the Order contains provisions regarding compliance, record-keeping, and distribution of the Order to various entities.

Paragraph V requires the respondents to maintain and make available to the FTC, for five years, all evidence that the respondents possess that substantiates or contradicts the representations encompassed by the Order.

Under Paragraph VI, the respondents must distribute copies of the Order to certain of its officers, agents, representatives and certain employees.

Paragraph VII requires that the respondent notify the FTC of changes in its corporate structure at least thirty days prior to such changes.

Finally, Paragraph VIII of the Order requires the respondents to file compliance reports with the FTC.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Deborah K. Owen Concurring in Part and Dissenting in Part in the Matters of *BPI Environmental, Inc.*, File No. 902–3225 and *Demert & Dougherty, Inc.*, File No. 912–3063 March 30, 1993.

Today, the Commission issues for public comment four consent agreements in cases involving environmental claims, which highlight a disturbing trend toward baffling inconsistencies among Commission orders affecting similarly situated respondents. The consent order against *BPI Environmental, Inc.* contains a provision prohibiting any environmental benefit claim for the covered products, unless the specific nature of the benefit is either disclosed or is clear from the context, and unless the respondent can substantiate the claim with competent and reliable scientific evidence. By contrast, three of the orders issued today—*Demert & Dougherty, Inc., Mr. Coffee, Inc.*, File No. 912–3036, and *North American Plastics, Corp.*, File No. 902–3184—like the order in *Archer Daniels Midland Company*, File No. 902–3283, issued for comment earlier, do not contain this so-called "specificity" requirement. In my view, no factors distinguish the *BPI* matter to warrant this inconsistent treatment. Thus, I dissent from the inclusion of the specificity requirement in the proposed *BPI* order.

As noted, the *BPI* order also imposes a scientific evidence standard for *any* environmental benefit claim, a standard repeated in the *Demert* order. Yet, it is possible that certain environmental claims may be substantiated with competent and reliable evidence that is not necessarily "scientific." In fact, this is explicitly recognized in both *Mr. Coffee* and *North American Plastics*, in which the proposed orders require substantiation consisting of "competent and reliable evidence, which *when appropriate* must be competent and reliable scientific evidence" (emphasis added). In addition, the proposed order in *Archer Daniels Midland* did not require scientific evidence for the same broad category of claims. Again, I find no factors that justify this disparate treatment of similarly situated respondents. Therefore, I dissent with respect to those parts of the *BPI* and *Demert* proposed orders that mandate "scientific" evidence for a broad category of claims, which, by its breadth, includes claims that may not require scientific substantiation.

The Commission has one more chance to correct these unmerited inconsistencies. Although it is a procedure that I believe should have been unnecessary, the Commission could still consider any comments received on these points so that the respondents might be placed on an equal footing before the orders are issued in final.

[FR Doc. 93–8696 Filed 4–13–93; 8:45 am]
BILLING CODE 6750–01–M

[File No. 912 3036]

Mr. Coffee, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Ohio corporation that manufactures coffee makers, filters and other products, from making false or unsubstantiated environmental claims, regarding chlorine-free processing and the use of recycled and recyclable paper, for any paper product or package it markets in the future.

DATES: Comments must be received on or before June 14, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, 6th & PA. Ave., NW., Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Mr. Coffee, Inc., a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Mr. Coffee, Inc., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Mr. Coffee, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 24700 Miles Road, Bedford Heights, Ohio 44146.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission therafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

A. *It is ordered*, That respondent Mr. Coffee, Inc., a corporation, its successors and assignees, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any paper product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

(1) Chlorine is used in the manufacture of any such product or package;

(2) Harmful byproducts result from the manufacture of any such product or package;

(3) Any such product or package is made from recycled materials;

(4) (i) Any such product or package is capable of being recycled; or

(ii) The extent to which recycling collection programs for any such product or package are available.

B. *Provided*, However, respondent will not be in violation of Part I(A)(4)(ii) of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any non-corrugated paperboard or cardboard product or package, if it truthfully represents that any such product or package is recyclable, provided that the labeling of such product or package and any advertising referring to the recyclability of such product or package discloses clearly, prominently, and in close proximity to such representation:

(a) That such product or package is recyclable in the few communities with recycling collection programs for non-corrugated paperboard or cardboard; or

(b) The approximate number of U.S. communities with recycling collection programs for such product or package; or

(c) The approximate percentage of the U.S. population or of U.S. communities to which recycling collection programs for such product or package are available.

For purposes of this Order, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears.

II.

It is further ordered That respondent Mr. Coffee, Inc., a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product packaging or paper product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product packaging or paper product offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this Order, competent and reliable scientific evidence shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered That respondent may continue to deplete its existing inventory of "Mr. Coffee" filter product packaging in the normal course of business without violating this Order until August 31, 1993.

IV.

It is further ordered That for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon

request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in respondent's possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

It is further ordered That respondent shall distribute a copy of this Order to each of its officers and supervising employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

VI.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VII.

It is further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Mr. Coffee, Inc., a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns the labeling and advertising of Mr. Coffee's paper coffee filter product and its paperboard packaging. The Commission's complaint charges that respondent falsely represented that its coffee filters are manufactured without the use of chlorine to clean and whiten them, and that no environmentally harmful byproducts associated with traditional chlorine bleaching are released during its new manufacturing process. In fact, the complaint alleges, at the time the advertisements were disseminated, "Mr. Coffee" filters were bleached using a chlorine dioxide process with some elemental chlorine still present. Moreover, although the new process released fewer environmentally harmful byproducts than previously, they were not eliminated in the sludge byproduct of the manufacturing process. The complaint also charges that in another version of its product labeling, respondent represented without adequate substantiation that its new cleaning and whitening process "virtually eliminated" environmentally harmful byproducts; that is, reduced them to an insignificant level.

The complaint further charges that Mr. Coffee falsely represented that its paper coffee filters are made of recycled paper, and that the paperboard package containing the filters is recyclable. In fact, the complaint alleges that respondent's paper coffee filters are not made from recycled paper, and the paperboard package is not recyclable by the vast majority of consumers because there are only a few collection facilities nationwide that accept that type of paperboard package for recycling.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires that respondent cease and desist from misrepresenting, in any manner, directly or by implication, with respect to any paper product or package: the extent to which chlorine is used in its manufacture; the extent to which harmful byproducts result from the manufacture thereof; the extent to which it is made from recycled materials; and the extent to which it is capable of being recycled or to which recycling collection programs are available. Part I also contains a proviso that allows the respondent to advertise non-corrugated paperboard and cardboard products or packages as recyclable without violating Part I of the order. The respondent may do so if it truthfully represents that a non-corrugated paperboard or cardboard product or package is capable of being recycled, and if it discloses clearly, prominently and in close proximity to the claim either that the product or package is recyclable in the few communities with recycling collection programs for non-corrugated paperboard or cardboard; or states the approximate number of U.S. communities with recycling collection programs for such product or package; or states the approximate percentage of the U.S. population or U.S. communities to which recycling collection programs for such product or package are available.

Part II of the proposed order provides that if the respondent represents in advertising that its product packaging or paper products offer any environmental benefit, it must have competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, to support the representation. This language is different in two respects from the language in certain other Commission consent orders covering a broad range of environmental benefit claims. Those orders require the respondent to have competent and reliable scientific evidence that substantiates such claims, and in some cases, additionally require that the respondent state the specific nature of the claimed environmental benefit, if it is not clear from the context. The modifications in the language contained in the proposed order are intended to clarify the respondent's compliance obligations under the order.

The Commission's Guides for the Use of Environmental Marketing Claims ("Guides") state that environmental claims must always be substantiated by competent and reliable evidence, which will "often" require competent and reliable scientific evidence.[1] The language contained in Part II of the proposed order is consistent with that standard, by requiring that the respondent have competent and reliable scientific evidence "when appropriate." In addition, as the Guides state, an advertiser is required to substantiate every express and material, implied claim that its representations convey to reasonable consumers about an objective feature of the product. The Guides further note that general environmental benefit claims may convey a wide range of meanings to consumers.[2] Unless all such meanings can be substantiated, the Guides state that broad environmental claims should be avoided or qualified. Under this analysis, the Commission believes that

[1] Federal Trade Commission Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, 36,364, (Aug. 13, 1992) (to be codified at 16 CFR 260.5).

[2] *Id.* at 36,365 (to be codified at 16 CFR 260.7(a)).

the requirement that the respondent have substantiation for whatever representations its claims convey to consumers provides adequate guidance to the respondent of its obligations under the order.

Part III of the proposed order permits respondent to deplete its existing inventory of product packaging in the normal course of business without violating the order until August 31, 1993. The proposed order also requires respondent to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–8695 Filed 4–13–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902 3225]

BPI Environmental, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts-based corporation from making unsubstantiated degradability or other environmental benefit representations for its plastic grocery store bags or any plastic product it markets in the future.

DATES: Comments must be received on or before June 14, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Gary Cooper, Boston Regional Office, Federal Trade Commission, 10 Causeway St., room 1184, Boston, MA 02222–1073, (617) 565–7240.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of BPI Environmental, Inc., successor to Beresford Packaging, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of BPI Environmental, Inc., successor to Beresford Packaging, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between BPI Environmental, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent BPI Environmental, Inc. ("BPI") is a Delaware corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts 02780. Beresford Packaging, Inc. ("Beresford") was a Massachusetts corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts 02780. On or about August 2, 1990, Beresford was merged into BPI, at which time the separate corporate existence of Beresford ceased and BPI became the surviving corporation. BPI, as the successor in merger to Beresford, is the legal successor to Beresford and is responsible for the acts or practices of Beresford alleged in the attached draft complaint.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be

required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, the following definition shall apply:

"BPI Environmental plastic product" means any product or product packaging composed of plastic, in whole or in part, including but not limited to plastic grocery bags or sacks, plastic T-shirt bags or sacks, plastic produce bags or sacks, and plastic bakery bags or sacks, that is offered for sale, sold, or distributed by respondent, its successors and assigns, or that is distributed to the public by any other person, corporation or third party who has purchased said plastic product from respondent, its successors and assigns, under the "BIO–SAC" or "PHOTO–SAC" brand names or any other brand name of respondent, its successors and assigns; and also means any plastic product that is sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

I

It is ordered, That respondent BPI Environmental, Inc., a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any BPI Environmental plastic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by word or depiction, that:

(1) That any such plastic product is "degradable," "biodegradable," or "photodegradable"; or,

(2) Through the use of such terms as "degradable," "biodegradable," "photodegradable," or any other substantially similar term or expression, that the degradability of any such plastic product offers any environmental benefits when disposed of as trash in a sanitary landfill, or when incincerated.

unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

II

It is further ordered, That respondent BPI Environmental, Inc., a corporation, its successor and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any BPI Environmental plastic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by word or depiction, that any such product offers any environmental benefit, unless the specific nature of that benefit is clear from the context or is disclosed clearly, prominently and in close proximity thereto; and, at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results. For purposes of this provision, a disclosure elsewhere on the product or product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser or consumer when examining the principal display panel of the product or product package. The principal display panel of the product or product package is that part of the product or product package that faces the consumer when presented under normal and customary conditions of display for retail sale or distribution.

III

It is further ordered That, for a period of three (3) years from the date that any representation covered by this Order is last disseminated, respondent shall maintain and upon request make available to the Commission for inspection and copying:

A. All materials that were relied upon to substantiate such representation; and

B. All test reports, studies, surveys, demonstrations or other evidence in respondent's possession or control, that contradict, qualify, or call into question such representation or the basis relied upon for such representation.

IV

It is further ordered That respondent shall distribute a copy of this Order within sixty (60) days after service of this Order upon them to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling or the preparation or placement of advertisements or other such sales or promotional materials covered by this Order.

V

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent BPI Environmental, Inc., successor to Beresford Packaging, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the product labeling and advertising of BPI Environmental, Inc.'s BIO–SAC™ and PHOTO–SAC™ plastic grocery sacks. The Commission's complaint charges that the respondent's labeling and advertising for its BIO–SAC™ plastic grocery sacks contained unsubstantiated representations concerning the product's alleged biodegradability and the environmental benefits that could be obtained when the product is disposed of as trash. The complaint alleges that the respondent represented that its BIO–SAC™ plastic grocery sacks offer a significant environmental benefit when consumers dispose of them as trash, and that they will completely break down, decompose, and return to nature within 3 to 6 years when buried in landfills. The Commission's complaint also charges that the respondent's labeling and advertising for its PHOTO–SAC™ plastic grocery sacks contained unsubstantiated representations concerning the product's alleged degradability and the environmental benefits that could be obtained when the product is disposed of as trash. The complaint alleges that the respondent represented that its PHOTO–SAC™ plastic grocery sacks offer a significant environmental benefit when consumers dispose of them as trash, and that they will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondent to cease representing that any of its plastic products, or plastic products it manufactures and sells to third parties for further sale or distribution to the public, are "degradable," "biodegradable," or "photodegradable," or more specifically, through the use of such terms or similar terms, that such plastic products offer any environmental benefits compared to other products when disposed of as trash in a sanitary landfill, or incinerated, unless the respondent has a reasonable basis for such representations at the time they are made.

Part II of the proposed order provides that if the respondent represents in advertising that its products offer any environmental benefit, it must state the specific nature of that benefit, if it is not clear from the context, and it must have competent and reliable scientific evidence to support the representation. The Commission is also issuing proposed consent orders with Mr. Coffee, Inc., North American Plastics Corporation, and DeMert & Dougherty, Inc., settling charges regarding environmental claims made by those companies. The orders in those cases contain certain differences with respect to these requirements, which are discussed in the analyses to aid public comment for those cases.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of, Commissioner Deborah K. Owen, Concurring in Part and Dissenting in Part in the Matters of *BPI Environmental, Inc.*, File No. 902–3225 and *Demert & Dougherty, Inc.*, File No. 912–3063 March 30, 1993.

Today, the Commission issues for public comment four consent agreements in cases involving environmental claims, which highlight a disturbing trend toward baffling inconsistencies among Commission orders affecting similarly situated respondents. The consent order against BPI Environmental, Inc. contains a provision prohibiting any environmental benefit claim for the covered products, unless the specific nature of the benefit is either disclosed or is clear from the context, and unless the respondent can substantiate the claim with competent and reliable scientific evidence. By contrast, three of the orders issued today—Demert & Dougherty, Inc., Mr. Coffee, Inc., File No. 912–3036, and North American Plastics, Corp., File No. 902–3184—like the order in Archer Daniels Midland Company, File No. 902–3283, issued for comment earlier, do not contain this so-called "specificity" requirement. In my view, no factors distinguish the BPI matter to warrant this inconsistent treatment. Thus, I dissent from the inclusion of the specificity requirement in the proposed BPI order.

As noted, the BPI order also imposes a scientific evidence standard for any environmental benefit claim, a standard repeated in the Demert order. Yet, it is possible that certain environmental claims may be substantiated with competent and reliable evidence that is not necessarily "scientific." In fact, this is explicitly recognized in both Mr. Coffee and North American Plastics, in which the proposed orders require substantiation consisting of "competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence" (emphasis added). In addition, the proposed order in Archer Daniels Midland did not require scientific evidence for the same broad category of claims. Again, I find no factors that justify this disparate treatment of similarly situated respondents. Therefore, I dissent with respect to those parts of the BPI and Demert proposed orders that mandate "scientific" evidence for a broad category of claims, which, by its breadth, includes claims that may not require scientific substantiation.

The Commission has one more chance to correct these unmerited inconsistencies. Although it is a procedure that I believe should have been unnecessary, the Commission could still consider any comments received on these points so that the respondents might be placed on an equal footing before the orders are issued in final.

[FR Doc. 93–8693 Filed 4–13–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 912 3237]

Orkin Exterminating Company, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Georgia pesticides corporation from advertising or representing that its pesticides are as safe as some common household

products or that they pose no significant risk to human health or the environment, without possessing competent and reliable scientific evidence to substantiate the claims.

DATES: Comments must be received on or before June 14, 1993.

ADDRESSES: Comments should be directed to : FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Judith Wilkenfeld, FTC/S–4002, Washington, DC 20580. (202) 326–3150.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Orkin Exterminating Company, Inc., a corporation ("Orkin" or "proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed by and between Orkin, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Orkin is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business located at 2170 Piedmont Road, NE., Atlanta, Georgia 30324.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purposes of this Order:

1. "Pesticide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest (as defined in 40 CFR 152.5) or intended for use as a plant regulator, defoliant, or desiccant.

2. "Pesticide Product" shall mean a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, delivered or applied.

I

It is ordered that respondent Orkin Exterminating Company, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale, distribution or use of any residential lawn care services which use any pesticide or pesticide product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing in any manner, directly or by implication, that:

1. The pesticides it uses in its residential lawn care services, when used as directed in such services, are as safe or safer than common household products such as suntan lotion and shaving cream; or

2. The pesticides it uses in its residential lawn care services, when used as directed in such services, are practically non-toxic and do not pose any significant risk to human health and the environment; or

B. Making any representation in any manner, directly or by implication, concerning the safety or degree of risk to human health or the environment of any pesticides it uses in its residential lawn care services, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence that has been conducted

and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

Provided however, that nothing in this Order shall prohibit respondent from disseminating (1) any pesticide label approved by the United States Environmental Protection Agency, or (2) any Material Safety Data Sheets prepared pursuant to 29 CFR 1910.1200 by a source other than respondent or its agent, unless at the time of dissemination of the Material Safety Data Sheets respondent knew or should have known that the representation was deceptive.

II

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors or assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon to substantiate any representation covered by this Order; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation.

III

It is further ordered that respondent shall forthwith distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of advertisements or other such sales materials covered by this Order.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations under this Order.

V

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require file with the Commission a report, in writing, setting forth in detail the manner and form in which it has compiled with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Orkin Exterminating Company, Inc. ("Orkin" or "respondent").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertisements regarding the safety of the pesticides used in respondent's residential lawn care services. The Commission's proposed complaint in this matter alleges that through its advertising for its lawn care services, respondent made unsubstantiated claims that its lawn care pesticides are as safe or safer than common household products like suntan lotion and shaving cream, and that its pesticides are practically non-toxic and do not pose any significant risk to human health and the environment.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I.A. of the proposed order prohibits respondent from representing that the pesticides it uses in its residential lawn care services, when used as directed in such services, are as safe or safer than common household products such as suntan lotion and shaving cream, and that the pesticides used in its residential lawn care services, when used as directed in such services, are practically non-toxic and do not pose any significant risk to human health or the environment, unless respondent has a reasonable basis, consisting of competent and reliable scientific evidence that substantiates the representation, at the time the claims are made.

Part I.B. of the proposed order prohibits respondent from making any representation concerning the safety or degree of risk to human health or the environment of any pesticide or pesticide product is uses in its residential lawn care services, unless respondent has a reasonable basis, consisting of competent and reliable scientific evidence that substantiates the representation, at the time the claim is made.

Part I.B. of the proposed order further provides that nothing in the order prohibits respondent from disseminating (1) any pesticide label approved by the United States Environmental Protection Agency, or (2) any Material Safety Data Sheets prepared pursuant to 29 CFR 1910.1200 by a source other than respondent or its agent, unless at the time of the dissemination, respondent knew or should have known that the representation was deceptive.

For purposes of parts I.A and I.B of the proposed Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

Part II. of the proposed order requires respondent to maintain and make available to the Commission materials relied upon to substantiate any claim covered by the order, tests, reports, studies, surveys, demonstrations or other evidence that contradict any such claim.

Part III. of the proposed order requires respondent to distribute a copy of the order to its operating divisions, officers, agents, representatives and employees.

Part IV. of the proposed order also requires respondent to notify the Commission prior to any change in the corporation that may affect compliance obligations arising out of the order.

Part V. of the proposed order requires respondent to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–8691 Filed 4–13–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902 3177]

National Media Corp., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair

methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Pennsylvania-based corporations from disseminating the infomercials for Cosmetique Francais or for Crystal Power in the future and from making false claims regarding the efficacy of the products or any similar cellulite treatment product or similar crystalline stone. The consent agreement would require that a disclosure statement be placed in certain video advertisements, and would require the respondents to pay $275,000 into a fund to be administered by the Commission.

DATES: Comments must be received on or before June 14, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Patricia Hensley, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA 98174. (206) 220–6350.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of National Media Corporation, and Media Arts International, Ltd., corporations.

The Federal Trade Commission having initiated an investigation of certain acts and practices of National Media Corporation and Media Arts International, Ltd., corporations, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between National Media Corporation and Media Arts International, Ltd., corporations, by their duly authorized officer and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent National Media Corporation is a Delaware corporation with its principal office and place of business at 4360 Main Street, Philadelphia, Pennsylvania 19127.

2. Proposed respondent Media Arts International, Ltd., is a Delaware corporation with its principal office and place of business at 1875 Campus Commons Road, suite 200, Reston, Virginia 22091.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated hereby and related material pursuant to § 2.34 of the Commission's Rules, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than the jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any rights they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order; Definitions

For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

It is ordered, That respondents National Media Corporation and Media Arts International, Ltd., corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole:

A. The 30-minute television advertisement for Cosmetique Francais described in the complaint and sometimes known as "Cellulite Free in 28 Days."

B. The 30-minute television advertisement for crystals described in the complaint and sometimes known as "Crystal Power."

II.

It is further ordered, That respondents National Media Corporation and Media Arts International, Ltd., corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, in any manner, directly or by implication, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale or distribution of Cosmetique Francais or any substantially similar cellulite treatment product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product substantially reduces or eliminates cellulite;

(2) Use of such product stimulates dermal metabolism;

(3) Use of such product substantially reduces or eliminates cellulite in 28 days;

(4) Continued use of such product once or twice a week after the cellulite has been reduced or eliminated will prevent its recurrence; or

(5) Use of such product is more effective than dieting or exercise in reducing or eliminating cellulite.

For purposes of this part II, a "substantially similar cellulite treatment product" shall be defined as any product of substantially similar composition or possessing substantially similar properties.

B. Representing, in any manner, directly or by implication, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product or service substantially reduces or eliminates cellulite;

(2) Use of such product or service stimulates dermal metabolism;

(3) Use of such product or service substantially reduces or eliminates cellulite in 28 days;

(4) Continued use of such product or service once or twice a week after the cellulite has been reduced or eliminated will prevent its recurrence; or

(5) Use of such product or service is more effective than dieting or exercise in reducing or eliminating cellulite,

unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents National Media Corporation and Media Arts International, Ltd., corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, in any manner, directly or by implication, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale or distribution of crystals or any substantially similar crystalline stone in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product can cure breast cancer; or

(2) Use of such product can eliminate lumps in women's breasts.

For purposes of this Part III, a "substantially similar crystalline stone" shall be defined as a mineral substance having a crystalline structure.

B. Representing, in any manner, directly or by implication, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product or service can cure breast cancer;

(2) Use of such product or service can eliminate lumps in women's breasts;

(3) Such product or service has the ability to cure or lower the risk of disease.

unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents National Media Corporation and Media Arts International, Ltd., corporations, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, in any manner, directly or by implication, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale or distribution of HP–9000 or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that such product is completely safe for use on human skin or will not hurt or harm the skin in any way.

For purposes of this Part IV, a "substantially similar product" shall be defined as any product that is advertised as a stain remover or cleaning product and that contains as an ingredient: naphtha, sodium hydrosulfite, sodium phosphate or sodium carbonate.

B. Making any representation, in any manner, directly or by implication, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale or distribution of any stain-removal or cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, about the safety or health risks associated with the use of such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V.

It is further ordered, That respondents National Media Corporation and Media Arts International, Ltd., corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale or distribution of the Magic Wand or any other immersion-style kitchen mixer of similar size and construction in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

A. The product can crush a whole, fresh pineapple in seconds.

B. Skim milk whipped by the product can be used as mousse-like desserts and cake frosting.

VI.

It is further ordered, That respondents National Media Corporation and Media

Arts International, Ltd., corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, in any manner, directly or by implication, regarding the performance, benefits, efficacy or safety or any food, drug or device, as those terms are defined in section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, unless at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; *provided, however,* That any such representation for any food product that is specifically permitted in labeling for such food product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to be substantiated by competent and reliable scientific evidence; *provided, further,* That any such representation for any over-the-counter drug product that is specifically permitted in labeling for such over-the-counter drug product in Final Regulations establishing conditions under which such product is safe and effective promulgated by the Food and Drug Administration under the Food, Drug, and Cosmetic Act, will be deemed to be substantiated by competent and reliable scientific evidence.

B. Making any representation, in any manner, directly or by implication, regarding the performance, benefits , efficacy or safety of any product or service (other than a product or service covered under Subpart VI.A above), unless at the time of making such representation respondents possess and rely upon competent and reliable evidence that substantiates the representation.

VII.

It is further ordered, That respondents National Media Corporation and Media Arts International, Ltd., corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless such is the case.

B. Representing, in any manner, directly or by implication, by words, depictions or symbols, that such product or service has been endorsed by a person, group or organization that is an expert with respect to the endorsement message unless:

(1) The endorser is an existing person, group or organization whose qualifications give it the expertise that the endorser is represented as possessing with respect to the endorsement; and

(2) The endorsement is supported by an objective and valid evaluation or test using procedures generally accepted by experts in that science or profession to yield accurate and reliable results.

VIII.

It is further ordered, That respondents National Media Corporation and Media Arts International, Ltd., corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, in connection with any advertisement depicting a demonstration, experiment or test, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any demonstration, picture, experiment or test depicted in the advertisement proves, demonstrates or confirms any material quality, feature or merit of any product, when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

A. The undisclosed use or substitution of a material mockup or prop.

B. The undisclosed material alteration in a material characteristic of the advertised product or any other material prop or device depicted in the advertisement.

C. The use of a visual perspective or camera, film, audio or video technique that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised product or any other material aspect of the demonstration.

IX.

It is further ordered, That respondents National Media Corporation and Media Arts International, Ltd, corporations, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating:

A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement.

B. Any commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"The program you are watching is a paid advertisement for [the product or service]."

Provided that, For the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein; *provided further that,* For a period of six (6) months following the date of entry of this Order, Subpart IX.B. shall not apply to any commercial or other video advertisement produced prior to the date of entry of this Order that contains a disclosure of the fact that the program is a paid advertisement or commercial at the beginning of said program.

X.

It is further ordered, That respondents National Media Corporation and Media Arts International, Ltd., their successors or assigns, shall pay to the Federal Trade Commission, by cashier's check

or certified check made payable to the Federal Trade Commission and delivered to the Regional Director, Federal Trade Commission, 915 Second Avenue, suite 2806, Seattle, Washington 98174, the sum of two hundred seventy-five thousand dollars ($275,000.00). Respondents shall make this payment on or before the tenth day following the date of entry of this Order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used by the Commission to provide direct redress to purchasers of Cosmetique Francais, Crystal Power and/or the Magic Wand. If the Federal Trade Commission determines, in its sole discretion, that redress to purchasers of these products is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

XI.

It is further ordered, That respondents shall distribute a copy of this Order to each of their operating divisions, to each of respondents' present and future principals and officers, and to every present and future employee, agent and representative who performs discretionary functions in sales or advertising, and shall secure from each such person a signed statement acknowledging receipt of the copy of the Order.

XII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation, such as a dissolution, the emergence of a successor corporation, the creation or dissolution of a subsidiary, transfer of the business by assignment to another entity, or any other change in the corporation that may affect compliance obligations under the Order.

XIII.

It is further ordered, That respondents shall, for five (5) years after the date of the last dissemination of any representation covered by this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation.

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

C. All advertisements and promotional materials subject to this Order.

XIV.

It is further ordered, That respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from National Media Corporation and Media Arts International, Ltd., corporations. The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns claims made for crystals advertised as a cancer cure, a cellulite product, a cleaning product and a kitchen mixer. These claims were made in program-length television commercials distributed by National Media and Media Arts. The crystals were advertised on a commercial called "Crystal Power." The cellulite product, Cosmetique Francais, was advertised on "Cellulite Free in 28 Days." HP–9000, the cleaning product, was advertised on "Amazing Discoveries: HP–9000." The kitchen mixer, the Magic Wand, was advertised on "Amazing Discoveries: Magic Wand."

The Commission's complaint in this matter charges respondents with making deceptive representations regarding the efficacy of Cosmetique Francais and the Crystal Power crystals. According to the complaint, respondents falsely claimed that (1) use of Cosmetique Francais substantially reduces or eliminates cellulite, use of Cosmetique Francais stimulates dermal metabolism, use of Cosmetique Francais substantially reduces or eliminates cellulite in 28 days, continued use of Cosmetique Francais once or twice a week after the cellulite has been reduced or eliminated will prevent its recurrence, and use of Cosmetique Francais is more effective than dieting or exercise in reducing or eliminating cellulite; and (2) use of the Crystal Power Crystals can cure breast cancer and can eliminate lumps in women's breasts. The complaint also alleges that the respondents falsely claimed that they possessed and relied upon a reasonable basis that substantiated these representations.

Further, the complaint charges the respondents with making deceptive representations regarding the safety of HP–9000. According to the complaint, respondents falsely claimed that HP–9000 is completely safe for use on human skin and will not hurt or harm the skin in any way. The complaint also alleges that the respondents falsely claimed that they possessed and relied upon a reasonable basis that substantiated these representations.

The complaint also charges the respondents with making deceptive representations regarding the performance of the Magic Wand. According to the complaint, respondents falsely claimed that (1) the Magic Wand can crush a whole, fresh pineapple in seconds and (2) skim milk whipped by the Magic Wand can be used as mousse-like desserts and cake frosting. Further, the complaint charges respondents with using deceptive demonstrations in the program-length commercial for the Magic Wand. According to the complaint, respondents falsely claimed that (1) the demonstration of the Magic Wand included an unaltered, whole, fresh pineapple used to make a tropical drink and (2) the demonstration of the Magic Wand included mousse-like desserts and cake frosting made from skim milk whipped by the Magic Wand. The complaint charges that (1) respondents substituted crushed pineapple pulp with a slice of pineapple on top to resemble a whole, fresh pineapple and (2) respondents substituted Cool Whip dairy topping to resemble mousse-like desserts and prepared frosting mix to resemble cake frosting.

In addition, the complaint alleges that respondents falsely represented that the program-length commercials for the four products are independent television programs and not paid commercial advertising.

The complaint alleges that respondents falsely represented that endorsements appearing in the advertisement for Cosmetique Francais

reflect the typical or ordinary experiences of consumers, in terms of eliminating cellulite, after using Cosmetique Francais. Further, the complaint alleges that in the program-length commercials for HP–9000 and the Magic Wand, respondents made deceptive representations regarding an organization called the National Association of Advertising Producers ("NAAP"). The complaint charges respondents with falsely claiming that (1) the NAAP is an existing organization whose qualifications give it the expertise to evaluate commercials for their integrity and excellence and (2) the NAAP is an entity that, at the time of providing its endorsements, was independent from all of the individuals and entities marketing the products.

The consent order contains provisions designed to remedy the advertising violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the order prohibits respondents from disseminating the 30-minute television advertisements known as "Crystal Power" and "Cellulite Free in 28 Days."

Parts II and III of the order prohibit respondents from making specified representations regarding the efficacy of Cosmetique Francais and the Crystal Power crystals or any substantially similar cellulite treatment product or any substantially similar crystalline stone. Part II also prohibits respondents from making specified cellulite-treatment claims for any product or service unless the representation is true and respondents rely upon competent and reliable scientific evidence that substantiates the representation. Part III also prohibits respondents from making specified health claims for any product or service unless the representation is true and respondents rely upon competent and reliable scientific evidence that substantiates the representation.

Part IV of the order prohibits respondents from making specified representations concerning the safety of HP–9000 or any substantially similar stain remover or cleaning product. Part IV further prohibits respondents from making any claims about the safety or health risks of any stain-removal or cleaning product unless the representation is true and respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part V of the order prohibits respondents from making specified representations regarding the performance of the Magic Wand or any other similar kitchen mixer.

Part VI of the order prohibits respondents from making representations about the performance, benefits, efficacy or safety of any food, drug or device without competent and reliable scientific evidence for the representations. Part VI provides that such representations for food products and over-the-counter drug products will be deemed substantiated, as required by the order, if they are specifically permitted in labeling by regulations promulgated by the Food and Drug Administration. Part VI of the order also prohibits respondents from making any representations about the performance, benefits, efficacy or safety of any product or service without a reasonable basis for the representations.

Part VII of the order prohibits respondents from misrepresenting that any endorsement of a product or service represents the typical or ordinary experience of members of the public who use the product or service. Part VII also prohibits respondents from representing that an expert has endorsed a product or service unless (1) the expert endorser is an existing person, group or organization with the expertise represented in the endorsement and (2) the expert endorsement is supported by an objective and valid evaluation or test.

Part VIII of the order prohibits respondents from misrepresenting that product demonstrations prove any quality, feature or merit of any product. The order prohibits deceptive demonstration techniques, including but not limited to (1) the undisclosed use or substitution of mock-ups or props, (2) undisclosed alterations in characteristics of products or props, and (3) use of visual perspectives or techniques that misrepresent product characteristics or aspects of demonstrations.

Part IX of the order prohibits respondents from creating, producing, selling or disseminating any advertisement that misrepresents that it is not a paid advertisement. Part IX also requires respondents to include, in any advertisement 15 minutes or longer, a disclosure indicating that the program is a paid advertisement. The order sets out the specific language for the disclosure and the times it must appear.

The order, in Part X, also requires respondents to pay $275,000 in consumer redress.

Parts XI–XIV of the order contain provisions relating to compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–8689 Filed 4–13–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902 3184]

North American Plastics Corp., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Illinois corporation and its officer from making unsubstantiated degradability or environmental benefit representations about their plastic bags in the future.

DATES: Comments must be received on or before June 14, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Brinley Williams, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, suite 520–A, Cleveland, Ohio 44114, (216) 522–4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the Matter of North American Plastics Corporation, a corporation; and Harold V. Engh, Jr., individually and as an officer of said corporation

The Federal Trade Commission having initiated an investigation of certain acts and practices of North American Plastics Corporation, a corporation, and Harold V. Engh, Jr.,

individually and as an officer of said corporation, and it now appearing that North American Plastics Corporation and Harold V. Engh, Jr., hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated,

It is hereby agreed by and between North American Plastics Corporation, by its duly authorized officer, and Harold V. Engh, Jr., individually and as an officer of said corporation, and their attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent North American Plastics Corporation is a Delaware corporation with its office and principal place of business at 921 Industrial Drive, Aurora, Illinois 60506.

Proposed respondent Harold V. Engh, Jr., is an officer of said corporation. In his capacity as an officer, he formulates, directs and controls the acts and practices of said corporation, and his business address is the same as that of the corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft Complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the attached draft Complaint, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft Complaint, or that the facts as alleged in the attached draft Complaint, other than the jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its Complaint corresponding in form and substance with the draft Complaint and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and Decision containing the agreed-to Order to proposed respondents' address as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or in the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the Complaint and the Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order; Definition

For purposes of this Order, the following definition shall apply:

Plastic bag means any plastic grocery sack, or any plastic "disposer" bag, including, but not limited to, trash bags, lawn bags and kitchen bags, that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under the "North American Plastics" or "*Enviro*Gard" brand name, or any other brand name of respondents, their successors and assigns; and also means any plastic bag sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

I

It is ordered, That respondent North American Plastics Corporation, a corporation, its successors and assigns, and its officers, and Harold V. Engh, Jr., individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions or symbols:

(A) That any such plastic bag is "degradable," "biodegradable," or "photodegradable," or

(B) Through the use of "degradable," "biodegradable," or "photodegradable," or any other substantially similar term or expression, that the degradability of any such plastic bag offers any environmental benefit when consumers dispose of them as trash that is buried in a sanitary landfill or incinerated,

unless at the time of making such representation, respondents possess and rely upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substantiates such representation. For purposes of this Order, competent and reliable scientific evidence shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II

It is further ordered, That respondents North American Plastics Corporation, a corporation, its successors and assigns, and its officers, and Harold V. Engh, Jr., individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any North American Plastics Corporation product, including, but not limited to, any plastic bags and their packaging, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product offers any

environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence that substantiates such representation.

III

Nothing in this Order shall prevent respondents from using any of the terms cited in part I, or similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV

It is further ordered, That, for three (3) years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

(A) All materials relied upon to substantiate any representation covered by this Order; and

(B) All tests, reports, studies, surveys or other materials in its possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation.

V

It is further ordered, That respondent North American Plastics Corporation shall distribute a copy of this Order within sixty (60) days after service of this Order upon it to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation of labeling and advertising and placement of newspaper, periodical, broadcast and cable advertisements covered by this Order.

VI

It is further ordered, That respondent North American Plastics Corporation shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VII

It is further ordered, That respondent Harold V. Engh, Jr., shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the date of this Order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the manufacture, sale or distribution of plastic products, or of his affiliation with a new business or employment in which his own duties and responsibilities relate to the manufacture, sale or distribution of plastic products. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VIII

It is further ordered, That respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing setting forth in detail the manner in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed Consent Order from respondents North American Plastics Corporation, a Delaware corporation, and Harold V. Engh, Jr., individually and as an officer of said corporation.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed Order contained in the agreement.

This matter concerns the package labeling and advertising of North American Plastics Corporation's *Enviro*Gard plastic trash bags. The Commission's Complaint charges that the respondents' labeling and advertising contained unsubstantiated representations concerning alleged biodegradability and the environmental benefits that could be obtained when the bags were disposed of as trash. The Complaint alleges that respondents represented that *Enviro*Gard trash bags offer a significant environmental benefit when consumers dispose of them as trash that is buried in a landfill, and *Enviro*Gard bags will completely break down, decompose and return to nature in a reasonably short period of time after consumers dispose of them as trash that is buried in a landfill.

The Consent Order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed Order requires the respondents to cease representing that any plastic bag is "degradable," "photodegradable," or "biodegradable," or more specifically, through the use of such terms or similar terms, that such plastic products offer any environmental benefits compared to other products when disposed of as trash that is ordinarily buried in a sanitary landfill, or incinerated, unless the respondents have a reasonable basis for such representations at the time they are made.

Part II of the proposed Order provides that if the respondents represent in advertising that their products offer any environmental benefit, they must have competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, to support the representation. This language is different in two respects from the language in certain other Commission Consent Orders covering a broad range of environmental benefit claims. Those Orders require the respondents to have competent and reliable scientific evidence that substantiates such claims, and in some cases, additionally require that the respondents state the specific nature of the claimed environmental benefit, if it is not clear from the context. The modifications in the language contained in the proposed Order are intended to clarify the respondents' compliance obligations under the Order.

The Commission's Guides for the Use of Environmental Marketing Claims ("Guides") state that environmental claims must always be substantiated by competent and reliable evidence, which will "often" require competent and reliable scientific evidence.[1] The language contained in Part II of the proposed Order is consistent with that standard, by requiring that the

[1] Federal Trade Commission Guides for the Use of Environmental Marketing Claims, 57 FR 36363, 36364 (Aug 13, 1992) (to be codified at 16 CFR 260.5).

respondents have competent and reliable scientific evidence "when appropriate." In addition, as the Guides state, an advertiser is required to substantiate every express and material, implied claim that its representations convey to reasonable consumers about an objective feature of the product. The Guides further note that general environmental benefit claims may convey a wide range of meanings to consumers.[2] Unless all such meanings can be substantiated, the Guides state that broad environmental claims should be avoided or qualified. Under this analysis, the Commission believes that the requirement that the respondents have substantiation for whatever representations its claims convey to consumers provides adequate guidance to the respondent of its obligations under the Order.

Part III provides that nothing in the Order prevents respondents from using any of the terms cited in Parts I and II of the Order if necessary to comply with any federal rule, regulation or law governing the use of such terms in advertising or labeling.

The proposed Order also requires the respondents to maintain materials relied upon to substantiate claims covered by the Order, to distribute copies of the Order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the Order, to notify the Commission of any changes in the business or employment of the name individual respondent, and to file one or more reports detailing compliance with the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–8694 Filed 4–13–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 911 0005]

YKK (U.S.A.) Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New Jersey-based corporation from requesting, suggesting, or advocating that any competitor raise, fix or stabilize prices or price levels, cease providing free equipment or other discounts, cease providing any services or products or engage in any other pricing action. In addition, the respondent would be prohibited from entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, agreement, plan or program with any competitor to fix, raise, establish, maintain or stabilize prices or service levels.

DATES: Comments must be received on or before June 14, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Dagen, FTC/S–2627, Washington, DC 20580. (202) 326–2628.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of YKK (U.S.A.) Inc., a corporation, hereinafter sometimes referred to as proposed respondent or "YKK" and it now appearing that YKK is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby Agreed by and between YKK, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent YKK (U.S.A.) Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 1251 Valley Brook Avenue, Lyndhurst, New Jersey.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in

[2] *Id.* at 36,365 (to be codified at CFR 260.7(a)).

construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purpose of this order, the following definitions shall apply:

A. "Respondent" means YKK (U.S.A.), Inc., its predecessors, subsidiaries, divisions, groups, and affiliates controlled by YKK (U.S.A.), Inc., and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "Zippers and related products" means slide fasteners, including, but not limited to, fastener chains, sliders and separating end components.

II

It is ordered That respondent, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any zippers and related products, and leasing of installation equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Requesting, suggesting, urging, or advocating that any competitor raise, fix or stabilize prices or price levels, cease providing free equipment or other discounts, cease providing any services or product, or engage in any other pricing action;

B. Entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, agreement, understanding, plan or program with any competitor to fix, raise, establish, maintain or stabilize prices, price levels, or service levels.

Provided, however, That YKK shall remain free to request that a competitor refrain from engaging in illegal conduct.

III

It is further ordered, That respondent shall:

A. Within thirty (30) days of the date on which this order becomes final, provide a copy of this order to all of its directors, officers, and management employees;

B. For period of five (5) years from the date on which this order becomes final, and within ten (10) days after the date on which any person becomes a director, officer, or management employee of respondent provide a copy of this order to such person; and

C. Require each person to whom a copy of this order is furnished pursuant to subparagraphs III.A and B of this order to sign and submit to YKK within thirty (30) days of the receipt thereof a statement that: (1) Acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject YKK to penalties for violation of the order.

IV

It is further ordered, That respondent shall:

A. Within sixty (60) days from the date on which this order becomes final, and annually thereafter for five (5) years on the anniversary date of this order, and at such other times as the Commission may by written notice to the respondent require, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order; and

B. For a period of five (5) years after the order becomes final, maintain and make available to the staff of the Federal Trade Commission for inspection and copying, upon reasonable notice, all records of communications with competitors of respondent relating to any aspect of pricing or services for zippers, related products, and installation equipment, and records pertaining to any action taken in connection with any activity covered by parts II, III and IV, of this order.

C. Notify the Commission at least thirty days prior to any change in corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from YKK (U.S.A.) Inc.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Talon, a competitor of YKK (U.S.A.) in the sale of zippers, was engaged in a form of price discounting, by offering free installation equipment along with its sales of zipper components. An attorney representing YKK complained in a letter to the President of Talon about such offers, characterizing them as "unfair and predatory" sales tactics. At a subsequent meeting between attorneys for the two companies, YKK's attorney then attempted to get Talon to cease this discounting. Specifically, the complaint alleges that, at a meeting on October 21, 1988, YKK's attorney characterized Talon's discounting as unlawful and asked an attorney for Talon to urge Talon to desist from offering free installation equipment. However, YKK's attorney also told Talon's attorney that YKK could lawfully meet Talon's price discounts.

The Commission has reason to believe that the attorney representing YKK went beyond a demand that Talon cease illegal conduct or an offer than YKK would refrain from taking legal action against Talon if Talon ceased illegal conduct. Rather, the Commission has reason to believe that the attorney representing YKK offered to Talon a *quid pro quo* that YKK would refrain from providing free equipment if Talon would. The complaint further alleges that an agreement between Talon and YKK to cease discounting would have constituted an unreasonable restraint of competition. Finally, the Commission has reason to believe that YKK's invitation to Talon to enter into an agreement by which both parties would refrain from offering free equipment to customers violates section 5 of the Federal Trade Commission Act. The complaint does not allege that Talon accepted YKK's offered agreement to cease discounting.

YKK (U.S.A.) Inc. has signed a consent agreement to the proposed consent order. The order prohibits YKK (U.S.A.) Inc. from requesting,

suggesting, urging, or advocating that any competitor raise, fix or stabilize prices or price levels, cease providing free equipment or other discounts, cease providing any services or products or engage in any other pricing action. The proposed consent order also prohibits YKK (U.S.A.) Inc. from entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, agreement, understanding, plan or program with any competitor to fix, raise, establish, maintain or stabilize prices, price levels or service levels. The order, however, permits YKK to request that a competitor refrain from engaging in illegal conduct. The order's provisions apply to zippers and related products, and installation equipment. Zippers and related products are defined as slide fasteners, including, but not limited to, fastener chains, sliders and separating end components.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in YKK (U.S.A.) Inc., File 911–0005

The Commission today accepts a proposed consent order that significantly encroaches on the ability of an attorney fully to represent the interests of his or her client. Indeed, the Commission creates a virtually impossible situation for lawyers representing clients under the Robinson-Patman Act who, under the implicit theory of the case, seem to be condemned if they do and condemned if they don't. I cannot join in this decision, which will make compliance with the Robinson-Patman Act more difficult than it already is.

The theory of violation is that an attorney for YKK, on behalf of his client, invited Talon, through its attorney, to fix prices.[1] I have supported the general theory that invitations to collude may be challenged as unlawful unilateral conduct under Section 5 of the Federal Trade Commission Act when the evidence shows an unambiguous offer to fix prices and no justification or excuse is offered for the conduct.[2] Neither of these circumstances exists in this case. First, the alleged invitation to collude, even when viewed in the light most favorable to the proposed complaint and order, is at best highly ambiguous, and in my view the available evidence plainly resolves any ambiguity against liability. Second, the context of the alleged invitation—a discussion of claims of law violations between two attorneys on behalf of their clients—suggests an important efficiency: the public interest in encouraging the negotiation and settlement of legal disputes.

The zipper industry, in which YKK and Talon and several other firms are members, has a history of allegations of unlawful price discrimination and predatory pricing.[3] Since 1981, YKK has been under an FTC order for alleged violations of Section 2(a) of the Robinson-Patman Act.[4] It is in this context that the attorneys for YKK and Talon met. The attorney for YKK, who is also a member of YKK's board of directors, believed that Talon was providing free zipper assembly machinery to some customers and that this practice was unlawful under section 2(a) of the Robinson-Patman Act.[5] YKK's attorney requested that Talon cease engaging in this practice.[6] The proposed complaint alleges that the attorney's request violated section 5 of the Federal Trade Commission Act.

A request by an attorney on behalf of his client that one of his client's competitors cease engaging in apparently unlawful conduct clearly is legitimate conduct. Indeed, the proposed order expressly provides that "YKK shall remain free to request that a competitor refrain from engaging in illegal conduct." Despite the provision in the order allowing such requests, the proposed complaint treats the requests by YKK's attorney not as legitimate requests to cease unlawful conduct but an invitations to fix prices.

It is difficult to reconcile the apparent inconsistency between the proposed complaint and the order. Does the Commission intend to establish a policy that allows an attorney to request that one of his client's competitors refrain from unlawful conduct unless that unlawful conduct happens to be a violation of the Robinson-Patman Act? If so, presumably a request to refrain from predatory or discriminatory pricing could be discussed only in the courtroom following the initiation of a lawsuit. Merely to state such a policy surely is to refute it.

Another possible interpretation is that a request to refrain from unlawful conduct is permissible only when it is based on legally and factually "correct" conclusions, that is, the requests identified in the complaint were not permissible because Talon's conduct has not been proved unlawful. This standard would be unrealistic and unduly narrow. Excepting frivolous or dishonest arguments or other abuses,[7] our adversary system of justice tolerates divergent views.[8]

Since neither of the requests alleged in the complaint explains the basis for

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[1] *I.e.*, to eliminate selective discounting in the form of providing free zipper assembly machinery to certain customers.

[2] In addition, the evidence of the alleged invitation should be independent of any testimony or material within the control of the competitor who received the offer. *See* Concurring Statement of Commissioner Mary L. Azcuenaga in *Quality Running Gear, Inc.*, Docket C–3403 (Nov. 5, 1992).

[3] In the 1970's, when YKK was expanding from Japan and Talon was the largest firm in the United States, the incumbent firms in the United States complained that YKK's pricing was unfair. A complaint that YKK was selling "at less than fair market value" was rejected by the Treasury Department, 38 CFR 9242 (April 12, 1973), and complaints to the International Trade Commission about YKK, filed by the U.S. Slide Fastener Association and Talon, also were dismissed without relief. In the Matter of Slide Fasteners and Parts Thereof, Report to the President on Inv. No. TA–201–6 Under section 201 of the Trade Act of 1974, USITC Publication 757 (1976); In the Matter of Certain Slide Fastener Stringers and Machines and Components Thereof for Producing Such Slide Fastener Stringer, ITC Inv. No. 337–TA–85, 1981 ITC LEXIS 212 (1981) (ITC opinion); 1980 ITC LEXIS 51 (1980) (ALJ opinion); *see also* notes 4 & 5 *infra*.

Complaints against YKK also were filed in Canada (1974) and the European Community (1972). The Canadian Antidumping Tribunal found that YKK was selling in Canada at less than fair value; the EC complaint was settled. *See* USITC Publication 757, at A–1.

[4] 98 F. T. C. 25 (1981) (barring YKK from discriminating in price among customers on the same functional level).

[5] Domestic industry members claimed in both ITC proceedings that YKK offered free or low-priced zipper assembly machines to its customers and that this was an unlawful pricing practice. The ITC referred these and other allegations that YKK had engaged in unlawful pricing practices to the FTC. These allegations may have played a role in the FTC's 1981 order against YKK for alleged violations of section 2(a) of the Robinson-Patman Act.

[6] The proposed complaint identifies two such requests: The first was a letter dated July 1, 1988, in which YKK's attorney "request[ed] that Talon stop engaging in these 'unfair' practices by taking immediate action to cease offering free equipment to customers * * *." Complaint Paragraph 5. The second occurred during a meeting on October 21, 1988, when YKK's attorney "asked an attorney for Talon to urge Talon to desist from offering free equipment." Complaint Paragraph 6.

[7] The theory of violation is an unlawful invitation to collude, not sham litigation. *See, e.g., California Motor Transport Co.* versus *Trucking Unlimited*, 404 U.S. 508, 510 (1972) (sham defined as "misrepresentations . . . in the adjudicatory process" and "a pattern of baseless, repetitive claims"); *see also* Amerco, 109 F.T.C. 135 (1987).

[8] *See* ABA Canon 7 ("The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will prevail."); 1 G. Hazard, Jr., & W. Hodes, *Law of Lawyering* § 1.3:100, at 70–71 (2d ed. 1990) (Rule 1.3 carries forward Canon 7's "'zeal' as the lawyer's appropriate mode in litigation; 'commitment and dedication' describe the lawyer's professionalism in other contexts.").

liability, we must look elsewhere for an explanation of the allegedly unlawful invitation to collude. According to the Analysis of Proposed Consent Order To Aid Public Comment ("Analysis To Aid Public Comment"),[9] YKK's attorney "went beyond" requesting that Talon cease the unlawful conduct or offering to refrain from suing if Talon ceased the unlawful conduct: "the attorney representing YKK offered to Talon a *quid pro quo* that YKK would refrain from providing free equipment if Talon would." Analysis To Aid Public Comment at 1. This characterization in the Analysis is a matter of inference.

But for the Robinson-Patman Act, the inference that YKK's attorney had invited an agreement to eliminate discounts might be irresistible. The statement by YKK's attorney that YKK lawfully could meet Talon's discriminatory prices is a paraphase of the meeting competition defense provided in section 2(b) of the Act.[10] The flip side of the section 2(b) meeting competition defense is that it is not available except to meet a competitor's offering.[11] As a consequence, any request that Talon cease allegedly unlawful discriminatory pricing implicitly included a "threat" that YKK would lawfully meet Talon's competition as well as an "offer" that YKK would not meet Talon's competition if Talon acceded to the request.[12] The "threat" and the "offer" are products of the Robinson-Patman Act.[13] The Act creates a mutuality that YKK's attorney recognized and understood, and it is from this that the Commission apparently infers an unlawful offer of a "*quid pro quo*." Analysis To Aid Public Comment at 1.

It is not disputed that YKK's attorney told Talon's attorney that YKK had "received advice from officials in Washington, that we, YKK, can meet" Talon's discriminatory prices.[14] The discussion between the two lawyers was grounded in the provisions of the Robinson-Patman Act. The evidence of the conversation between YKK's attorney and Talon's attorney, which is based on a contemporaneous memorandum prepared by YKK's attorney, voluntarily provided to the Commission with YKK's report of compliance with the 1981 order, shows that each attorney claimed that the other's client had engaged in unlawful pricing and that his or her own client's pricing was protected by the meeting competition defense provided in section 2(b) of the Robinson-Patman Act.

YKK's attorney began by stating that a recent "Talon promotion raised a number of questions about fair competition." YKK memorandum. Talon's attorney replied that Talon had "'not engaged in any free placement of equipment, since'" the July 1988 letter from YKK's attorney.[15] YKK memorandum. Although the free equipment program had been discontinued, Talon would continue to meet the low prices of its competitors, Talon's attorney said.[16] YKK's attorney said that "if Talon continues or restarts any of its programs to give free machines for one year, we have received advice from officials in Washington, that we, YKK, can meet such competition."[17] YKK memorandum.

YKK's attorney described to Talon's attorney "YKK's position that [Talon's] targeting certain if [YKK's] customers * * * with very low prices * * * constituted an unfair trade practice."[18] YKK memorandum. YKK also was engaging in unlawful pricing practices, Talon's attorney said, citing, "'evidence that YKK not only sells at low prices in order to target-and-take Talon customers, but that YKK beats, rather [than] simply meets our competition.'" YKK memorandum. Talon's attorney "opened a file and began to read from 'evidence' that YKK priced * * * 'below YKK's list and also, below Talon's prices,'" naming the customers involved. YKK memorandum. Talon's attorney claimed that "'Talon has hard evidence that YKK * * * [has] giv[en] away equipment to meet and beat competition from Talon.'" YKK memorandum. YKK's attorney responded that "if any of the reports were true they could not be actionable because, obviously, there was other competition besides head-to-head operations by Talon and YKK (such as Taiwan Zipper, Scovil and Ideal)." YKK memorandum.

YKK's attorney also said that "YKK would consider it 'a plus * * *' if Talon would continue its current policy of not giving away free equipment to their customers." YKK memorandum. It is hardly surprising and, under the circumstances, not especially troubling that YKK's attorney would view it as "a plus" if Talon acceded this request and discontinued its discriminatory pricing program. If Talon in fact ceased the practice, as Talon's attorney claimed it had, YKK would no longer face the costs of potential litigation and of documenting its compliance with the meeting competition defense.

At the close of the discussion, YKK's attorney said that YKK had "no intention * * * at this time to file a complaint against Talon." YKK memorandum. Talon's attorney said "that Talon does not have any intention of preparing legal action against YKK, if the status quo continues." YKK memorandum. After the meeting, YKK's attorney advised his client in terms of the Robinson-Patman Act and the Act's meeting competition defense: "If, as Talon has alleged, we are beating rather than simply meeting competition, they would have grounds for a complaint unless we could prove affirmatively that we were not meeting a Talon price but a price by some other competitor that was very low." YKK's attorney also told his client that "[w]e have good defenses and they should be reviewed soon." YKK memorandum.

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[9] An analysis is prepared in every consent case "to facilitate public comment on the proposed order." By its terms, an Analysis To Aid Public Comment "is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms."

[10] Section 2(a) of the Robinson-Patman Act, 15 U.S.C. § 13(a), bars sellers from discriminating in price between competing customers, subject to certain other statutory requirements. Section 2(b) of the Act, 15 U.S.C. 13(b), permits a seller to rebut a *prima facie* case of price discrimination by showing that the lower price to a customer was made in good faith to meet the equally low price of a competitor. The elements of the meeting competition defense must be approved by its proponent.

[11] More precisely, if there were no lower prices to which to respond, the proponent of the meeting competition defense could not expect to prove that its differential prices were offered in good faith to meet lower price offers.

[12] Neither firm, of course, would be barred by the Act from granting across-the-board price discounts to customers on the same functional level. The Act bars price discrimination, not lower prices.

[13] *United States* versus *United States Gypsum Co.*, 438 U.S. 422 (1978), is inapposite. In that case, the Court rejected a defense, asserted by firms indicted on criminal price-fixing charges, that their explicit exchanges of price information were necessary to verify each other's prices in order to comply with section 2(b) of the Robinson-Patman Act. YKK was not seeking to verify Talon's prices but was asserting its right under the Act lawfully to meet those prices.

[14] The quoted language is from a contemporaneous memorandum prepared by YKK's attorney (hereafter "YKK memorandum"), as explained in the text below.

[15] Talon's discontinuance of its free equipment program after receiving the request from YKK's lawyer may have reflected a concern that the program could not withstand challenge under the Robinson-Patman Act.

[16] "Meeting competition" under section 2(b) is different from engaging in normal competition. The meeting competition defense arises when a firm offers price cuts to selected customers, *i.e.*, engages in price discrimination.

[17] The availability of the meeting competition defense likely was particularly important to YKK's attorney, because of YKK's potential liability for civil penalties for unlawful price discrimination under the Commission's 1981 order against YKK.

[18] The term "unfair trade practice" was used by the Commission to refer to "unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices," including unlawful price discrimination. *See* FTC, Trade Practice Rules for the Slide Fastener Industry (June 21, 1958), rescinded, 42 FR 19,859 (March 16, 1977).

The proposed consent order, as explained in the analysis To Aid Public Comment, apparently treats threats to litigate as protected conduct and threats to meet competition under section 2(b) as a basis for liability. There is little to distinguish a threat to litigate from a threat to meet competition: Both are lawful, and either is likely to cause the recipient to stop and consider the consequences of continuing the challenged conduct. A lawyer surely would advise a client charged with or facing discriminatory pricing of the availability of these options.

Under the approach described in the Analysis To Aid Public Comment, an attorney can request that the allegedly discriminatory pricing cease, threaten legal action or offer to "refrain from taking legal action," Analysis To Aid Public Comment at 1, if the discriminatory pricing practices cease.[19] But a request by an attorney that a competitor stop discriminatory pricing, coupled with a statement that his client can lawfully avail itself of the statutory meeting competition defense and the suggestion that his client would prefer not to be placed in the position of doing so (i.e., a treat to meet competition), apparently will be construed by the Commission as an unlawful invitation to fix prices. I cannot agree.

Implicit in the theory of the complaint, as explained in the Analysis To Aid Public Comment, is the notion that YKK was trying to persuade a competitor to stop engaging in beneficial competitive conduct by offering to agree to forgo the same beneficial conduct. This underlying theme has a strong superficial appeal, but it is fundamentally invalid in this situation. The conduct at issue is discriminatory pricing and, by definition under the Robinson-Patman Act, the conduct is not good. Although it may seem counter-intuitive, YKK was not asking Talon to stop doing something right but rather to stop violating section 2(a).[20] "Also implicit in the theory of the complaint, as explained in the Analysis To Aid Public Comment, is the notion that the better way to level the playing field between YKK and Talon is for YKK to emulate the behavior of Talon and offer its own selective discounts under cover of the section 2(b) defense. This assumption ignores real world costs and risks of significant dimension. If a firm wants to undertake the risk and cost of documenting conduct in the hope of establishing the protection of section 2(b), that is one thing. It is quite another for the Commission implicitly to require that course of action in preference to requesting a competitor to cease violating section 2(a).[21]

One final irony pervades this case: YKK is the only zipper firm under a Robinson-Patman order. Because of the Commission's 1981 order against YKK, YKK's attorney must be sensitive to YKK's need to watch its Robinson-Patman p's and q's. Because the order alleges a violation of section 2(a) of the Robinson-Patman Act, YKK's attorney must be particularly sensitive to the need for his client, to avoid liability for civil penalties under the Commission's order, to limit differential price offers to meeting competition situations. Indeed, YKK's attorney sought and obtained advice from the FTC that YKK lawfully could meet discriminatory prices offered by its competitors.[22] Then, when YKK's attorney repeated the advice that he had received from the staff of the Commission about compliance with an order of the Commission under a law enforced by the Commission, the Commission alleges an unlawful solicitation to fix prices. YKK surely has been caught between the proverbial devil and the deep blue sea.

The purpose of challenging invitations to collude under Section 5 presumably is to deter such conduct, because of the danger that it will ripen into actual collusion or reduce uncertainty. Although such deterrence has value, we should remember that extending an invitation to fix prices, which is a unilateral act, involves less competitive harm than actual price fixing. This underscores the need scrupulously to protect lawful discussion in these cases. To ensure that legitimate communication is not inhibited, we should challenge only naked invitations to collude, those that unambiguously solicit an unlawful agreement on price and have no other function. *See United States* v. *American Airlines, Inc.*, 743 F.2d 1114, 1119 (5th Cir. 1984). Because the communications by YKK's attorney were an assertion of his client's lawful alternatives, they did not constitute a naked invitation to collude.[23] The proposed consent order infringes on legitimate communications by an attorney on behalf of his or her client and is inconsistent with the public interest.

I dissent.

Concurring Statement of Commissioner Deborah K. Owen

I share the concern that our efforts in the invitation to collude area should not encompass, and thereby deter, legitimate business activity (or legal representation related thereto), and have repeatedly urged caution by the Commission in this regard.[1a] One of the difficulties in the Commission's efforts to explore the frontiers of section 5 law through consent agreements is that much of the pertinent evidence supporting the Commission's action is not ordinarily a matter of public record. I have found reason to believe that a violation occurred in this matter based on an investigative record which, in my view, was replete with inculpatory evidence that far outweighed any that might be interpreted as exculpatory. This case involves, in my judgment, activity by a corporate official, who incidentally happened to wear a legal hat, that was not in fact a good faith effort to resolve a legal dispute; rather, I find reason to believe that the legal dispute served simply as a pretext for an invitation to engage in a naked price restraint (in the form of ceasing certain discounts) where market power exists. I am therefore thoroughly comfortable with the Commission's decision to accept the proposed consent agreement for public comment.[2a]

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[19] Threats of litigation are "acts reasonably and normally attendant upon effective litigation," protected as is litigation from antitrust liability: "The litigator should not be protected only when he strikes without warning. If litigation is in good faith, a token of that sincerity is a warning that it will be commenced and a possible effort to compromise the dispute." *Coastal States Marketing, Inc.* v. *Hunt*, 694 F.2d 1358, 1367 (5th Cir. 1983) (footnote omitted). *See also* Columbia Pictures v. *Professional Real Estate Investors, Inc.*, 944 F.2d 1525, 1529 (9th Cir. 1991), *cert. granted*, 112 S. Ct. 1557 (Mar. 30, 1992) (No. 91–1043) (Settlement discussions are incidental to prosecution of lawsuit, "not a separate and distinct activity which might form the basis for antitrust liability").

[20] YKK's attorney had a valid interest in protecting his client against unfair competition by attempting to persuade Talon to stop violating section 2(a). He had no obligation to approach the task by persuading Talon to go the other direction and stop violating section 2(a) by offering discounts to all customers. Nor can we assume that either firm could offer these discounts to all customers without risking their financial health and ability to stay in business.

[21] Litigation also would be a costly and risky option.

[22] The 1981 order does not expressly permit YKK to claim the statutory defenses in the Robinson-Patman Act but requires YKK to cease and desist from offering discriminatory prices.

[23] Another puzzling aspect of this case is that the order is imposed on the client for the conduct of its attorney, apparently leaving the attorney free, were he so inclined, to engage in similar conduct for other clients.

[1a] *See* Concurring Statements by Commissioner Deborah K. Owen in Quality Trailer Products Corporation (File No. 911–0068) and AE Clevite, Inc. (File No. 901–0166).

[2a] As in the cases cited in note 1 *supra*, I have accepted certain provisions in the Commission's order here, which could preclude some otherwise legal conduct, as fencing-in relief. This should not be interpreted as a finding that otherwise legitimate joint activity that involves ancillary price discussions thereby becomes illegal.

Concurring Statement of Commissioner Roscoe B. Starek III

I concur in the Commission's decision to accept for public comment the consent Order in this matter. Given the unusual factual context of the "invitation to collude" that forms the gravamen of the complaint, and the paucity of information that would otherwise appear in the final record of this decision, I feel compelled to explain the analysis underlying my vote.

The consent Order in this matter settles charges that YKK solicited an agreement from its largest competitor whereby the firms mutually would refrain from offering free installation equipment with the sale of their zipper products. Such an agreement—like an agreement mutually to forbear on pricing or any other significant dimension of competition—is conduct "that appears likely, absent an efficiency justification, to 'restrict competition and decrease output,' and is, therefore, inherently suspect" under the standards set forth in the Commission's decision in *Massachusetts Board of Registration in Optometry*.[1b] An unambiguous solicitation of such an agreement is likewise "inherently suspect."[2b] I find no reason to believe that YKK invited such an anticompetitive agreement and that no plausible efficiency justification exists for this conduct.

YKK's invitation, however, arguably was the consequence of settling allegations of unlawful price discrimination under the Robinson-Patman Act.[3b] Indeed, settlement of a competitor's claim of primary line injury for unlawful price discounting implies that the discounting will cease. This could suggest that prosecution of anticompetitive restraints must make an accommodation for such restraints imposed for the purpose of settling such a claim.

The context of private settlement, however, does not remove from antitrust scrutiny inherently suspect conduct that lacks an efficiency justification. In civil cases generally, a legitimate intent or purpose would not justify a restraint that has unreasonably anticompetitive effects.[4b] Moreover, even a good faith attempt to avoid Robinson-Patman liability will not excuse anticompetitive conduct that is clearly inconsistent with the broader purposes of the U.S. antitrust laws.[5b]

In *United States* v. *U.S. Gypsum Co.*, 438 U.S. 422 (1978), the Supreme Court held that an exchange of information concerning current prices was *per se* unlawful, even though the stated purpose was to assure compliance with the "meeting competition" defense of section 2(b) of the Robinson-Patman Act. In that case, the defendants asserted that exchanges of price information allowed each seller to verify that any discriminatory prices it offered were necessary to meet a competitor's price. The court held, however, that the agreement was not necessary to avoid Robinson-Patman liability. Interseller verification was not necessary to invoke the defense; a "good faith belief, rather than an absolute certainty" that a price concession was being offered by a competitor was all that was necessary to invoke section 2(b).[6b] Noting the potential tension between the rationales underlying the Sherman and Robinson-Patman Acts, the Court held that the requirements of the Robinson-Patman Act should be construed so as to ensure its coherence with the Sherman Act.[7b]

Similarly, the anticompetitive conduct in this matter cannot be justified by an attempt to comply with, or settle claims under, the Robinson-Patman Act. The evidence strongly suggests that YKK issued an unambiguous invitation to one of its largest competitors to enter into an agreement mutually to discontinue a form of discounting that was an important dimension of competition between the firms. Although YKK's invitation arguably was intended as an offer of settlement to resolve claims of unlawful discounting under the Robinson-Patman Act, the invited agreement far exceeded the scope of what was reasonably necessary to achieve a settlement. The potential effects of such an invitation are unambiguously anticompetitive.

Assuming *arguendo* that YKK's threats of litigation were made in good faith,[8b] the appropriate *quid pro quo* for the competitor's commitment to cease from engaging in the putative violation was YKK's commitment to forgo initiating litigation. YKK, however, went further, offering to discontinue an important form of discounting in exchange for the competitor's commitment to discontinue such discounting. This conduct poses a substantial threat to competition, particularly in cases such as this where the evidence strongly suggests that the relevant firms, acting in concern, have market power.[9b]

Private settlement discussions of disputes between competitors alleging unlawful discounting do not provide the basis for a defense to anticompetitive conduct. On the contrary, the Supreme Court's analysis in *U.S. Gypsum* is more consistent with the view that such settlement discussions provide a context for anticompetitive behavior and should be carefully scrutinized.[10b] Price-fixing is an obvious means for competitors to resolve allegations of unlawful discounting. Given the potential for abuse in this context, the Commission should make clear that competitors attempting to resolve claims of unlawful discounting under the Robinson-Patman Act understand that any settlement or attempted settlement must pass scrutiny under U.S. antitrust laws forbidding unreasonable restraints of trade, including section 5 of the FTC Act.[11b]

Concurring Statement of Commissioner Dennis A. Yao

I appreciate the concern that has prompted Commissioner Azcuenaga to dissent in this matter. I am disturbed by the possibility that this consent agreement may be misinterpreted to

[1b] 110 F.T.C. 549, 604 (1988).

[2b] *See Quality Trailer Products Corp.*, Docket C-3403 (Nov. 5, 1992) (consent order based on invitation to agree to fix prices of certain axle products in violation of section 5 of the FTC Act).

[3b] 15 U.S.C. 13a, *et seq.*

[4b] *See, e.g., Jefferson Parish Hosp. Dist. No. 2* v. *Hyde*, 466 U.S. 2, 25–26 nn. 41 & 42 (1984); *Appalachian Coals, Inc.* v. *United States*, 288 U.S. 344, 372 (1933) ("[g]ood intentions will not save a plan otherwise objectionable").

[5b] *United States* v. U.S. Gypsum Co., 438 U.S. 422, 447–459 (1978); *Automatic Canteen Co.* v. *FTC*, 346 U.S. 61, 74 (1953) (as a general rule, the Robinson-Patman Act should be construed so as to ensure its coherence with "the broader antitrust policies that have been laid down by Congress.").

[6b] 438 U.S. at 451. The Court held that an exchange of information concerning current prices could *not* satisfy the "controlling circumstances" test where the stated purpose was to assure compliance with the meeting competition defense of § 2(b) of the Robinson-Patman Act. *Id.* Settlement of the Robinson-Patman Act dispute in this matter similarly is not a "controlling circumstance" that would excuse the anticompetitive behavior.

[7b] 438 U.S. at 458 (*citing Automatic Canteen Co.* v. *FTC*, 346 U.S. 61, 74 (1953)).

[8b] I do not find it necessary to determine whether YKK reasonably believed that its competitor was engaged in violations of the Act, since I believe that the solicitation far exceeds the scope of what was reasonably necessary to settle a legitimate Robinson-Patman Act claim.

[9b] The complaint notes that YKK and Talon, the competitor that was the recipient of the unlawful solicitation, account for more than 80% of zippers sold in the United States.

[10b] The Court rejected even a limited Robinson-Patman compliance exception to unlawful exchanges of contemporaneous price information, finding that such an exception would "remove from scrutiny under the Sherman Act conduct falling near its core with no assurance, and indeed with serious doubts, that competing antitrust policies would be served thereby." 438 U.S. at 458 (citing *Automatic Canteen*, 346 U.S. at 74).

[11b] A similar analysis applies to anticompetitive private settlements of disputes under U.S. international trade laws. *See* U.S. Department of Justice, Antitrust Enforcement guidelines for International Operations (1988), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,109, at § 7 and Case 17.

mean that a simple discussion settling alleged Robinson-Patman Act violations could lead to an FTC enforcement action alleging an "invitation to collude" actionable under section 5 of the FTC Act. Price-cutting and alleged violations of the Robinson-Patman Act form two sides of the same coin because the Robinson-Patman Act seeks to forestall certain types of price discounts. Because charging that a competitor has violated the Robinson-Patman Act implies that, while the complainant is not discounting, the competitor is and must cease discounting or face a lawsuit, one could interpret a charge of a Robinson-Patman Act violation as an implicit "invitation" that the other side "agree" to end price discounting. Consequently, some might assume that discussions settling alleged Robinson-Patman Act violations could be construed by the FTC as an offer to agree to end price discounts and, hence, an "invitation to collude" by raising prices. To prevent this possible misconception from chilling efficient settlement discussions of legal disputes, it is necessary to explain in greater detail than usual why there is sufficient reason here to believe that YKK's behavior violated section 5 of the FTC Act.[1c]

Most importantly, the lawyer's actions here went beyond requesting that his client's competitor cease an allegedly unlawful practice of offering free installation equipment to customers buying chain, slider and other zipper components. YKK's lawyer, who is also a member of YKK's board of directors, privately met with a lawyer for YKK's competitor, Talon, and suggested that YKK would refrain from providing free equipment if Talon agreed to cease offering free equipment. Because Talon's provision of free equipment is a form of discounting, an agreement between Talon and YKK to cease this form of discounting would have violated the law.[2c] Consequently, an offer to agree that both parties end price discounts, as happened here, should similarly be unlawful.[3c] Absent an offer to agree on a factor such as price, however, a lawyer's *bona fide* threat of litigation standing alone should not violate section 5, even if the logical result of that threat is that the other side would have to end a price discount in order to settle the dispute. To suggest otherwise could potentially chill settlement discussions in legal disputes.

The evidence strongly suggests that such a *quid pro quo* offer was made. Although at the meeting YKK's lawyer discussed his apparently good faith belief that Talon's offering of free installation equipment violated the Robinson-Patman Act and other trade regulation rules, his own written description of the meeting demonstrates that he went beyond discussing alleged violations of the law and offered a *quid pro quo*. Specifically, he recounts that he told Talon's lawyer that "it would be good for the industry if no one 'gave away' installation equipment" and, in the same sentence, that "YKK would consider it 'a plus * * *' if Talon would continue its current policy of not giving free equipment to their customers."[4c] Further buttressing this case is the fact that this offer of a *quid pro quo* is not the product of disputed deposition testimony between competitors, but rather is described in explicit detail in a document written by YKK's lawyer. While such documentary evidence—because of its rarity—is not necessary in order to find clear evidence of an unlawful offer, it serves as a powerful counter to any argument that the evidence here is ambiguous. Finally, these two companies may have market power—the complaint notes that YKK and Talon together account for approximately 82 percent of all zippers manufactured and/or sold in the United States. Market power increases the incentives of the parties to seek to fix prices (since collusion is more likely to be successful when the parties have market power) and thus increases the probability of an anticompetitive motive on the part of the offeror, further reducing any ambiguity in the evidence concerning the offer.

Although the Commission must take care in cases like this to avoid any misimpression that mere settlement discussions could lead to a section 5 action, the Commission cannot abdicate its responsibility to challenge an unlawful invitation to collude solely because it occurs during an otherwise lawful conversation. The evidence described above shows that YKK's lawyer, a member of its board of directors, went beyond discussing alleged violations of the Robinson-Patman Act and offered Talon a *quid pro quo* at the meeting. Hence, I find that there is reason to believe that, in doing so, YKK violated section 5.

[FR Doc. 93–8692 Filed 4–13–93; 8:45 am]

BILLING CODE 6750–01–M

[1c] The Analysis of Proposed Consent Order to Aid Public Comment which the Commission has issued in this matter also provides a fuller description of this matter than is contained in the complaint and consent order. Because Analyses are not included in the bound volume of final Commission decisions, I have appended the Analysis to my concurring statement for reference purposes.

[2c] *United States* v. *United States Gypsum Co.*, 438 U.S. 422, 448–59 & n. 23 (1978) (agreement among competitors to verify actual prices is actionable under Section 1 even if supposedly done to avoid Robinson-Patman Act violations).

[3c] *See, e.g., Quality Trailer Products Corp.*, File No. 911–0068 (Aug. 6, 1992) (FTC complaint charged that respondent violated section 5 by making an unambiguous offer to fix prices of certain axle products).

[4c] (ellipsis in original). At an earlier point in the meeting, Talon's attorney had informed YKK's attorney that Talon was no longer offering free installation equipment.

[Dkt. C–3417]

Alan V. Phan, d/b/a Harcourt Companies; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California marketer of "Jazz cigarettes", a non-tobacco product, from representing that smoking such products poses no health risk, that smoking such products does not pose any of the health risks associated with smoking cigarettes, and that the smoke contains no tar. In addition, the respondent is prohibited from making any representations about the comparative or absolute health or safety attributes, benefits or risks of any cigarette or smoking product, unless it is substantiated by competent and reliable scientific evidence.

DATES: Complaint and Order issued March 12, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Kerry O'Brien, San Francisco Regional Office, Federal Trade Commission, 901 Market Street Suite 570, San Francisco, CA. 94103 (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, January 6, 1993, there was published in the **Federal Register**, 58 FR 559, a proposed consent agreement with analysis In the Matter of Alan V. Phan, d/b/a Harcourt Companies, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, D.C. 20580.

contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 93–8690 Filed 4–13–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement 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: Clinical Laboratory Improvement Advisory Committee.

Times and Dates: 8 a.m.–4:30 p.m., May 26, 1993. 8:30 a.m.–3:30 p.m., May 27, 1993.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services and the Assistant Secretary for Health regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include a review and discussion of the Classification of Waived Tests; continued discussion of the Physician Performed Microscopy Procedures category; further discussion on several personnel issues, including Testing Personnel—High Complexity and General Supervisor—High Complexity; and current updates on implementation issues.

Written comments on the criteria and process used in the Classification of Waived Tests and suggested modifications are welcome. Comments on the classification of specific tests will not be accepted at this time. Comments should not exceed five single-spaced, typed pages in length and should be received by the contact person listed below no later than April 30, 1993. Copies of comments that are germane to the Classification of Waived Tests will be supplied to the committee members for review prior to the meeting. Public oral comments will be accepted at the discretion of the chairman at the close of the meeting if time permits.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Henry M. Colvin, Assistant Director for Program Policy, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 1600 Clifton Road, NE., Mailstop G–25, Atlanta, Georgia 30333, telephone 404/639–1706.

Dated: April 8, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–8669 Filed 4–13–93; 8:45 am]

BILLING CODE 4160–18–M

Board of Scientific Counselors, National Center for Infectious Diseases; 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: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 9 a.m.-5:30 p.m., May 3, 1993. 8:30 a.m.-4 p.m., May 4, 1993.

Place: CDC, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: The agenda will focus on updates of the CDC draft plan on new and emerging infectious diseases, infectious diseases in minority and underserved populations, and action planning. Infectious disease updates will be provided on the following topics: Lyme Disease: Surveillance Definition/Diagnostics Workshop; Malaria in North Carolina; Meningococcal Disease; Antimicrobial Resistance; *E. coli* 0157:H7 and Food Safety; Tuberculosis; Sexually Transmitted Diseases; and the Public Health Laboratory Information System. Other agenda items include announcements; consideration of minutes of the December 3–4, 1992, meeting; a report from the Director, NCID; discussion of drug resistant microorganisms and vaccine development and evaluation; and future board activities.

The discussion will include presentations by community, state, and Federal representatives. Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0044.

Dated: April 8, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–8668 Filed 4–13–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93M–0106]

Tosoh Medics, Inc.; Premarket Approval of AIA–PACK CEA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Tosoh Medics, Inc., South San Francisco, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of AIA–PACK CEA. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 19, 1993, of the approval of the application.

DATES: Petitions for administrative review by May 14, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1034.

SUPPLEMENTARY INFORMATION: On August 28, 1991, Tosoh Medics, Inc., South San Francisco, CA 94080, submitted to CDRH an application for premarket approval of AIA–PACK CEA. The device is a immunoenzymometric assay and is indicated for the quantitative measurement of carcinoembryonic antigen (CEA) in serum to aid in the

management of cancer patients in whom changing concentrations of CEA are observed. In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Immunology Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On February 19, 1993, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 14, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 31, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–8618 Filed 4–13–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93M–0096]

Scott Medical Products; Premarket Approval of ISPAN™ Sulfur Hexafluoride (SF_6) Gas

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Scott Medical Products, Plumsteadville, PA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of ISPAN™ Sulfur Hexafluoride (SF_6) Gas. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 25, 1993, of the approval of the application.

DATES: Petitions for administrative review by May 14, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Denis L. McCarthy, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration,1390 Piccard Dr., Rockville, MD 20850, 301–427–1209.

SUPPLEMENTARY INFORMATION: On November 2, 1990, Scott Medical Products, Plumsteadville, PA 18949, submitted to CDRH an application for premarket approval of ISPAN™ Sulfur Hexafluoride (SF_6) Gas. The device is a gas and is indicated for use as a surgical aid in the treatment of uncomplicated retinal detachment by pneumatic retinopexy. It is used in the form of an intravitreal injection for selected retinal breaks and to aid in the resorption of subretinal fluid. Associated measures used include transconjunctival and transscleral cryotherapy and laser photocoagulation.

On April 18, 1991, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On February 25, 1993, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 14, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this

document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 1, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93-8616 Filed 4-13-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93M-0097]

Scott Medical Products; Premarket Approval of ISPAN™ Perfluoropropane (C_3F_8) Gas

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Scott Medical Products, Plumsteadville, PA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of ISPAN™ Perfluoropropane (C_3F_8) Gas. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 25, 1993, of the approval of the application.

DATES: Petitions for administrative review by May 14, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Denis L. McCarthy, Center for Devices and Radiological Health (HFZ-462), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1209.

SUPPLEMENTARY INFORMATION: On November 2, 1990, Scott Medical Products, Plumsteadville, PA 18949, submitted to CDRH an application for premarket approval of ISPAN™ Perfluoropropane (C_3F_8) Gas. The device is a gas and is indicated for use as a surgical aid in the treatment of uncomplicated retinal detachment by pneumatic retinopexy. It is used in the form of an intravitreal injection for selected retinal breaks and to aid in the resorption of subretinal fluid. Associated measures used include transconjunctival and transscleral cryotherapy and laser photocoagulation.

On April 18, 1991, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On February 25, 1993, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 14, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 15, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93-8617 Filed 4-13-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Availability of Funds for Grants for (State) Demonstration Projects With Respect to Alzheimer's Disease or Related Disorders

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $4.7 million in fiscal year (FY) 1993 for grants to States for demonstration projects with respect to Alzheimer's Disease or related disorders. Of the $4.7 million, approximately $1 million will be available, on a competitive basis, for new awards to agencies of State governments not previously funded under this program. Approximately $3.7 million will be available for non-competing continuation awards to the 11 States funded in FY 1992.

This program is authorized by Section 398 of the Public Health Service (PHS) Act, 42 U.S.C. 280c and grants will be awarded in accordance with Sections 398, 399 and 399A of the PHS Act as amended, 42 U.S.C. 280c-3 to 280c-5.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Alzheimer's Disease (or related disorders) Demonstration Grant Program to States directly addresses the Healthy People 2000 objectives by improving access to information and services for persons with Alzheimer's Disease and their families. This includes respite care services for underserved populations, particularly minority groups, and other disadvantaged populations. 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. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20042–9325 (Telephone 202–783–3238).

ADDRESSES: Application kits and additional guidance (Form PHS 5161–1, with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189) may be obtained from, and completed applications should be mailed to: Alice H. Thomas, Grants Management Officer (GMO), Bureau of Primary Health Care, Health Resources and Services Administration, 12100 Parklawn Drive, Rockville, Maryland 20857. The telephone number is (301) 443–5902, and FAX number is (301) 443–5906. The Grants Management Officer is also available to provide assistance on business management issues.

DATES: The deadline date for receipt of competing applications is June 7, 1993, and noncompeting applications is July 1, 1993. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the 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 the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.) Late applications will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For general program information or technical assistance, contact Carol E. Sherman, D.M.D., M.P.H, Division of Programs for Special Populations (DPSP), Bureau of Primary Health Care (BPHC), room 9–12, 5600 Fishers Lane, Rockville, Maryland 20857. Tel. No. (301) 443–9371.

SUPPLEMENTARY INFORMATION: The purpose of this program is to assist grantees in carrying out demonstration projects in planning, establishing, and operating respite care and supportive service programs as follows:

(a) *Program Development:* to coordinate with public and private organizations the development and operation of diagnostic, treatment, care management, respite care, legal counseling and education services provided within the State to individuals with Alzheimer's Disease or related disorders and to the families and care providers of these individuals;

(b) *Service Delivery:* States are required to expend not less than 50 percent of the grant award for the following services: home health care, personal care, day care, companion services, short-term (up to 14 days per annum) respite care in long-term care and other health facilities, and other respite care to families and individuals with Alzheimer's Disease or related disorders; and

(c) *Information Dissemination:* to provide health care providers, individuals with Alzheimer's Disease or related disorders, the families of such individuals, organizations established for such individuals and such families, and the general public, information concerning: (1) Diagnostic, treatment, and related services; (2) sources of assistance in obtaining such services, including assistance under entitlement programs; and (3) the legal rights of such individuals and their families.

Eligible Applicants: Eligible applicants for new awards are States not previously funded under this program. The term "State" includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands (the Republic of the Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia. Only one application per State will be accepted. The State must designate the agency responsible for implementing this demonstration program.

Available Funds: Approximately $1 million for new discretionary grants to States to assist in carrying out demonstration projects for planning, establishing, and operating programs will be awarded in FY 1993.

Number of Awards: Not more than 4 awards will be made, each for a one year budget period. Project periods for new grantees may not exceed three years. The range of awards will be between $300,000–$500,000 per 12 month period, depending upon the scope of the program and the number of individuals to be served.

Grant Requirements

- A State must agree to expend at least 50 percent of the grant award for the following services: home health care, personal care, day care, companion services, short-term (up to 14 days per annum) respite care services in long-term care and other health facilities, and other respite care to individuals with Alzheimer's Disease or related disorders.
- A State must agree that no more than 10 percent will be expended for administrative expenses.
- A State may not make payments from a grant for any item or service to the extent that payment has been made, or can reasonably be expected to be made, under any State compensation program, an insurance policy, any Federal or State health benefits program, or by an entity that provides health services on a prepaid basis. Grant funds may not be used to supplant State funds for services that are currently supported or for services from which State funds have recently been withdrawn.
- Matching Requirement: Under this program, the amount of Federal grant funds may not exceed 75 percent of the cost of services to be provided by the State for the first year, 65 percent for the second year, and 55 percent for the third year. Amounts provided by the Federal government, or services assisted or subsidized to any significant extent by the Federal government, may not be counted toward the non-Federal contribution requirement. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services in accordance with applicable PHS guidelines.

Criteria for Evaluating Competing Applications

Competing applications which meet basic application requirements will be reviewed based upon the following evaluation criteria:

(a) *Need:* The extent to which the proposed plan has: (1) Identified and documented the need for respite care or supportive services for persons with Alzheimer's Disease or related disorders, for their families and their caregivers; (2) projected the number of persons to be served by the proposal; (3) identified traditionally underserved populations to be served; and (4) described the barriers to be overcome in accessing respite care and supportive services.

(b) *Proposed Plan:* The extent to which the proposed plan has: (1) specified activities that will address identified needs for respite care and supportive services; (2) provided a specific description of proposed program services and activities which demonstrates at least a 50 percent use of program funds used for direct services for program participants; (3) specified outreach activities to traditionally underserved populations; (4) provided a description of the quality assurance program; and (5) described the applicant's experience in providing

outreach, respite care, and other supportive services, including a description of the proposed staffs' qualifications and experience.

(c) *Project Administration, Collaboration and Coordination:* The extent to which an applicant: (1) Has collaborated and will collaborate (and described strategies) with other public or private nonprofit agencies to link, coordinate and integrate the service system; (2) has an adequate plan and appropriately trained staff for the overall management of the project, including procedures for fiscal control and supervision of contracts.

(d) *Budget:* The extent to which the proposed budget is adequate and appropriate to support and meet the objectives of the program.

(e) *Outcome and Evaluation:* The adequacy of the plan to monitor the progress of the program and to assess and document outcomes of the program.

Other Award Information

The Alzheimer's Demonstration Grant to States Program has been determined to be a program which is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State-point-of-contact (SPOC) in the State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after appropriate deadline dates. The BPHC does not guarantee that it will accommodate or explain its responses to State process recommendations received after the due date. (See "Intergovernmental Review of Federal Programs", Executive Order 12372, and 45 CFR part 100, for a description of the review process and requirements).

In the OMB Catalog of Federal Domestic Assistance, the Alzheimer's Demonstration Grant to States Program is listed as Number 93.951.

This program is not subject to the submission of a Public Health System Impact Statement.

Dated: February 2, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–8683 Filed 4–13–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of a Recombinant Toxin To Treat Cancer

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a pharmaceutical company that can effectively pursue the scientific and commercial development of a recombinant immunotoxin to treat several types of human cancers. NCI has isolated a monoclonal antibody (MAb B3) that reacts with many types of human cancers. This antibody has been used to make a single chain immunotoxin termed B3(Fv)–PE38 or LMB–7. LMB–7 has been shown to cause the complete regression of human cancers growing in immunodeficient mice. The selected sponsor will be awarded a CRADA to produce LMB–7 for use in a Phase I/II trial of patients whose cancers react with monoclonal antibody B3.

ADDRESSES: Questions about this opportunity may be addressed to Ira Pastan, M.D., Chief, Laboratory of Molecular Biology, Division of Cancer Biology Diagnosis and Centers, National Cancer Institute, 9000 Rockville Pike, Building 37, room 4E16, Bethesda, MD 20892, Tel: (301) 496–4797, Fax: (301) 402–1344.

DATES: Thirty (30) days, maximum, from date of publication.

SUPPLEMENTARY INFORMATION: The NCI is seeking a pharmaceutical or biotechnology company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR part 404), can produce the recombinant immunotoxin LMB–7 for which patents are pending or have been issued to meet the needs of the general public with the best terms for the NCI. B3 is a monoclonal antibody that reacts with many kinds of human cancers. The antibody reacts with many colon cancers, lung cancers, stomach cancers, ovarian cancers, esophageal cancers, and breast cancers. LMB–7 is a single chain immunotoxin in which the combining site of the B3 antibody has been fused to a recombinant form of *Pseudomonas* exotoxin in which the cell binding domain of the toxin has been removed. LMB–7 is expressed in *E. coli* using a T7 based expression system. The recombinant protein accumulates within inclusion bodies. Methods have been developed to solubilize the inclusion bodies and purify the recombinant protein. Using LMB–7 prepared in the National Cancer Institute, preclinical studies have been carried out which indicate that LMB–7 can cause complete regression of human tumors growing in mice when given in doses that do not cause significant toxicity in these mice.

In order to bring LMB–7 to market, it will be necessary to show that the recombinant immunotoxin is safe and effective therapy. The initial clinical trial will be done at the National Cancer Institute after FDA approval.

The role of the National Cancer Institute, the Division of Cancer Biology, Diagnosis, and Centers and the Division of Cancer Treatment includes the following:

1. NCI will provide vectors that encode LMB–7 and can be used to produce LMB–7 in *E. coli*.

2. NCI will provide human cancer cell lines that can be used to test the activity of LMB–7.

3. NCI will provide information about how the activity of LMB–7 can be measured using cultured cell lines or an ELISA assay.

4. NCI will design and conduct a clinical trial with clinical grade LMB–7 supplied by the CRADA holder. The NCI will measure the toxicity of LMB–7 in patients, carry out pharmacokinetic studies, carry out studies on the immunogenicity of the recombinant toxin and also record any response during a Phase I trial with the recombinant immunotoxin.

5. If the Phase I trial is completed successfully, the NCI will carry out a Phase II evaluation of the activity of LMB–7 against selected human cancers containing the B3 antigen. During this trial the NCI will screen cancer samples to assure that the B3 antigen is present before the clinical trial is carried out.

6. Relevant patent rights are available for licensing through the Office of Technology Transfer, NIH. For further information contact: Margarie Hunter, National Institutes of Health, OTT, Bethesda, MD 20892, Tel: (301) 496–7735, Fax: (301) 402–0220.

The role of the successful corporate partner under the CRADA will include the following:

1. Generate 5 grams of LMB–7 suitable for a clinical trial. This will include

supplying all data necessary to meet FDA standards and to obtain an IND.

2. Provide the drug before January 1, 1994.

3. Provide funds to support a technician to carry out analyses needed for the clinical trial. These will include measurement of LMB–7 in patients' blood samples, measurements of antibodies to LMB–7, and related activities.

4. Provide funds to support a postdoctoral fellow and associated expenses to work on improvements to LMB–7.

5. Provide funds to support a research nurse and expenses associated with the exploratory clinical trials.

6. If efficacy is demonstrated in the human trials, the company would be responsible for the large scale production, packaging, marketing, and distribution of this recombinant immunotoxin.

Criteria for choosing the cooperating company will include the following:

1. Experience in producing recombinant proteins for human use and conducting clinical trials with recombinant proteins.

2. Experience and ability to produce, package, market and distribute pharmaceutical products in the United States and to provide the product at a reasonable price.

3. Willingness to cooperate with the NCI in the collection, evaluation, publication and maintenance of data from clinical trials of investigational agents.

4. Willingness to cost share in laboratory studies and clinical trials as outlined above.

5. An agreement to be bound by the DHHS rules involving human and animal subjects.

6. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for clinical development.

7. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with: (1) An irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor); or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: April 5, 1993.

Reid Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 93–8687 Filed 4–13–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Board of Scientific Counselors Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina, on May 11, 1993.

The meeting will be open to the public from 9 a.m. to adjournment with attendance limited only by space available. The preliminary agenda topics with approximate times are as follows:

9 a.m.–11:45 a.m.—The NTP staff will provide the Board with reports of information about recent meetings, an update of status of the Advisory Review report and the Programs's response to the report, and summary of toxicity studies planned, ongoing or recently completed. The Board will be briefed on NTP Toxicology Review Teams and a recent Interagency Agreement between the NIEHS and the Food and Drug Administration.

12:45 p.m.–4 p.m.—The NTP staff will discuss with the Board selected ongoing or recently completed research projects on low frequency electromagnetic fields, methylene chloride, and oxazepam. The Board will be informed about progress on changes in procedures for the nomination and selection of chemicals and scientific issues or concepts. The Board's advice will be sought on a proposed scheme for prioritizing chemicals for carcinogenesis testing. Other scientific issues may be discussed as appropriate.

The Executive Secretary, Dr. Larry G. Hart, National Toxicology Program, P.O. Box 12233, Research Triangle park, North Carolina 27709, will have available a roster of Board members and other program information prior to the meeting and summary minutes subsequent to the meeting.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 93–8685 Filed 4–13–93; 8:45 am]

BILLING CODE 4160–17–M

Public Health Services

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority; Correction

AGENCY: National Institutes of Health.

ACTION: Notice correction.

The notice published in the February 16, 1993 **Federal Register** (58 FR 8605) announcing amendment of Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 58 FR 6288, January 27, 1993) to reflect the reorganization of the National Center for Human Genome Research, incorrectly listed some of the alpha prefixes for the organizational codes as "HNA". NIH is publishing this notice to correct these alpha prefixes to read "HN".

Dated: March 31, 1993.

Bernadine Healy,

Director, NIH.

[FR Doc. 93–8688 Filed 4–13–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending 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 collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0004), Washington, DC 20503, telephone 202–395–7340.

Title: Consolidated Consumers' Report

OMB approval number: 1032–0084

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys, Volumes I, II, and III of the Minerals Yearbook, and Mineral Commodity Summaries for use by private organizations and other Government agencies.

Bureau form number: 6–1109–MA

Frequency: Monthly and Annual

Description of respondents: Operations that consume ferrous metals.

Annual responses: 4,432
Annual burden hours: 4,432
Bureau clearance officer: Alice J. Wissman, 202–501–9569

Dated: December 8, 1992.

T.S. Ary,

Director, Bureau of Mines.

[FR Doc. 93–8613 Filed 4–13–93; 8:45 am]

BILLING CODE 4310–53–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

Notice of Commission Determination Not To Review Initial Determination Granting Joint Motion To Terminate the Investigation With Respect to Two Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus; Investigation No. 337–TA–337.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (ID) (Order No. 155) in the above-captioned investigation granting a joint motion to terminate the investigation with respect to respondents Winbond Electronics Corporation and Winbond Electronics North America Corporation on the basis of a cross license agreement.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq. or Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3093 and 202–205–3108, respectively. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 1, 1992 based on a complaint filed by SGS-Thomson Microelectronics, Inc. (ST) alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of certain integrated circuit telecommunication chips and products containing same, including dialing apparatus, which allegedly infringe claims 1, 4, 10, 11, and 14–16 of U.S. Letters Patent 4,315,108; claims 6–9 and 13–14 of U.S. Letters Patent 4,061,886; and/or claims 1–4 and 6 of U.S. Letters Patent 4,446,436.

On March 8, 1993 ST renewed a joint motion to terminate this investigation as to respondents Winbond Electronics Corporation and Winbond Electronics North America Corporation (Winbond respondents) on the basis of a cross license agreement. The original motion, filed on June 11, 1992, was denied without prejudice because the required approval of the Taiwanese government had not been demonstrated. That approval has since been obtained. The Commission investigative attorney had no objection to the renewed motion. On March 9, 1993, respondent United Microelectronics Corporation (UMC) objected to the renewed motion.

March 9, 1993, the ALJ granted the renewed motion, issuing an ID terminating the investigation as to Winbond respondents. No petitions for review or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for public 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.

Issued: April 5, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–8707 Filed 4–13–93; 8:45am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–644; Preliminary]

Welded Stainless Steel Pipe From Malaysia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Malaysia of welded stainless steel pipe, provided for in subheadings 7306.40.10 and 7306.40.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On February 16, 1993, a petition was filed with the Commission and the Department of Commerce by Avesta Sheffield Pipe, Shaumburg, IL; Bristol Metals, Bristol, TN; Damascus Tube Division of the Nes Bishop Tube Co., Greenville, PA; Trent Tube Division of Crucible Materials Corp., East Troy, WI; and the United Steelworkers of America, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of welded stainless steel pipe from Malaysia. Accordingly, effective February 16, 1993, the Commission instituted antidumping investigation No. 731–TA–644 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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 February 24, 1993 (58 FR 11247). The conference was held in Washington, DC, on March 9, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Issued: April 6, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–8709 Filed 4–13–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington,

DC 20423, (202) 927–5750 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–290 (Sub-No. 126X), Georgia Northern Railway Company—Abandonment Exemption—In Dougherty and Lee Counties, Georgia. EA available 4/9/93.

AB–393 (Sub-No. 1X). Northwestern Oklahoma RR—Abandonment In Woodward County, OK. EA available 4/9/93.

AB–394X, Austin and Northwestern Co., Inc. Texas & New Mexico Railroad Division—Abandonment Exemption—In Lea County, NM. EA available 4/9/93.

Comments on the following assessment are due 30 days after the date of availability:

AB–55 (Sub-No. 456X), CSX Transportation, Inc. Abandonment—In Sampson County, NC. EA available 4/5/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8714 Filed 4–13–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 461X)]

CSX Transportation, Inc.; Abandonment Exemption; In Clay County, KY

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 0.59 miles of rail line in Clay County, KY, consisting of two line segments: (1) Its line between milepost CF–211.66 at Gault and milepost CF–212.01 at Herron; and (2) its entire Gregory Branch between mileposts CG–210.94 and CG–211.18.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 14, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 26, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 4, 1993, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by April 19, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 7, 1993.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8718 Filed 4–13–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32275]

Indiana Harbor Belt Railroad Co.; Trackage Rights Exemption; Consolidated Rail Corp.

Consolidated Rail Corporation has agreed to grant nonexclusive overhead trackage rights to Indiana Harbor Belt Railroad Company (IHB) over approximately 19.0 miles of rail line between milepost 503.0± at Indiana Harbor in Lake County, IN, and milepost 484.0± at Burns Harbor, in Porter County, IN. IHB will use the trackage rights as follows: (1) Interchange traffic only between milepost 484.0± and milepost 488.0±; and (2) bridge traffic only between milepost 488.0± and milepost 503.0±. The trackage rights were to become effective on April 5, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Roger A. Serpe, 175 West Jackson Boulevard, Suite 1460, Chicago, IL 60604.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: April 7, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8716 Filed 4–13–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32274]

PL&W Railroad, Inc.; Acquisition and Operation Exemption; Youngstown and Southern Railway Co. and Pittsburgh and Lake Erie Railroad Co.

PL&W Railroad, Inc. (PL&W), a noncarrier, has filed a notice of exemption to acquire and operate 51.16 miles of certain rail lines owned by

Youngstown and Southern Railway Company (Y&S) and Pittsburgh and Lake Erie Railroad Company (P&LE).[1] The lines involved include: (1) Y&S' main line between milepost 0.0 in the City of Youngstown, OH, and milepost 35.7 in the Township of Darlington, PA; (2) Y&S's Smith's Ferry Branch between milepost 0.0 at Negley, OH, and milepost 12.92 at Smith's Ferry, PA; (3) P&LE's Youngstown Branch between milepost 0.0 in the City of Youngstown, OH, and milepost 0.64 in the Village of Struthers, OH; and (4) the former LE&E main line of P&LE between milepost 0.0 and milepost 1.9 in the City of Youngstown, OH. The transaction was expected to be consummated after March 29, 1993, the effective date of the exemption.

Any comments must be filed with the Commission and served on: Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 7, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8717 Filed 4–13–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 29, 1993 a proposed partial consent decree in *United States* v. *In-Tek Constructors, et al.*, Civil Action No. CIVS–92 353 WBS–JFM, was lodged with the United States District Court for the Eastern District of California. This is an action brought pursuant to the Clean Air Act, 42 U.S.C. 7401–7632, and the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated under Section 112 of the Act, 42 U.S.C. 7412. Under the terms of the proposed partial consent decree, the settling defendant South Tahoe Redevelopment Agency ("South Tahoe") agrees to provide training for its employees in asbestos inspection, management, and project design, to purchase certain equipment used for inspection and sampling, and to comply with certain injunctive provisions designed to insure that it does not violate the revised NESHAP in the future. The decree includes stipulated penalties in the event that South Tahoe fails to comply with the provisions of the decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530. Comments should refer to *United States* v. *In-Tek Constructors, et al.*, D.O.J. Ref. 90–5–2–1–1521.

The proposed partial consent decree may be examined at the Office of the Assistant United States Attorney, Eastern District of California, 3305 Federal Building, 650 Capitol Mall, Sacramento, CA 95814, and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005 (202–624–0892). A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005. In requesting a copy by mail, please enclose a check in the amount of $6.00 (25 cent per page reproduction cost) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–8611 Filed 4–13–93; 8:45 am]

BILLING CODE 4410–11–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 31, 1993, a proposed Consent Decree in *United States* v. *Otto Skipper et al.*, Civil Action No. 89–102–Civ–7–F, was lodged with the United States District Court for the Eastern District of North Carolina. The Complaint, brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9607, seeks the recovery of response costs incurred or to be incurred by the United States in connection with the Potter's Pits Superfund Site, Maco, North Carolina (the "Site"). The Site is situated in the town of Sandy Creek, Brunswick County, North Carolina, and occupies approximately 5 acres. The Site was used from 1960 until at least the late 1970's for disposal of waste oil, oil sludges, creosote and other hazardous substances. These hazardous wastes were disposed of in shallow, unlined pits at the Site.

The amount paid by these defendants is based on their financial inability to contribute meaningfully to the clean up of the Site. The consent decree provides that the Estate of Hubert J. Anderson and Mrs. Anderson will pay $1,000, and Mr. and Mrs. Cain will pay $500 in settlement of the United States' claims.

Cain will pay $500 in settlement of the United States' claims. The consent decree includes an extraordinary circumstances release under Section 122(f)(6)(B) of CERCLA, 42 U.S.C. 9622(f)(6)(B) for past and future liability.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. Comments should refer to *United States* v. *Otto Skipper, et al.*, D.O.J. Ref. 90–11–3–120A.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of North Carolina, Princess and Water Streets, Wilmington, North Carolina 28401; Office of the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–8612 Filed 4–13–93; 8:45 am]

BILLING CODE 4410–01–M

[1] PL&W expected to execute an Agreement to acquire the assets of Y&S and P&LE on or about March 25, 1993.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-029]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Commission.

DATES: April 20, 1993, 8:30 a.m. to 5:30 p.m.

ADDRESSES: 400 Virginia Avenue, SW., room 825, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W. P. Raney, Code D, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1857.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Office of Space Systems Development Overview
—Space Station Freedom Program Redesign Status
—Utilization Activities
—Congressional Prognosis

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: 7 April 1993.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 93-8614 Filed 4-13-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME: Wednesday, April 28, 1993, 8:30 a.m.-5 p.m.

PLACE: Embassy Suites Hotel, 1250 22nd Street, NW., Diplomat Room, Washington, DC.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Roy Widdus, Ph.D., Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: The agenda for the Commission meeting will include discussions of the Commission's activities before it closes business.

Dated: April 8, 1993.

Roy Widdus,

Executive Director.

[FR Doc. 93-8660 Filed 4-13-93; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships Section) to the National Council on the Arts will be held on May 4-6, 1993 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 6 from 3:30 p.m.-5:30 p.m. for policy discussion and guidelines reviews.

The remaining portions of this meeting on May 4-5 from 9 a.m.-5:30 p.m. and May 6 from 9 a.m.-3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93-8609 Filed 4-13-93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Educational Infrastructure Panel Meeting.

Date and Time: April 23, 1993, 8:30 am-5 pm.

Place: Room 540, 1800 G Street, NW, Washington, DC 20550.

Contact: Harry G. Hedges, Program Director, CISE/OCDA, room 436, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. 202-357-7349.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for nominations submitted to the NSF for financial support.

Agenda: To review and evaluate National Science Foundation educational infrastructure proposals as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S. X. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–8619 Filed 4–13–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and time: April 21 & 22, 1993; 8:30 a.m.–5 p.m.

Place: Room 1242, 1800 G Street, NW., Washington, DC.

Type of meeting: Closed

Contact Person: Authur R. Bergen, Program Director, ECS, room 1151, NSF, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation and Research Equipment proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in obtaining meeting room.

Dated: April 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–8620 Filed 4–13–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 22, 1993, through April 2, 1993. The last biweekly notice was published on March 31, 1993.

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 May 14, 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.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 3, 1993

Description of amendment request: The proposed change will (1) add ANF-88-133(P)(A), "Qualification of Advanced Nuclear Fuels' PWR Design Methodology for Rod Burnups of 62 Gwd/MTU," to the approved methodologies list of Technical Specification (TS) 6.9.3.3.b, (2) clarify wording in TS 3.10.2.1 and 3.10.2.2.2 by describing more precisely how measurement uncertainty and engineering factors are considered, (3) correct an inadvertent typographical error made in Amendment 141 in TS 3.10.2.2 where the symbol should have indicated less than, not less than or equal to, and (4) correct a reference to TS 6.9.3.3.b. from 2 to p).

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.

The addition of an NRC previously reviewed and approved methodology to the list of Technical Specification 6.9.3.3.b, the wording clarification of Technical Specification 3.10.2.1 and 3.10.2.2.2., the typographical error correction in Technical Specification 3.10.2.2, and the correction to the basis reference will have no influence on the probability of an accident previously evaluated. No changes will be made to any safety related equipment, systems, or setpoints used in determining the probability of an evaluated accident. No changes in plant operation are required. The plant design basis will not be altered. Therefore, there will be no significant increase in the probability of an accident previously evaluated.

Consequences are dependent on the type of accident and the mitigating response of safety related equipment. Furthermore, the magnitude of consequences are calculated (directly or through supporting calculations) by use of NRC approved methodologies. The proposed license amendment will not alter the function of safety related equipment designed to mitigate the consequences of an accident previously evaluated or allow operation of the facility outside any current limitations or restrictions. Also, this amendment will not alter the requirement that evaluation of the consequences of a accident previously evaluated be determined with NRC reviewed and approved methodologies. Accordingly the proposed license amendment will not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any design or function changes to any safety related equipment designed to prevent and/or mitigate accidents, to any setpoints or systems, or to any portion of the plant design basis. Operation of the facility will remain within all required limitations and restrictions. Therefore, the proposed amendment will not create the possibility of a new kind of accident from any accident previously evaluated.

* * * * *

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed license amendment is administrative in nature. No current operational limits, restrictions, or operating modes of the facility and its equipment (safety related or otherwise) designed to preserve the margin of safety will be changed or affected by the proposed amendment. There will be no changes to setpoints or to the plant design basis. The methodology proposed for addition to Technical Specification 6.9.3.3.b has been previously reviewed and approved by the NRC. Accordingly, the proposed license amendment 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: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602 NRC Project Acting Director: Jocelyn A. Mitchell

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Dates of amendment request: September 19, 1990 and February 26, 1993

Description of amendment request: The proposed changes would revise the ACTION statement to Technical Specification (TS) 3/4.6.1.3, to specify actions to be taken in the event of an inoperable interlock mechanism in one or both primary containment airlock doors, but do not explicitly address the specific case of an inoperable interlock mechanism. A supplement to the September 19, 1990 letter was submitted February 26, 1993, which reformatted the previously proposed interlock mechanism TS change and revised the footnote to TS 3.6.1.3. The footnote permits limited containment entry to perform repairs when one or both of the airlocks have an inoperable door. Current TSs allow such use only for repair of an inoperable inner airlock door.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

This change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of a previously evaluated accident is not increased because the containment airlocks do not affect the initiation of any accident. Therefore, this change to add action requirement for an inoperable airlock interlock mechanism and to revise the wording of the footnote addressing use of the operable airlock door can not increase the probability of an accident previously evaluated.

The consequences of an accident remain bounded by conditions which exist prior to this change, since operation under the provisions of the proposed changes to the airlock Actions does not produce potential containment leakage paths beyond the currently approved Technical Specifications. With regard to containment airlocks, that containment leakage rate is maintained provided at least one Operable airlock door is closed during the event. The period of time that an airlock door could have no Operable door closed remains extremely small. For the case of the inoperable airlock interlock mechanism, at least one Operable airlock door will be maintained closed at all times thus meeting the requirements for the airlock doors. In the case of having only one air lock with one door inoperable, the Operable door on that air lock may only be used during performance of activities associated with repairs of the affected air lock components. In the case where both air locks have an inoperable door, use of the Operable doors for containment entry and exit (in addition to repair entries) is permissible for only seven days, under administrative controls that limit their use and ensure prompt closure following use for entry and exit through the doors. The use of the air lock for these limited circumstances is acceptable due to the low probability of an event that could pressurize the containment during the short time that the Operable door will be open for entries/exits. Therefore, the changes addressing the interlock mechanism and the footnote cannot increase the consequences of any accident previously evaluated by the NRC.

This proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Containment airlocks are designed and assumed to be used for entry and exit. Their operation does not interface with the reactor coolant pressure boundary or any other mechanical or electrical controls which could impact the operations of the reactor or its direct support systems. Therefore, a new or different accident cannot be created. The proposed changes to the airlock door interlock mechanism and to the footnote permit limited use of the Operable door in an airlock.

The proposed changes to Action 3.6.1.3.a and the

* footnote do not create the possibility of a new or different kind of accident, since the conditions of the containment and its interlocks remains unchanged and the actual operating mode and procedures for the airlock are unaffected by the Technical Specification changes.

The proposed change does not involve a significant reduction in the margin of safety.

The applicable margin of safety consists of maintaining the containment leak rates within the assumptions of the design basis accident analysis. With regard to the containment air locks, these leak rates are maintained provided at least one Operable air lock door is closed during the event. The period of time that an air lock could have no Operable door closed remains extremely small, as was the case for the current footnote. The current footnote was previously evaluated by the NRC and determined to be acceptable since the potential for an event requiring containment integrity occurring during the limited time when no Operable door is closed is sufficiently remote to justify limited access when required. Therefore, the margin of safety is not significantly reduced by the proposed revision of the footnote or by the proposed Action 3.6.1.3.a.

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: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: February 22, 1993

Description of amendment request: The proposed amendment would relocate the power operated relief valve low temperature overpressure protection setpoint to a Pressure and Temperature Limits Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of the low temperature overpressure protection (LTOP) power operated relief valve (PORV) actuation setpoints from the Technical Specifications (TS) has no influence or impact on the probability or consequences of an accident previously evaluated. The LTOP PORV actuation setpoints are not assumed to be initiators of analyzed events. Reactor vessel integrity is assumed in mitigating the consequences of design basis accidents. The relocation of the LTOP PORV actuation setpoints to the pressure and temperature limits report (PTLR) will not affect the performance of any safety systems or structures beyond ensuring the continued integrity of the reactor vessels. Therefore, the relocation of the setpoints does not involve significant increases in the probability or consequences of an accident previously evaluated. The LTOP PORV actuation setpoints, although not in Technical Specifications, will continue to be followed and maintained in the operation of Zion Nuclear Power Station. The proposed amendment still requires exactly the same actions to be taken when or if setpoints are exceeded, as is required by current TS. The limits within the PTLR will be implemented and controlled per Zion procedures. Any changes to the PORV setpoints in the PTLR will be in accordance with NRC-approved methodology discussed in "LTOP PORV Actuation Setpoint Methodology." Changes to the PTLR will be performed per the requirements of 10 CFR 50.59. This ensures that future changes to the LTOP PORV actuation setpoints in the PTLR will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not necessitate a physical alteration of the plant (no new or different types of equipment will be installed). The removal of the LTOP PORV actuation setpoints has no effect on any of the systems or structures at Zion Nuclear Power Station. No safety related equipment or safety function will be altered as a result of this proposed change. The LTOP PORV actuation setpoints will continue to be calculated using NRC approved methods and submitted to the NRC to allow the staff to continue to trend the values of these limits. The TS will continue to require operation with the required LTOP PORV actuation setpoints and appropriate actions will be taken, when or if the setpoints are exceeded. Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of the LTOP PORV actuation setpoints. "LTOP PORV Actuation Setpoint Methodology" addresses the criteria for acceptability of these setpoints. Appropriate measures exist to control the LTOP PORV actuation setpoints. The proposed amendment continues to require operation within the LTOP PORV actuation setpoints as obtained from the NRC approved methodology and appropriate actions to be taken, when or if limits are exceeded. Each change to the LTOP PORV actuation setpoints will involve a 10 CFR 50.59 safety review to ensure that operation of the unit within the limits will not involve a reduction in a margin of safety. Therefore, the proposed changes are administrative in nature and do not impact the operation of the Zion Nuclear Power Station in a manner that involves a reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 16, 1993

Description of amendment request: CYAPCO has identified the need for an editorial cleanup of the Haddam Neck Plant Technical Specifications. These editorial changes can be characterized into one of seven groups. The seven types are: (1) incorporation of missing sections in the index, (2) providing editorial consistency throughout the document, (3) removal of cycle specific comments, (4) removal of notes that are no longer used, (5) clarification of wording used in the sections, (6) incorporation of material that was inadvertently deleted in an earlier amendment, and (7) incorporating new title changes in the administrative 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:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the possibility of occurrence or consequences of an accident previously analyzed.

The proposed changes have been characterized into seven groups. These seven groups are either administrative or editorial in nature and have no impact on the possibility of occurrence or consequences of any accident previously evaluated. The changes which deal with the incorporation of missing sections in the index; the editorial consistency; and clarification of wording are solely editorial changes and will assist in the use and interpretation of the technical specifications. The removal of cycle-specific limits; removal of unused notes; incorporation of inadvertently deleted material; and incorporation of new titles will, in fact, help the operators and other plant personnel from the commission of errors or omission of actions due to old or misleading

material. The use [use] of these editorial and administratively correct technical specifications will decrease the chance of error by the user by ensuring that consistent nomenclature and correct presentation of material throughout the document is maintained.

2. Create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no changes in the way the plant is operated, and therefore, the potential for a new accident is not created. No new failure modes are introduced. These changes that are being proposed fall into either the editorial or administrative categories. These two types of changes will ensure consistency between CYAPCO documents. These corrections will result in technical specifications that are easier to use and clearer to follow.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not have any impact on any previously evaluated accident and do not create any accident of a new or different type. Further, the changes contained herein do not increase the consequences of any accident; therefore, there is no reduction in margin of safety. The incorporation of the editorial and administrative changes will assist technical specification users. The incorporation of missing sections in the index will ensure all individuals are able to quickly and correctly find a specific technical specification. The use of editorial consistency, such as the use of the phrase "greater than" as opposed to "above" will ensure no errors are made based on the misunderstanding of what "above" means. The removal of cycle-specific information will ensure individuals do not take credit for a statement which is no longer valid because the cycle exclusion has passed. The removal of footnotes or references to figures that are not contained in the text any more will prevent the misuse of material or an incorrect interpretation. The incorporation of material that was inadvertently deleted will ensure individuals have available to them the basis of the auxiliary feedwater system for reference and review. The use of proper titles will ensure the correct individual(s) review the material that they are required to see. These changes taken on the whole, assist in maintaining the high margin of safety afforded the Haddam Neck Plant.

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: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 16, 1993

Description of amendment request: The purpose of this change is to allow the Haddam Neck Plant to perform alternative methods of calculating containment integrated leakage rates during surveillance testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

The performance of the test will verify the "as left" and "as found" condition of the containment. This integrated leak rate test is performed to ensure that the containment integrity is in a satisfactory state prior to starting power operation.

The proposed change will modify the technical specifications to allow containment leakage to be tested with other methods that have already been approved by the NRC staff and successfully used at other nuclear facilities.

This change has no impact on the probability of occurrence of any previously evaluated accidents. The additional test methodologies that CYAPCO proposes to use have been previously reviewed and approved by the NRC staff and are recommended for use by national engineering organizations. The consequences of any accidents previously evaluated are not affected since containment integrity will be tested and verified to be within existing limits by approved test methods.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The potential for an unanalyzed accident is not created since there are no changes in the way the plant is operated. The testing methodologies that CYAPCO proposes on using are permitted for use by the NRC staff. These testing methodologies will ensure containment integrity is maintained within the existing limits.

3. Involve a significant reduction in margin of safety.

The proposed change does not impact the safety limits of the containment or its protected boundaries. The proposed change will allow additional methods of testing to be performed which will verify containment integrity. Since all methods that CYAPCO proposes to use have been shown previously to adequately verify containment integrity, the margin of safety afforded by this test is not impacted. Since the proposed change does not affect any accident previously analyzed or create any new accidents, there is no 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: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 22, 1993

Description of amendment request: The proposed amendment would change the following:

The footnote to Technical Specification 3.8.3.2.b is being revised to identify the available options for providing power to the 480 volt buses during plant shutdown (mode 5 or mode 6). This change adds the bus tie breakers 6T11 and 11T6 to the list of available tie breakers.A change to Bases Section 3/4.4.4., Relief Valves, clarifies why it is acceptable to place the power-operated relief valve (PORV) auto-trip signal in the bypass position if a pressurizer pressure channel fails.A change to Bases Section 3/4.7.3, Service Water System, clarifies the definition of the service water header and describes the Adams filter bypass line and valves that were recently added to the service water system.

The proposed change to Special Test Exception Technical Specifications 3.10.3 and Bases Section 3/4.10.3, Position Indication System-Shutdown, addresses exceptions for operability of the individual rod position indication (IRPI) system during shutdown modes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to Technical Specification 3.8.3.2.b expands an existing note to identify the available 480 volt tie breakers that can be

utilized to achieve the subject limiting condition for operation. Adding this clarification assures independent redundant systems are maintained and, as such, decreases the probability or consequences of an accident previously evaluated.

The change to Bases Section 3/4.4.4 will not affect the probability of occurrence of previously evaluated accidents. The automatic opening of the PORVs are not credited in any account analyses and placing the signal in bypass will not initiate any of the previously evaluated accidents, or affect off-site doses or the consequences of previously evaluated accidents.

The proposed change to Technical Specification 3.10.3 only addresses the operability and surveillance requirement of the IRPI system during shutdown modes and revises Bases Section 3/4.10.3 associated with the IRPI system. The change will add the control rod drive slave cycler tests to the Special Test Exceptions in addition to the rod drop tests and the IRPI calibration. There are no design basis accidents directly impacted by the change. Therefore, it is concluded that previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The change to Technical Specification 3.8.3.2.b is a clarification that does not change the way the plant is operated; therefore, the potential of a new or different kind of accident from any previously analyzed is not created.

With regard to the change made to Bases Section 3/4.4.4, placing the PORV auto trip signal in bypass prevents an inadvertent reactor trip with the PORV open. Since the accident analysis does not credit opening the PORVs, failure of the PORVs to open does not create the possibility of an accident of a different type than previously evaluated.

The revised Bases Section 3/4.7.3 concerning the service water system is a clarification of a definition and the inclusion of a description. The change does not alter the operation of the plant such that there is the potential for an unanalyzed accident.

The change to Technical Specification 3.10.3 and Bases Section 3/4.10.3 concerning the IRPI system does not change the way the plant is operated. The potential for an unanalyzed accident is not created and no new failure modes are introduced.

3. Involve a significant reduction in a margin of safety.

The proposed change to Technical Specification 3.8.3.2.b concerning the Electrical Power Systems does not have any adverse impact on the protective boundaries. Since the proposed change does not affect the consequences of any accident previously analyzed, there is no reduction in a margin of safety.

The proposed change to Bases Section 3/4.4.4 will allow the PORVs to be available while not increasing the probability of an inadvertent trip with the PORV open. Thus, the proposed change does not impact the margin of safety.

The revised Bases Section for 3/4.7.3, Service Water System, states that an operable Adams filter in one of two service water headers shall be required for system operability. An operable Adams filter is defined as a filter having sufficient debris accumulation capacity to assure the cloggage level does not exceed 50 percent during the first 30 minutes of a design basis accident without the backwash mechanism. In addition, the revised bases states that an operable Adams filter bypass valve in each header is required. As such, the change in the basis will provide a higher level of assurance for service water system operability. The change has no adverse impact on the margin of safety as defined in the accident analysis.

The proposed change to Technical Specification Section 3.10.3 and Bases Section 3/4.10.3 will not adversely affect any core reactivity requirements while facilitating better scheduling of the three activities; i.e., control rod drop time tests, IRPI calibration, and control rod drive slave cycler timing tests. Thus, the change has no adverse impact to 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: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: January 29, 1993

Description of amendment request: The proposed amendment would revise Technical Specification Table 3.23-2, Radial Peaking Factor Limits, to add limits for those new fuel bundles to be installed during the 1993 refueling outage. In addition, the bases for several Specifications (2.1, 2.3, 3.1, 3.12, and 3.23.2) have been updated to reflect the revision of analytical reports for Cycle 11.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Technical Specifications [TS] increases the radial peaking factor limits for Cycle 11 (Reload 0 fuel assemblies). This change is in core neutronics parameters due to changes in the fuel design and fuel management scheme. No changes to plant hardware (other than the new fuel) are involved. There are no associated changes in plant systems operating procedures or in instrument trip settings. Operation of the facility in accordance with the proposed [TS] would, therefore have no effect on the way the plant systems are operated, or the way these systems would respond to postulated events. Therefore, operation of the facility in accordance with the proposed [TS] would not result in a significant increase in the probability of an accident previously evaluated.

The proposed change to the [TS] increases the radial peaking factor limits for Cycle 11 (Reload 0 fuel assemblies). The increased radial peaking limits for Cycle 11 caused the predicted minimum DNBR [departure from nucleate boiling ratio] to decrease and peak linear heat rate to increase for anticipated operational occurrences. The MDNBR [minimum departure from nucleate boiling ratio] is predicted to remain above the ANFP correlation limit and the peak LHR [linear heat ratio] is predicted to remain below the fuel centerline melt criteria for all AOO [anticipated operational occurrences] events. Therefore, the consequences of all AOO events are within the specified acceptable fuel design limits.

All but four postulated accidents remain bounded by the previous analyses. The effect of increased radial peaking limits on MDNBR and peak LHR was assessed for the reactor coolant pump rotor seizure and single rod withdrawal events. The effect of increased radial peaking limits on radiological consequences was assessed for the fuel handling and spent fuel cask drop accidents.

The peak LHR, for the reactor coolant pump seizure, is predicted to remain below the fuel centerline melt criteria. The MDNBR is predicted to be slightly lower than the ANFP correlation limit for the reactor coolant pump seizure, resulting in failure of approximately 0.1% of the fuel rods in the core. With the only radiological release path to the environment being through a primary to secondary leak in a steam generator, the consequences remain bounded by other postulated accidents such as the control rod ejection event. The radiological consequences of a reactor coolant pump seizure would therefore be a small fraction of 10 CFR [Part] 100 limits.

The MDNBR, for the single rod withdrawal event, is predicted to remain above the ANFP correlation limit and the peak LHR is predicted to remain below the fuel centerline melt criteria.

The predicted radiological consequences for the fuel handling and spent fuel cask drop accidents are less than those predicted by the previous analyses of record. Though higher peaking factors are allowed, the use of dose conversion factors from ICRP 30 [International Commission on Radiological Protection], which are consistent with the latest revision to 10 CFR [Part] 20, results in lower predicted consequences.

Therefore the consequences of all events remain less than the acceptance criteria and operation of the facility in accordance with the proposed [TS] would not result in a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to [TS] Table 3.23-2 increases the assembly and total radial peaking factor limits for Cycle 11 (Reload 0 fuel assemblies). This change is in core neutronics parameters due to changes in the fuel design and fuel management scheme. No changes to plant hardware (other than the new fuel) are involved. There are no associated changes in plant systems operating procedures or in instrument alarm or trip settings. Therefore operation of the facility in accordance with the proposed [TS] would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to the [TS] increases the radial peaking factor limits for Cycle 11 (Reload 0 fuel assemblies). The increased radial peaking limits for Cycle 11 caused the predicted minimum DNBR to decrease and peak linear heat rate to increase for anticipated operation occurrences. The MDNBR is predicted to remain above the ANFP correlation limit and the peak LHR is predicted to remain below the fuel centerline melt criteria for all AOO events. Therefore, the consequences of all AOO events are within the specified acceptable fuel design limits.

All but four postulated accidents remain bounded by the previous analyses. The effect of increased radial peaking limits on MDNBR and peak LHR was assessed for the reactor coolant pump rotor seizure and single rod withdrawal events. The effect of increased radial peaking limits on radiological consequences was assessed for the fuel handling and spent fuel cask drop accidents.

The peak LHR, for the reactor coolant pump seizure, is predicted to remain below the fuel centerline melt criteria. The MDNBR is predicted to be slightly lower than the ANFP correlation limit for the reactor coolant pump seizure, resulting in failure of approximately 0.1% of the fuel rods in the core. With the only radiological release path to the environment being through a primary to secondary leak in a steam generator, the consequences remain bounded by other postulated accidents such as the control rod ejection event. The radiological consequences of a reactor coolant pump seizure would therefore be a small fraction of 10 CFR [Part] 100 limits.

The MDNBR, for the single rod withdrawal event, is predicted to remain above the ANFP correlation limit and the peak LHR is predicted to remain below the fuel centerline melt criteria.

The predicted radiological consequences for the fuel handling and spent fuel cask drop accidents are less than those predicted by the previous analyses of record. Though higher peaking factors are allowed, the use of dose conversion factors from ICRP 30, which are consistent with the latest revision to 10 CFR [Part] 20, results in lower predicted consequences.

Therefore, operation of the facility in accordance with the proposed change to the [TS] 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: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: L. B. Marsh

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: February 26, 1993

Description of amendment request: The proposed amendment would change the Reactor Coolant System Leakage Technical Specifications (TS). These changes provide additional action statements generally consistent with the current design of the leakage detection systems and support increased operational flexibility while preserving adequate monitoring of the reactor coolant pressure boundary.

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:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed changes do not affect the design or operation of any plant system. The systems affected only provide operator information and perform no automatic functions used to mitigate accidents. Due to the diversity of the leakage detection systems, reasonable assurance is provided for detecting small leaks across the reactor coolant pressure boundary. Each of the leakage detection systems inside the drywell are designed with the capability of detecting leakage less than the established leakage rate limits and providing an appropriate alarm in the control room of excess leakage. Because these systems provide no automatic action, nor are they credited following an accident, if an accident occurred while these systems are inoperable, the safety systems credited in the accident analysis would be available and capable of performing their safety functions. Revised surveillance requirement 4.4.3.2.1 continues to require that leakage rates are monitored and remain within limits once every 12 hours or the appropriate ACTION statement is entered. The TS 3.0.4 proposed exceptions do not increase the probability or consequences of an accident because other leak detection instrumentation is available to monitor leakage.

Therefore, the probability or consequences of previously analyzed accidents are not significantly increased.

b. The change would not create the possibility of a new or different king of accident from any previously analyzed.

The requested change will not add any plant equipment, or introduce any new modes of plant operation. Although in the case of proposed action "d", the Drywell Atmosphere Gaseous and Particulate Radioactivity Monitoring systems will be disabled, the Floor Drain Sump Monitoring system is still available to monitor UNIDENTIFIED LEAKAGE from the reactor coolant system within the Drywell. This leakage, in conjunction with the revised surveillance requirement, will continue to be monitored every 12 hours in accordance with the Technical Specifications. Revised surveillance requirement 4.4.3.2.1 does not create the possibility of a new or different kind of accident from any accident previously evaluated. The TS 3.0.4 proposed exceptions do not increase the possibility of a new or different kind of accident because other leak detection instrumentation is available to monitor leakage.

c. This change would not involve a significant reduction in a margin of safety.

The function of the leakage detection systems is to monitor and detect leakage from the reactor coolant pressure boundary. Only the Drywell Floor and Equipment Drain Sump Monitoring Systems have the ability to quantify leakage. The continued availability of the leakage quantification function in conjunction with grab samples provides a level of assurance (i.e., a margin of safety) that leakage from the reactor coolant system will continue to be adequately monitored. Revised surveillance 4.4.3.2.1 continues to require that leakage rates are monitored and remain within limits once every 12 hours or the appropriate ACTION statement is entered. Therefore, operating the plant with the proposed changes will not involve a significant reduction in a margin of safety because the diversity of other leak detection instrumentation provides assurance that leakage is adequately monitored.

Based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards considerations.

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: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502NRC Acting

Project Director: George T. Hubbard, Acting Project Director

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 28, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow a reduced volume of fuel oil for the emergency diesel generator (EDG) for a period not to exceed 5 days. This proposed amendment replaces the amendment which was the subject of a no significant hazards consideration published in the Federal Register on June 26, 1971 (56 FR 29274).

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:

Previously analyzed accidents that are potentially affected by this change are those that postulate the loss of offsite power concurrent with a design basis accident (e.g., Loss of Coolant Accident LOCA or Main Steamline Break MSLB). To significantly increase the probability or consequence of such an accident, this change would have to negatively impact the reliability or performance of the EDGs.

Under the proposed change an EDG would be operable with a fuel oil volume less than the 7 day time dependent volume of 38,760 gallons, for a period up to 5 days. This period is acceptable based on the supply of fuel oil in the redundant storage tank associated [with] the other EDG, the remaining capacity of 5 days at full load (i.e. 38,000 gallons), the fact that procedures will be initiated to obtain replenishment, and the low probability of an event during this period.

In addition if a single EDG had to be run continuously from a single storage tank, there are several sources of diesel oil supplies within the area.

Waterford 3 currently has a purchase agreement with a local supplier that provides delivery approximately twenty-four hours from the time of the request. It is improbably that additional fuel oil could not be secured and delivered within five days, even under the most severe weather conditions. Primarily, diesel oil is brought in by truck. Under extremely unfavorable environmental conditions, it is possible to deliver diesel oil by railroad or river barge. As such, interruption of EDG operation following a limiting design basis event or accidents is highly unlikely. The reliability and performance of the EDGs are unaffected by the change. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will recognize a condition when less than a 7 day EDG fuel oil supply may occur, provided that a 5 day supply is maintained and fuel is replenished to the 7 day volume within 5 days. It does not change any existing EDG system components or the control/alarm logic, nor will it undermine the capability to obtain additional fuel supplies in a timely manner.

Based on the above, this change will not introduce a new failure path and consequently, will not create [a] new unevaluated sequence of events. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change will allow substituting the 7 day oil supply for a 5 day fuel oil supply provided fuel is replenished within 5 days. This does not impact the availability of the EDGs following any limiting design basis event or accident since the 5 day reserve provides adequate time for local suppliers to replenish fuel without interrupting operation of the diesels.

The proposed amendment does not affect any design related issues or the performance of the system. All technical content of the safety analyses are retained and no analysis-based safety margins are significantly affected. There are no changes to the physical design of the plant. Therefore, the proposed change 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) aresatisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: George T. Hubbard (Acting)

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 5, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications to incorporate a technical review and control process to supplement the onsite technical review and approval of new procedures and changes thereto affecting nuclear safety. This process is discussed in Section 5.5 of the Revised Standard Technical Specifications, NUREG-1432.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change is administrative in nature and provides for 1) procedural reviews through the use of qualified technical review personnel designated by the PORC [Plant Operating Review Committee] and 2) procedural approval through the use of group heads designated by the General Manager Plant Operations as authorized by administrative controls upon their development. As part of this process, qualified technical reviewers will be individuals other than the preparer who will document and implement necessary cross-discipline reviews prior to approval. The process will be controlled by administrative controls which will be reviewed by the PORC and approved by the General Manager Plant Operations.

The procedures governing plant operation will continue to ensure that plant parameters are maintained within acceptable limits. Procedures and changes thereto will be reviewed and approved at a level commensurate with their importance to safety. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes are administrative in nature. The proposed changes do not involve physical changes to the plant, changes to setpoints, or operating parameters. The applicable procedures governing the operation of the plant will receive reviews and approvals commensurate with their importance to nuclear safety, and where appropriate cross-discipline review will be performed. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature. The Waterford 3 safety margins are defined and maintained by the Technical Specifications in Sections 2-5 which are unaffected. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: George T. Hubbard (Acting)

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: November 25, 1992

Description of amendment request: On June 25, 1990, the NRC staff issued

Generic Letter (GL) 90-06, "Resolution of Generic Issue 70, Power-Operated Relief Valve and Block Valve Reliability, and Generic Issue 94, Additional Low-Temperature Overpressure Protection for Light-Water Reactors, Pursuant to 10 CFR 50.54(f)." Generic Issue 70 involves the evaluation of the reliability of power-operated relief valves (PORVs) and block valves, and their safety significance in PWR plants. The generic letter discussed how PORVs are increasingly being relied on to perform safety-related functions and the corresponding need to improve the reliability of both PORVs and their associated block valves. Generic Issue 94 involves the evaluation of the safety significance of low-temperature overpressure (LTOP) transients. The staff determined that LTOP protection systems unavailability is the dominant contributor to risk from LTOP transients. Based on its studies, the staff proposed and required that all affected facilities implement Technical Specifications (TS) improvements to increase the reliability and functional capability of these components.

In response to GL 90-06, the licensee proposed TS changes to its facilities. The proposed amendments would revise the Technical Specifications (TS) 3/4.4.4, "Relief Valves," and TS 3/4.9.3 "Overpressure Mitigation Systems." TS 3.4.4 would be revised to include a requirement to maintain power to the associated block valves when closed due to leaking PORVs, to place the PORV in manual control when the block valves are not operable, and to specify actions and allowable outage time limits when one or both PORVs are inoperable. TS 3.9.3 would be revised to enable the use of PORVs for the feed and bleed cooling function in the event of a loss of secondary heat sink capabilities and to specify reduced allowable outage time when operating in Modes 5 and 6 and when the LTOP equipment is inoperable. Associated TS Bases would also be revised.

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 a reordered format.

Proposed Changes to TS 3/4.4.4

(1) Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The FPL proposed [Limiting Condition for Operation (LCO)] changes include changing the word "each" to "both" in reference to the two PORVs, and adding "and their associated" to expand the Technical Specifications to include both the PORVs and the block valves. These proposed changes are in accordance with the GL [90-06] recommendations. This proposed change is editorial in nature and does not present an increase in the probability or consequences of an accident previously evaluated.

[With respect to the proposed changes to the action statements]

FPL has performed plant specific analyses for feed and bleed using the MAAP 3.0B Computer Code, Rev. 16, for Turkey Point using a combination of best estimate and conservative analysis assumptions. These analyses show that feed and bleed is achievable using a single PORV, provided that it is opened within a certain time frame. Availability of the PORVs and block valves for feed and bleed does not represent a high sensitivity in reference to the total core melt frequency. This is primarily due to the diverse sources of feedwater available, including three steam driven auxiliary feedwater pumps and two electric driven feedwater pumps. Brief periods of unavailability of feed and bleed will have little impact on the plant's total core melt frequency. Therefore, a 30 day action statement for a single inoperable PORV is considered acceptable. These same arguments apply to the block valves.

Operation of the facility in accordance with the proposed amendments does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendments place more stringent Limiting Conditions for Operation on the facility. These include new and/or shorter allowable outage time for PORVs and associated block valves.

(2) Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed [LCO] change is editorial in nature and is in accordance with the GL [90-06] recommendations. The proposed change does not impact plant equipment or change the operation of the facility. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the facility in accordance with the proposed [action statement] amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. With the exception of a failed-open PORV, resulting in the equivalent of a small-break LOCA, the PORVs and block valves cannot initiate accident sequences. The case of a failed-open PORV has been previously evaluated and is not a new or different kind of accident. The proposed changes will not result in the PORVs or block valves being operated or used in a new or different manner. Therefore, the possibility of a new or different kind of accident is not created.

(3) Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

The proposed [LCO] change is editorial in nature and is in accordance with the GL [90-06] recommendations. The proposed change does not impact the safety analysis results as presented in the FSAR [Final Safety Analysis Report] or the Technical Specifications, therefore, operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety.

Operation of the facility in accordance with the proposed [action statement] amendment does not involve a significant reduction in a margin of safety. Overall plant safety would be enhanced as a result of the additional restrictions placed on PORVs and block valves.

Proposed Changes to TS 3/4.9.3

(1) Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The FPL proposed [LCO] change adds the statement "(below an RCS average coolant temperature of 275°F)" defining more specifically the applicability statement for Mode 4. The proposed change is editorial in nature and is consistent with the current Turkey Point Technical Specifications. Therefore, operation of the facility with the proposed amendment does not present an increase in the probability or consequences of an accident previously evaluated.

FPL proposes to revise this action statement [TS 3/4.9.3.b] consistent with the GL [90-06] recommendations. The FPL proposed change also adds the statement "(below an RCS average coolant temperature of 275°F)" defining more specifically the applicability statement for Mode 4. The proposed change is editorial in nature and is consistent with the current Turkey Point Technical Specifications. Therefore, as previously determined by the NRC in GL 90-06, this proposed change does not present an increase in the probability or consequences of an accident previously evaluated.

FPL proposes to include this action statement [TS 3/4.9.3.c] consistent with the GL [90-06] recommendations. Addition of the words "with the reactor vessel head on," clarifies the MODES 5 or 6 condition of applicability consistent with the current Turkey Point Technical Specifications and in accordance with the GL [90-06] recommendations. This action statement is revised to add additional restrictions not presently included in the Technical Specifications. Therefore, operation of the facility in accordance with the proposed change does not present an increase in the probability or consequences of an accident previously evaluated.

The proposed change [to TS 3/4.9.3.d] is editorial in nature to maintain consistency with the GL recommendations and the Turkey Point Technical Specifications format. The time to complete depressurization and venting of the RCS with both PORVs inoperable has been maintained at 24 hours to allow for an orderly depressurization. This is consistent with the current Turkey Point Technical Specifications. FPL also proposes to add the words "either restore one PORV to operable status or" to provide additional clarification and consistency in format with the other

action statements. This proposed change is editorial in nature, therefore, operation of the facility in accordance with the proposed amendment does not present an increase in the probability or consequences of an accident previously evaluated.

This proposed change [to TS 3/4.9.3.e] provides additional clarification to the requirements for the submittal of a Special Report. The proposed change is editorial in nature and does not present an increase in the probability or consequences of an accident previously evaluated.

(2) Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change [to TS 3/4.9.3, LCO] is editorial in nature and is consistent with the current Turkey Point Technical Specifications. The proposed change does not impact plant equipment or change the operation of the facility. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change [to TS 3/4.9.3.b] is in accordance with the GL [90-06] recommendations. The proposed change does not impact plant equipment or change the operation of the facility. Therefore, as previously determined by the NRC in GL 90-06, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change [to TS 3/4.9.3.c] is in accordance with the GL [90-06] recommendations. The proposed change does not impact plant equipment or change the operation of the facility. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change [to TS 3/4.9.3.d] is editorial in nature, therefore, operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not result in the PORVs or block valves being operated or used in a new or different manner. Therefore, the possibility of a new or different kind of accident is not created.

The proposed change [to TS 3/4.9.3.e] is editorial in nature and does not impact plant equipment or change the operation of the facility. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

The proposed change [to 3/4.9.3, LCO] is editorial in nature and is consistent with the current Turkey Point Technical Specifications. The proposed change does not impact the safety analysis results as presented in the FSAR or the Technical Specifications, therefore, operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety.

The proposed change [to TS 3/4.9.3.b] is in accordance with the GL [90-06] recommendations. The proposed change doe not impact the safety analysis results as presented in the FSAR or the Technical Specifications, therefore, operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety.

The proposed change [to TS 3/4.9.3.c] is in accordance with the GL [90-06] recommendations. The proposed change does not impact the safety analysis results as presented in the FSAR or the Technical Specifications, therefore, operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety.

This proposed change [to TS 3/4.9.3.d] is editorial in nature, therefore, operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety.

The proposed change [to TS 3/4.9.3.e] is editorial in nature and does not impact the safety analysis results as presented in the FSAR or the Technical Specifications, therefore, operation of the facility in accordance with the proposed amendment 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 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

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NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: September 2, 1992

Description of amendment request: The proposed amendments correct the reactor pressure vessel (RPV) water level corresponding to the Top of Active Fuel (TAF) for Hatch Nuclear Plant, Units 1 and 2. The correct value is 6 inches higher than the value shown in Technical Specification (TS) Figure 2.1-1 for Unit 1 and Figure B 3/4 3-1 for Unit 2.

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.

The proposed change only involves revising Unit 1 TS figure 2.1-1 and Unit 2 TS figure B 3/4 3-1 to correct the Top of Active Fuel (TAF) indicated value. The change accounts for the newer design fuel assemblies which contain 6 inches of nonenriched uranium at the top of the bundle, thereby making the active fuel length 150 inches, as opposed to 144 inches, and the TAF boundary at 358.56 inches, as opposed to the 352.56 inches (referenced from vessel zero) currently indicated in the TS.

No changes to systems designed to mitigate the consequences of an accident are proposed.

The proposed change does not affect any previously analyzed accident, because all SAFER/GESTR accident analyses were performed using the correct fuel length and TAF value. The same analyses also assumed the RPV levels at which the emergency core cooling systems (ECCSs) would initiate in response to these design basis events are much lower than the actual plant setpoints. Thus, raising the TAF boundary by 6 inches does not affect or require a change to accident analyses, since the analyses utilized the correct fuel length and TAF boundary.

ECCS RPV level setpoints will not be affected by the proposed change, since the analyses used the correct TAF value and assumed initiating setpoints that are much lower than the actual plant settings. The proposed change will merely bring the TS in agreement with the actual plant configuration.

In summary, the proposed change does not involve any physical changes to the plant which would increase the probability of occurrence of a loss of coolant accident (LOCA). The consequences of previously analyzed LOCAs are not increased, because no changes are being proposed to systems designed to mitigate the consequences of LOCAs, and previous accident analyses have already been performed, considering the correct TAF number.

The minor editorial change is strictly an aesthetic enhancement which does not affect the design or operation of any plant equipment or system.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. The proposed change only involves changing the TS to reflect the actual plant configuration and making an insignificant editorial change.

b. No physical changes to the plant are proposed.

c. No changes involving operating systems or equipment outside of their intended design are proposed.

Thus, no new modes of operation are introduced, and the possibility of occurrence of a different type of event from any previously evaluated is not created.

3. The proposed event does not involve a significant reduction in the margin of safety

The SAFER/GESTR accident analyses under which Plant Hatch is currently licensed used the correct fuel length and TAF boundary. In addition, the RPV level ECCS initiating setpoints were assumed to be much lower than TS or actual plant setpoints. Therefore, the margin of safety is not affected, since the proposed change only achieves consistency between the TS and the actual plant configuration. Neither the accident analyses nor the ECCS RPV level setpoints will 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: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: David B. Matthew

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: September 21, 1992

Description of amendment request: The proposed amendments change Plant Hatch, Units 1 and 2, Technical Specifications (TS) to implement the recommendations contained in Generic Letter (GL) 89-01. The proposed changes add new programmatic requirements governing radioactive effluents, radiological environmental monitoring, and solid radioactive wastes to the Administrative Controls Section of Units 1 and 2 TS. Procedural details contained in existing TS pertaining to radioactive effluents, radiological environmental monitoring, solid radioactive wastes, and associated reporting requirements are being relocated to the Offsite Dose Calculation Manual (ODCM) or the Process Control Program (PCP), as appropriate. In addition, changes are proposed to other portions of the TS to accommodate the incorporation of GL 89-01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative in nature and alter only the format and location of programmatic controls and procedural details relative to radioactive effluents, radiological environmental monitoring, solid radioactive wastes, and associated reporting requirements. Compliance with applicable regulatory requirements will continue to be maintained. In addition, the proposed changes do not alter the conditions or assumptions in any of the FSAR [Final Safety Analysis Report] accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amounts of any radioactive effluents released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not involve any actual change in the methodology used in the control of radioactive effluents, solid radioactive wastes, or radiological environmental monitoring. These changes are considered administrative in nature, provide for the relocation of procedural details outside the TS, and add appropriate administrative controls to provide continued assurance compliance with applicable regulatory requirements. These proposed changes also comply with the guidance contained in GL 89-01. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

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NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: October 14, 1992, as supplemented December 11, 1992, and January 15, 1993

Description of amendment request: The proposed amendments revise Hatch Units 1 and 2 Technical Specifications (TS) to implement the updated 10 CFR Part 20 requirements. The licensee proposed the following changes: (1) revise the definition of MEMBER(S) OF THE PUBLIC found in Unit 1 TS 1.0.ZZ and Unit 2 TS 1.0, and the definition of UNRESTRICTED AREA found in Unit 1 TS 1.0.BBB and Unit 2 TS 1.0; (2) delete the reference to the Environmental TS (ETS) contained in Unit 1 TS Table 3.2-8, Item 1, and Unit 2 TS Table 3.3.6.1-1, footnote (a), regarding radiation monitoring instrumentation and replace it with a specific reference to proposed Unit 1 and Unit 2 TS 6.18(7) contained in the licensee's response to Generic Letter 89-01 dated September 21, 1992, for Plant Hatch; (3) revise the trip setting for the Refueling Floor Exhaust Vent Radiation Monitors contained in Unit 1 TS Table 3.2-8, Item 2, by deleting the reference to the ETS and replacing it with a specific trip setting value; (4) correct the footnotes for Unit 1 TS 3.15.1.4 and Unit 2 TS 3.11.1.4 regarding the liquid holdup tanks, (5) delete Action statement b from Unit 1 TS 3.15.1.4 and Unit 2 TS 3.11.1.4 regarding the liquid holdup tanks; (6) revise Unit 1 TS Bases 3/4.15.1.4 and Unit 2 TS Bases 3/4.11.1.4 to reference the acceptance criteria contained in the new 10 CFR Part 20 which is used to determine the activity limit for the liquid holdup tanks; (7) revise Units 1 and 2 TS 6.9.1.5a by updating footnote 2 to incorporate the new 10 CFR Part 20 reference regarding reports of individual monitoring; (8) revise Units 1 and 2 TS 6.12.1 by incorporating the new 10 CFR Part 20 reference related to the control of access to high radiation areas; (9) revise Units 1 and 2 TS 6.17.1.a.2 and 6.18(3), respectively, to incorporate the new 10 CFR Part 20 reference regarding dose limits for individual members of the public, and (10)/(11) revise Units 1 and 2 TS 6.18(2) and 6.18(7), respectively, in order to accommodate needed operational flexibility to facilitate implementation of the new 10 CFR Part 20 requirements at Plant Hatch.

By letter dated December 2, 1992, the NRC staff requested additional information from the licensee. By letters dated December 11, 1992, and January 15, 1993, the licensee responded to the request for additional information.

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:

Evaluation of Proposed Changes 1, 2, 4, 5, 6, 7, 8, and 9

1. The proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated because they are administrative in nature. The proposed changes update specific definitions and old references to 10 CFR [Part] 20, and correct footnote and table errors in order to facilitate implementation of the 10 CFR [Part] 20 requirements. The proposed changes do not alter the conditions or assumptions in any FSAR [Final Safety Analysis Report] accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amount of effluents released offsite.

3. The proposed changes do not involve a significant reduction in a margin of safety because they are administrative in nature and do not reduce the effectiveness of the radiation protection programs at Plant Hatch. Also, the proposed changes do not involve any actual change in the methodology used in the control of solid radioactive wastes or radiological environmental monitoring. The methodology to be used in the control of radioactive effluents will result in the same effluent release rate as the current methodology now being used.

Evaluation of Proposed Change 3

1. The proposed change to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated because it is administrative in nature since it corrects a table error by making the instrument trip setting identical to that found in the more current Unit 2 TS. The proposed change does not alter the conditions or assumptions in any FSAR accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because it is administrative in nature and does not involve any change to the configuration or method of operation of the Standby Gas Treatment System, or to the ability to isolate primary and secondary containment. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor has any new limiting single failure been identified as a result of the proposed change.

3. The proposed change does not involve a significant reduction in a margin of safety because it is administrative in nature and does not impact routine releases. Therefore, there will be no reduction in the effectiveness of the radiation protection programs at Plant Hatch. Additionally, the accident analyses are not impacted because primary and secondary containment isolation functions and Standby Gas Treatment System operation are unaffected by this change. Therefore, compliance with the requirements of 10 CFR [Part] 100 will be maintained.

Evaluation of Proposed Changes 10 and 11

1. The proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated because the operational flexibility needed for effluent releases is needed to facilitate implementation of the new 10 CFR [Part] 20 requirements. Compliance with applicable regulatory requirements will continue to be maintained. The proposed changes do not alter the conditions or assumptions in any FSAR accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the operational flexibility needed for effluent releases does not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor has any new limiting single failure been identified as a result of the proposed changes. Also there will be no change in types or increase in the amount of effluents released offsite.

3. The proposed changes do not involve a significant reduction in a margin of safety because the operational flexibility needed for effluent releases does not reduce the effectiveness of the radiation protection programs at Plant Hatch. The proposed changes do not involve any actual change in the methodology used in the control of solid radioactive wastes or radiological environmental monitoring. The methodology to be used in the control of radioactive effluents will result in the same effluent release rate as the current methodology being used. The operational flexibility needed for effluent releases requires the use of concentration values 10 times the values given in the new 10 CFR [Part] 20. However, this is acceptable since annual doses will be limited to the doses specified in 10 CFR [Part] 50, Appendix I and 40 CFR [Part] 190.

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: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: October 19, 1992

Description of amendment request: The proposed amendments would delete the main steam isolation valve (MSIV) closure, the reactor scram, and the control room pressurization functions of the main steam line radiation monitors (MSLRMs). The proposed change is consistent with the BWR Owners Group (BWORG) Topical Report NEDO-31400, "Safety Evaluation for Eliminating the Boiling Water Reactor Main Steam Isolation Valve Closure Function and Scram Function of the Main Steam Line Radiation Monitor." The proposed change provides improved availability of the main condenser for removal of decay heat and aids in minimizing inadvertent reactor scrams and engineered safety feature actuations. In its safety evaluation report dated May 15, 1991, the NRC approved General Electric's (GE's) conclusions in NEDO-31400. Furthermore, GE confirmed that NEDO-31400 applies to plant Hatch and Georgia Power Company agrees with GE's assessment.

In addition, the amendments propose changes to the references to the hydrogen water chemistry footnotes in the isolation tables, and to an action statement concerning the off-gas post treatment monitors.The following Technical Specifications (TS) are affected:

1. Unit 1 TS Tables 3.1-1, 4.1-1, 3.2-1, 3.2-8, 3.7-1 and 3.12

2. Unit 2 TS Tables 2.2.1-1, 3.3.1-1, 3 3.1-2, 3.3.2-1, 3.3.2-2, 3.3.6.7-1, 3.3.6.7-2, 4 3.1-1, 4.3.6.7-1 and 3.7.2

3. The associated Bases for both units.

No design basis accident (DBA) takes credit for a reactor scram due to high radiation in the main steam lines

(MSLs). The only DBA which takes credit for an MSIV closure is the control rod drop accident (CRDA). In NEDO-31400, GE shows the occurrence of an CRDA, with the MSL high radiation isolation removed, results in offsite radiological exposures that are a small fraction of 10 CFR 100 guidelines.

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.

The objective of the MSLRMs is to provide early indication of gross fuel failure. The monitors provide an alarm function, a scram function, and an isolation function for the MSIVs. The basis for the MSIV isolation on [an] MSL high radiation signal is to reduce the amount of fission product release transported form the reactor vessel to the condenser during a CRDA. No DBA takes credit for a reactor scram resulting from [an] MSL high radiation signal.

This proposed change removes some of the trip functions of the MSLRMs. No control rods, CRDs [Control Rod Drives], rod coupling mechanisms, or any other equipment associated with the control rods or CRDs are affected by this change. The only modification resulting from this change is the removal of the reactor scram, part of the Group 1 isolation, and MCREC [main control room environmental control system] pressurization mode initiation logic from the MSLRMs. These logic systems do not affect the operation of any equipment having the potential to cause a CRDA. Therefore, the probability of a CRDA is not increased or in any way affected by the proposed change.

In NEDO-31400, GE included the safety evaluation (requested by the BWROG) addressing the removal of the scram and MSIV isolation. In the evaluation, GE concludes that eliminating the MSLRM trips results in exposures that are small fractions of 10 CFR 100 limits. GE also assessed the applicability of NEDO-31400 to Plant Hatch...

* * * * *

While not specifically addressed in the GE evaluation, [it is also] propose[d] to eliminate the main steam line drain valves from the isolation logic. These valves discharge to the main condenser as do the MSIVs; both paths are therefore processed by the off-gas system. However, the drain valves discharge on one 3-inch line; the MSIVs exhaust to the condenser on four 24-inch lines. Thus, the exhaust from the drain path is minimal compared to the MSIVs.

* * * * *

Removing the automatic MSLRM high radiation initiation from the MCREC system pressurization mode of operation will not increase the consequences of the CRDA, because this mode of operation is also initiated on a high radiation signal at the MCR air intake. In addition, the abnormal operating procedure (AOP) for MSL high radiation will include directions to manually initiate the pressurization mode if [an] MSL high radiation condition is confirmed. The pressurization mode initiation on high radiation at the MCR air intake, together with the procedural guidance to manually start the pressurization mode upon confirmation of an MSL high radiation condition, provides adequate protection against control room inhabitants receiving excessive radiation exposure.

Modifying the hydrogen water chemistry footnote does not increase the consequences of a CRDA, since hydrogen injection is not performed when rated thermal power is less than 20 percent. Thus, MSLRM setpoint adjustments will not be performed at low power levels when the CRDA is applicable.

Modifying action statement d. of Unit 1 TS table 3.2-8 does not increase the probability of occurrence or the consequences of any type accident.

The off-gas monitors are not designed to prevent the occurrence of abnormal radiation releases, they merely monitor these releases. The consequences of any radiological release events are not increased because this change only clarifies a Technical Specification action statement to reflect the actual system configuration. The system will function and be operated as always.

2. [The proposed amendment does not] create the possibility of a new or different kind of accident from any accident previously evaluated.

The function of [an] MSLRM trip is to detect abnormal fission product release and isolate the steam lines, thereby stopping the transport of fission products from the reactor to the main condenser. The monitors do not perform a prevention function for any kind of accident. The existence of [an] MSLRM trip does not prevent the occurrence of a fuel failure event or any other type of event. Therefore, eleminating the trips neither increases nor decreases the possibility of occurrence of any type event.

Removing part of the Group 1 isolation trip, the reactor scram, and the MCREC system pressurization mode initiation on MSL high radiation from the respective logic systems will not affect the operation of other equipment or systems necessary for the prevention or mitigation of accidents.

* * * * *

3. [The proposed amendment does not involve] a significant reduction in a margin safety.

The methodology described in NEDO-31400, as applied to Plant Hatch, shows that, for the CRDA with the elimination of MSIV isolation, offsite radiological exposure limits are not significantly increased and remain well within 10 CFR 100 limits. As discussed in the response to question no. 1 of this enclosure, offsite whole-body doses for Unit 2 increased from 0.014 to 0.024 rem as a result of eliminating the MSLRM functions. The Unit 1 offsite whole-body dose rates increased from 8.6E-3 to 0.024 rem. Although higher, these dose rates are still well within 10 CFR 100 limits... Therefore, the margin to the 10 CFR 100 limits is not significantly reduced as a result of this change.

Adequate controls are presently in place, or will be implemented, to ensure significant increases in radiation levels in the MSLs are promptly addressed. For example, the MSLRM high radiation alarm will remain in place, alarming at 1.5 times the normal full power background. At this point, annunciator response procedures (ARPs) and abnormal operating procedures (AOPs) will provide guidance for verifying automatic actions, checking secondary containment conditions, and notifying plant personnel. In addition, AOPs contain restrictions for venting the primary containment and verifying the mechanical vacuum pump trip.

* * * * *

Relative to removing the pressurization mode initiation from the MSLRM high radiation signal, if a CRDA were to occur and the radiation levels around the MCR were to increase, the pressurization mode would automatically initiate due to high radiation levels at the air intake monitors. Also, the AOP will direct the operators to manually initiate the pressurization mode if a high radiation condition at the MSLs is confirmed. Thus, sufficient redundancy exists to protect the MCR operators from excessive radiation exposure. The AOP does not presently include guidance to manually initiate the pressurization mode. This will be included upon approval and prior to implementation of this amendment.

* * * * *

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: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: David B. Matthews

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine YankeeAtomic Power Station, Lincoln County, Maine

Date of amendment request: March 4, 1993

Description of amendment request: The proposed amendment would reorganize plant radiation monitors into two new groupings; Radiation Area Monitors, and Radiation Process and Effluent Monitors. (The previous groupings were Area, Process and Effluent Monitors, and the Primary Vent Stack High Range Noble Gas Monitor.) A monthly functional test is proposed for all monitors, and all daily checks of these monitors would be performed using an internally-generated test signal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c)d. The NRC staff's review is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would provide flexibility in the method used to demonstrate operability, while ensuring that each monitor is adequately tested. The addition of a monthly functional test of all monitors will increase the number of operability tests performed, while allowing use of an internal or external radiation source will provide flexibility in verifying operability as monitors are replaced due to obsolescence. Reorganizing the radiation monitors into two new groupings is an administrative change. Plant radiation monitors are neither added nor deleted and no changes to monitor locations or setpoints are made. The proposed change will therefore not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.Operability of all plant radiation monitors would continue to be demonstrated. The proposed amendment would make no physical changes to the Radiation Monitoring System, and reorganizing the radiation monitors into two new groupings is an administrative change. Plant radiation monitors are neither added nor deleted, thus the proposed amendment does not create any unique operating condition that could adversely affect the functional performance of this system. The proposed change will therefore 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 a margin of safety.

Substituting a monthly functional test using a radiation source, for a daily monitor check that requires an internal source, does not change the results of any Final Safety Analysis Report (FSAR) Chapter 14 Safety Analysis. The requirement to perform monthly functional tests using either an internal or external radiation source will continue to demonstrate operability of the radiation monitors. Reorganizing the radiation monitors into two new groupings is an administrative change; plant radiation monitors are neither added nor deleted and no changes to monitor locations or setponts are made. The proposed amendment therefore does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 83 Edison Drive, Augusta, Maine 04336

NRC Project Director: Walter R. Butler

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: March 12, 1993

Description of amendment request: The proposed change replaces the reference to subsection 3.7.A.7 in Limiting Condition for Operation (LCO) 3.7.A.2.a(4) with a specific requirement to initiate an orderly shutdown if the provisions of 3.7.A.2.a(1) and (2) cannot be met. This corrects an administrative oversight and no requirements are being added or deleted.

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 10 CFR 50.92, NNECO [Northeast Nuclear Energy Company] has reviewed the attached proposed change and has concluded that it does 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 change does not involve a SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change corrects an administrative oversight and no requirements are being added or deleted. The proposed change incorporates the action to be taken if the provisions of LCO 3.7.A.2.a(1) and (2) cannot be met into LCO 3.7.A.2.a(4). This change is necessary because the current action statement incorrectly references Subsection 3.7.A.7 which is the action statement for containment high-range radiation monitors. As such, the change has no adverse affect on the LCOs or the surveillance requirements. In addition, no design basis accidents are affected by this change. Therefore, there is no impact on the probability of occurrence or the consequences of any design basis events. No safety systems are adversely affected by the change. No failure modes associated with the change are identified. Previous analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The change incorporates the action to be taken if LCO 3.7.A.2.a(1) and (2) cannot be met into LCO 3.7.A.2.a(4). No requirements are being added or deleted.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. There is no impact on plant response to the point where it can be considered a new accident, and no new failure modes are introduced. Furthermore, this administrative change clearly has no impact on safety limits or design basis accidents and it has no potential to create a new or unanalyzed event.

3. Involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and no requirements are being added or deleted. As such, the change does not directly affect any protective boundaries nor does it impact the safety limits for the boundary. Thus, there are no adverse impacts on the protective boundaries, safety limits, or margins 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: 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, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: March 22, 1993

Description of amendment request: The proposed changes revise the pressure-temperature limits for the reactor vessel. Specifically, Technical Specification Limiting Condition for Operation 3.6.B, Surveillance Requirement 4.6.B, and Figures 3.6.1, 3.6.2, and 3.6.3, along with the corresponding bases for Section 3.6 are revised. The current limitations are valid to 16 Effective Full Power Years (EFPY) and the proposed curves would be valid to 32 EFPY.

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 [Northeast Nuclear Energy Company] has reviewed the proposed changes in accordance with 10CFR50.92 and concluded that the changes do not involve a significant hazards consideration. The basis for this conclusion is that three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve a significant hazards consideration because the changes do not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

The proposed curves will not result in any plant operational or hardware modifications. They will only decrease the allowable pressure vs. temperature during vessel heatup/cooldown and pressure tests to account for the anticipated end-of-life vessel embrittlement.

The revision to the heatup and cooldown curves will ensure that the plant is maintained in a safe condition. NNECO performed a four-step process whereby NNECO established a surveillance plan according to 10CFR50 Appendix H. This required periodic removal of surveillance capsules from the reactor vessel. Secondly, NNECO performed Charpy impact tests, tensile test, and neutron flux measurements. These tests provide data for the actual neutron irradiation damage to the reactor vessel in terms of RT_{NDT} and USE [upper shelf energy]. NNECO then calculated the adjusted RT_{NDT} for a postulated crack in the vessel using Regulatory Guide 1.99, Revision 2 guidance. Finally, NNECO compared the actual RT_{NDT} shift to the predicted RT_{NDT} shift. This process identified the condition of the Millstone Unit No. 1 reactor vessel and prompted the revised curves. The parameters identified in Regulatory Guide 1.99 Revision 2 have been addressed with acceptable results. Therefore, the probability of occurrence or consequence of an accident previously analyzed has not been increased.

2. Create the possibility of a new or different kind of accident previously evaluated.

The proposed curves will not result in any plant operational changes. They will only decrease the allowable pressure vs. temperature during vessel heatup/cooldown and pressure tests.

The intent of the pressure temperature limits is to prevent brittle fracture of the reactor vessel. By evaluating the surveillance capsule specimens, NNECO is able to establish new limits for Millstone Unit No. 1 to operate within. The adherence to the pressure temperature curves will ensure that no new or different kinds of accidents are created.

3. Involve a significant reduction in a margin of safety.

The pressure-temperature limit curves were calculated in accordance with the requirements of 10CFR50, Appendix G which in turn requires compliance with the ASME Code Section XI, Appendix G prescribed methodology and associated margins of safety. This methodology and margin of safety is applicable to both the current and the new proposed curves.

The adherence to these curves will ensure that the plant is maintained in a safe condition. These curves have been developed so that the reactor coolant pressure boundary is maintained with sufficient margin to ensure that, when stressed under operating, maintenance, testing and postulated accident conditions that the boundary behaves in a nonbrittle manner, and that the probability of rapidly propagating fracture is minimized. In addition, these analyses have been performed to ensure that the fracture toughness of the reactor vessel materials caused by neutron radiation is maintained within the required range.

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, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 15, 1993

Description of amendment request: The proposed amendment would permit use of a new fuel assembly cladding, ZIRLO. ZIRLO is similar to the Zircalloy-4 cladding presently used in the Millstone 3 core.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The 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 fuel cladding design criteria are the same with the ZIRLO clad fuel as with the zircaloy clad. All design and performance criteria will continue to be met and no new single failure mechanisms will be created. The use of the ZIRLO cladding does not involve any alterations to plant equipment or procedures which would affect any operational modes or accident precursors. Therefore, the change in material has no effect on the probability of occurrence of previously evaluated accidents, and has no effect on the consequences of previously evaluated accidents. The changes proposed to Section 6.9.1.6.b have no impact on the probability of occurrence or consequences of any design basis accident.

2. Create the possibility of a new or different kind of accident than any previously evaluated.

The fuel cladding design criteria are the same with the ZIRLO clad fuel as with the zircaloy clad. All design and performance criteria will continue to be met and no new single-failure mechanisms will be created. The use of the ZIRLO cladding does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility of a new or different type of accident from any accident previously evaluated is not created. The associated technical specification changes with the fuel cladding changes are the addition of three references to Specificaton 6.9.1.6.b. These changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The change to the use of ZIRLO does not change the proposed reload design or safety analysis limits for each cycle reload core. These fuel assemblies will be specifically evaluated using approved reload design methods and approved fuel rod design model and methods. In addition, 10CFR50.46 criteria will be applied to each cycle of the ZIRLO clad fuel rods. Since the safety analysis limits are unaffected, and cycle-specific analyses will show that the analysis limits are met; the change to ZIRLO cladding will have no impact on 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: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 12, 1993

Description of amendment request: The proposed change would modify the Technical Specifications to identify

systems that are capable of detecting a 1-gpm reactor coolant system (RCS) leak within 4 hours of the leak's beginning, in accordance with the recommendations listed in Generic Letter 84-04.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Establishing the containment radiation monitors as the primary monitoring indicator for LBB [leak before break] detection does not increase the probability or consequences of an accident since the safety function of the monitors is not altered. The high alarm setpoint will not be changed[;] thus VIAS [ventilation isolation actuation signal] actuation will not be affected by the proposed Technical Specification.

The function of the radiation monitor(s) is to alert operators of potential RCS leakage or problems. The change proposed requires more stringent monitoring, and equally accurate indication, of the VCT [volume control tank] level if radiation monitoring systems are inoperable.

The probability of leaks occurring due to thermal or normal fatigue is not affected as indicated in the fracture mechanics analysis referenced in Generic Letter 84-04. No changes are proposed to primary RCS piping systems or supports as a result of the proposed revision. Adjusting the radiation monitor setpoints consistent with detection capability of one gpm RCS leakage ensures that a potential significant failure does not go undetected within the Regulatory Guide 1.45 criteria as noted in Generic Letter 84.04.

No High Energy Line Break/Loss of Coolant Accident (HELB/LOCA) analysis will be impacted by the proposed change. The results of the current Fort Calhoun HELB/LOCA analyses cited in Section 14.15 of the Updated Safety Analysis Report (USAR) will not be impacted as a result of this change.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

It has been determined that a new or different kind of accident will not be created due to the proposed changes since no new or different modes of operation are created by this change. The existing operating procedures were established to support an enhanced RCS leak detection program. Operation of either radiation monitor RM-050 or RM-051 shall not differ from existing conditions. Only the alert setpoint shall be altered, in a conservative direction, which does not initiate safeguards components. The alert setpoint has been set above containment equilibrium monitor readings.

(3) Involve a significant reduction in a margin of safety.

The margin of safety as defined in the basis for the Technical Specifications is not changed or reduced by this proposed change. Defining adequate RCS LBB monitoring is required to meet recommendations provided in Generic Letter 84-04. The number of systems required to be operable to detect RCS leakage has not decreased. The proposed change implements requirements to ensure that systems capable of detecting a one gpm reactor coolant leak are required to be operable, and therefore the proposed changes are more conservative than the present specifications.

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) aresatisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

NRC Project Director: George T. Hubbard (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

Description of amendment request: The licensee has proposed changes to the Technical Specifications to support a modification to the systems currently used to monitor the atmosphere inside primary containment. The modification will replace the Containment Atmospheric Control (CAC) system oxygen analyzers and the separate Containment Atmospheric Dilution (CAD) system hydrogen/oxygen analyzers with two (per unit) new hydrogen and oxygen analyzers that will support the function of both the above systems.

The proposed TS changes will modify the existing Limiting Conditions for Operation (LCO), surveillance requirements and bases to reflect the new hardware. Specifically, Unit 3 TS paragraph 3.7.A.6.c, concerning the CAD function, will be changed to require two analyzers to be operable to monitor oxygen concentration in the containment atmosphere. It will further specify that two channels be operable to monitor drywell oxygen concentration and two channels be operable to monitor torus oxygen concentration. In addition, the change will provide shutdown requirements if less than a full complement of analyzer channels are operable. Since the modification will not be made to Unit 2 until the scheduled refueling outage in the fall of 1994, Unit 2 TS paragraph 3.7.A.6.c will remain unchanged except to delete the current reference to "either" reactor.

Finally, the licensee has proposed changes to Unit 3 TS Table 3.2.F to reflect the enhanced hydrogen monitoring capability of the new analyzers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design function and operation of the CAD and CAC systems which are supported by the operation of the containment monitoring system has not been altered as a result of these changes. The CAC system monitors the content of oxygen during startup and normal operation and the CAD system is utilized to monitor the content of hydrogen and oxygen during post-LOCA operation. The monitoring of these variables will continue to mitigate the consequences of accidents previously evaluated. Additionally, no accident precursors will be impacted by these changes. The new system meets or exceeds the design standards of the original system. Additionally, the decrease in warmup time will increase the availability and usefulness of the analyzers to mitigate the consequences of an accident. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously [evaluated].

2) Create the possibility of a new or different type of accident from any accident previously evaluated; [or,]

The proposed TS change does not involve the introduction of any new accident initiators. The new containment monitoring system will enhance the ability of CAD system to mitigate the consequences of an accident and prevent the introduction of a new or different type of accident previously evaluated. The new system meets or exceeds existing design standards and will be tested to ensure its reliability thus ensuring that no new accident[s] initiators will be introduced. Therefore, the proposed changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3) Involve a significant reduction in a margin of safety.

Although the number of analyzers is being reduced, the proposed modification and TS changes will enhance the ability of the containment monitoring system to support the operation of the CAC and CAD systems th[r]ough the use of improved equipment that meets or exceeds the design standards of the original system. Therefore, the proposed changes will not reduce 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: Charles L. Miller

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: March 11, 1993

Description of amendment request: The licensee has proposed a change to the Technical Specification Section 1.0 Definitions. The proposed change would modify the definition of the term "Shutdown Mode" to more correctly describe the as-built design of the reactor mode switch scram bypass.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated 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: Charles L. Miller

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 1, 1993 (TS 93-01)

Description of amendment request: The amendment would revise Technical Specification Definition 1.18 and Specifications 6.9.1.8, 6.14.1.3 and 6.15.1.1 to increase the interval for submittal of radioactive effluent release reports under 10 CFR 50.36a(a)(2) from semiannual to annual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues 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 changes as proposed are administrative, intended to implement changes to regulations, and reduce the regulatory burden on licensees. There is no effect on 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 changes are administrative only, therefore they do not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety.

The margin of safety as defined in the basis for the [TS] has not been affected because no margin of safety is defined for the administrative controls section of the TS.

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

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 1, 1993 (TS 93-03)

Description of amendment request: The proposed amendment would increase the maximum voltage limit during and following a full-load rejection surveillance test of the emergency diesel generators. Technical Specification Surveillance 4.8.1.1.2.d.3 would be revised to replace the present requirement to ensure voltage does not exceed 120 percent of initial pretest voltage or 8712 volts, whichever is less, with a requirement to ensure that the voltage does not exceed 8880 volts.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues 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 revises TS 4.8.1.1.2.d.3 to provide a new voltage limit of 8880 volts (V) for a full-load rejection test of the diesel generator (D/G). This increase in the voltage requirement has been verified not to result in component damage. Safety-related functions will not be affected by this change, and D/G operability and availability for accident mitigation will remain unchanged. Therefore, the D/G will still be capable of performing required safety functions, and there will be no increase in the consequences of an accident.

The D/Gs provide a safety-related source of alternating-current power to mitigate the consequences of an accident. Since the D/G is not postulated to be the source of any

design basis accident, based on only providing accident mitigation functions, this change in the surveillance test requirements for D/G voltage overshoot will not increase the probability of an accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed above, the D/G only provides accident mitigation functions and is not postulated to create an accident. Allowing test voltages of 8880 V during a full-load rejection test has been verified not to damage connected D/G generating, control, and distribution components. Other components that are connected to the D/G before the surveillance testing or accident conditions are not affected because their disconnection creates the full-load rejection before the voltage overshoot occurs. Therefore, the proposed change will not create the possibility of a new or different accident because plant functions have not been affected.

3. Involve a significant reduction in a margin of safety.

Increasing the D/G voltage overshoot limit for surveillance testing does not adversely affect any component. Plant functions remain unchanged to mitigate design basis accidents. The D/G will remain operable and available as required by TSs without degradation of D/G safety functions. Therefore, the margin of safety provided by the D/G and the shutdown power distribution system is unchanged by the [proposed] TS change.

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

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: September 3, 1992, supplemented by letter dated March 17, 1993.

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Technical Specifications (TS) Section 6 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 SBLOCA evaluation model using the NOTRUMP computer code. NOTRUMP is currently used for CPSES Unit 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed change pertains to replacing the CPSES Unit 1 1975 Small Break LOCA evaluation model using WFLASH with Westinghouse's current 1985 Small Break LOCA evaluation model using the NOTRUMP code. There are no potential failure modes identified or hardware and process parameters affected by the proposed change. Selection of an updated evaluation model does not increase the probability or consequences of an event. Thus, implementation of this change does not increase the probability or the consequences of an accident previously analyzed.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The evaluation model that is being changed determines the effects of a licensing basis accident. Because this change only affects analysis methods, there are no new failure modes or new types of accidents introduced as a result of this proposed change. There are no previously deemed incredible events being made credible.

Therefore, this change does not create the possibility of an accident different from any accident evaluated in the licensing basis documents.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed change will not have any effect on equipment performance and availability. The analysis results must meet the regulatory requirements set forth in 10CFR50.46(b). The principle Small Break LOCA result is the calculated PCT [peak centerline temperature]. Since the PCT remains under the 2200°F acceptance criteria, there is no increase in LOCA consequences.

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 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black, Director

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: September 10, 1992, supplemented by letter dated March 17, 1993.

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES) Unit 1 and 2 technical specifications Table 2.2-1 for the reactor coolant pump bus undervoltage (UV) relay "Z" value and underfrequency (UF) "allowable value." These changes are required to incorporate a previously unaccounted for uncertainty in the UV relay setpoint calculations and to simplify setting the setpoint for the UF relay.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The UV and UF reactor coolant pump bus trips provide core protection against departure from nucleate boiling (DNB) as a result of a complete loss of coolant flow. The proposed change regarding the UV trip does not change the allowable value for the trip setpoint in the Technical Specifications (TS); the UV trip will occur at the same point in the accident analysis as previously assumed. The proposed change regarding the UF trip does change the allowable value for the trip below that in the TS; however, the proposed allowable value for the UF trip setpoint is still more conservative than that assumed in the accident analysis. Therefore, the proposed changes do not involve an increase in the probability or consequences of a previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes result in modifications to the technical specifications, there are no hardware changes associated with the proposed

license amendment. These changes do not introduce any new credible failure or accident modes from those previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes result in modifications to the technical specifications. The margin of safety assumed in the accident analyses for the UV and UF trips has not changed. Therefore, there has been no reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black, Director

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 10, 1992, as supplemented by letter dated March 17, 1993.

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Technical Specifications (TS) 4.3.4.2a to reduce the frequency of cycling each high and low pressure turbine stop and control valve from once every 14 days to once every 6 weeks. The amendment would also revise Technical Specification 4.3.4.2c to reduce the frequency of direct observation of the movement of the above valves from every 31 days to every 6 weeks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

Surveillance Requirements 4.3.4.2a and 4.3.4.2c monitor the performance of each high and low pressure turbine stop and control valve. Turbine overspeed is limited by rapid closure of the turbine control and stop valves. Turbine overspeed can result in the occurrence of turbine missiles from a burst type failure of the low pressure blades or disks. The NRC has provided guidance to limit the maximum probability of generating turbine missiles. For favorably oriented turbines, such as at CPSES, the acceptance criterion for the generation of turbine missiles is a probability of less than 10^{-4} per year. In ER-504, "Probability of Turbine Missiles," Siemens calculated the overall turbine missile probability to be approximately 2.1×10^{-7} per year based, in part, on the failure probability of the high and low pressure stop and control valves of 3.93×10^{-6} and 8.53×10^{-6} per year respectively. The CPSES turbine missile probability is significantly lower than that required by the NRC guidance. Siemens later updated the failure rate data for turbine stop and control valves. The updated failure probability for these valves decreased to 6×10^{-7} per year. Based on this latest data, Siemens calculated that test intervals of up to 6.4 weeks will not increase the failure probability above the calculated value of 6×10^{-7}. Thus, the requested six week test interval would not affect the calculated missile generation probability.

Based on ER-504 and the updated stop and control valve failure probability, it is concluded that the implementation of this technical specification revision will not increase the probability or consequences of an accident previously analyzed. The revision of the surveillance requirement results in a net improvement in plant safety by reducing the likelihood of plant trips and stress and wear on plant components.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Turbine overspeed with the resulting turbine missiles is the only accident potentially affected by failure of the turbine stop and control valves. The turbine missile analysis is not altered by reducing the frequency of high and low pressure stop and control valve testing. Based on the Siemens analysis, reducing the frequency of turbine valve testing from every 2 weeks to every 6 weeks does not result in a significant change in the failure rate, nor does it affect the failure modes for the turbine valves. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

A reduction in turbine valve test frequency does not involve a significant reduction in a margin of safety since the safety analyses in the CPSES Final Safety Analysis Report (FSAR) are essentially unaffected and safety limits are not exceeded. The possible impacts to safety are due to slower valve closing time. Since additional monitoring sensors are being installed on each valve, degradation of closing time of the stop valves will be detected.

The probability of generating turbine missiles, as noted in ER-504, remains unchanged. Thus, this change to the CPSES TS will not result in a significant reduction in the margin of safety for turbine missile ejection. The probability of missile ejection remains acceptably small and well within guidelines established by the NRC staff.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black, Director

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 10, 1992, as supplemented by letter dated March 17, 1993.

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Technical Specifications (TS) Surveillance Requirement 4.3.4.2d by replacing the requirement to disassemble the low pressure turbine stop and control valves and perform a visual and surface inspection, with a requirement to perform a visual inspection of the disk and accessible portions of the shaft.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against

the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

Surveillance 4.3.4.2d monitors the integrity of the seats, disks and stems of the turbine valves. Turbine overspeed is limited by rapid closure of the turbine control or stop valves whenever turbine power exceeds generator output. Should a destructive turbine overspeed occur, the resulting accident is the generation of turbine missiles from burst type failure of the low pressure blades and/or disks.

The NRC had provided guidance to limit the maximum probability of generating turbine missiles. For favorably oriented turbines, such as at CPSES, the acceptance criterion for the generation of turbine missiles is a probability of less than 10^{-4} per year. In Engineering Report No. ER-504, "Probability of Turbine Missiles," the probability of turbine missiles for turbines of the type supplied to CPSES was calculated to be 2.1×10^{-7}. The report did not take credit for disassembly and surface inspection of the turbine low pressure valves and thus the removal of this portion of the surveillance will not have any impact on the calculated probability of generating turbine missiles. The potential benefit from the disassembly and surface inspection of the low pressure (LP) stop and control valves is small and could easily be overcome by the potential for valve damage.

Final Safety Analysis Report (FSAR) Section 3.5.1.3 evaluated turbine missiles including an analysis of the worst postulated turbine missile. The acceptability of this analysis is based on the low probability of a turbine missile and the low potential for damage from a postulated missile. This change has no impact on the potential damage from a postulated missile, and since there is no significant impact on the probability of a turbine overspeed event this change does not increase the consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment eliminates the disassembly and surface inspection of the low pressure turbine stop and control valves. The only potential accident associated with this change is the generation of turbine missiles. Turbine missile accidents have been previously analyzed in FSAR Section 3.5.1.3. This change will not affect the failure modes for the turbine valves. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The change does not involve a significant reduction in a margin of safety because the safety analyses in the CPSES FSAR are essentially unaffected and safety limits are not exceeded.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black, Director

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: January 27, 1993

Description of amendment request: This proposed amendment would revise Technical Specification 6.3.1.2 to allow any one of three management personnel within the Health Physics department, i.e., the Superintendent, Health Physics, the Supervisor, Health Physics, Technical Support, or the Supervisor, Health Physics, Operations, to be designated as the Radiation Protection Manager as long as that person meets or exceeds the qualifications of USNRC Regulatory Guide 1.8, September 1975, for a Radiation Protection Manager.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to Technical Specification Table 6.3.1.2 does not involve a significant hazard consideration because operation of the

Callaway Plant with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not affect accident initiators or assumptions. The radiological consequences of any accident previously evaluated remain unchanged.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not create any new accident initiators nor involve any modifications or changes in the plant.

3. Involve a significant reduction in a margin of safety.

The proposed change will not affect any safety limits or boundary or system performance. This change does not reduce management control of the Callaway Plant radiation protection program nor affect the potential for exposures of persons to radiation. The proposed change does not reduce the overall base of experience at the Callaway Plant nor the commitment to minimum qualifications. Callaway Plant personnel will continue to have the training, experience, and expertise necessary to recognize, analyze, assess, evaluate, and effectively respond to plant transients or other abnormal events. As discussed above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any previously evaluated, or result in a significant reduction in a margin of safety. Therefore, it has been determined that the proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 9, 1993

Description of amendment request: This proposed amendment would revise Technical Specification Surveillance Requirement 4.8.1.1.2.h(2) that requires a pressure test of those portions of the diesel fuel-oil system that are designed to Section III, Subsection ND of the ASME Code. This system pressure test is to be performed at a pressure equal to 110% of the system design pressure at least once per 10 years. This technical specification may be deleted since Technical Specification 4.0.5 imposes the equivalent surveillance requirements for inservice inspection and testing of ASME Code Class 1, 2, and 3 components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to Technical Specification Requirement 4.8.1.1.2.h(2) does not involve a significant hazard consideration because operation of the Callaway Plant with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The configuration of the diesel fuel-oil system as currently installed and operated is such that a pressure test of 110% of design pressure would be impractical to perform. The system contains tanks designed for atmospheric pressure and isolation of them and their vent lines from the specified pressure test is not practical. The ASME Code, Section XI, provides alternate test methods to use when storage tanks are involved in a system pressure test. By deleting this T/S requirement the provisions of T/S 4.0.5 can be utilized as an equivalent testing requirement to ensure the integrity of the diesel fuel-oil system to perform its intended safety function.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remain unchanged. This T/S requirement is not needed since T/S 4.0.5 provides an equivalent surveillance requirement for the diesel fuel-oil system using methods acceptable to Section XI of the ASME Code and RG 1.137 Revision 0.

3. Involve a significant reduction in a margin of safety.

There are no changes being made to the safety limits or safety system settings that would adverely impact plant safety. The intended requirements of this T/S are provided for in T/S 4.0.5, utilizing methods more appropriate for testing the functionality of the diesel fuel-oil system to perform its intended safety function following a loss of offsite power.

Based on the above discussions, it has been determined that the requested Technical Specification change does not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 10, 1993

Description of amendment request: The proposed change would revise the North Anna Units 1 and 2 (NA-1&2) Technical Specifications (TS) requirements pertaining to the high head safety injection (HHSI) system flow balance tests. The NA-1&2 TS 4.5.2.h requires that HHSI flow balance tests be performed following the completion of modifications to the emergency core cooling system (ECCS) subsystems that alter the subsystem flow characteristics. The successful completion of the HHSI flow balance testing is ensured by two surveillance requirements. These surveillance requirements are for the sum of the flows through the two lowest flow branch lines, and a total HHSI pump flow requirement. The flow rates currently specified for the sum of the flows through the two lowest flow branch lines and the total HHSI pump flow are conservative with respect to the existing safety analysis values. The flow rates would be revised to remove any instrument inaccuracies. Normal instrument inaccuracies would be factored into the acceptance criteria of the periodic surveillance tests which perform the flow balance testing.

The proposed changes would decrease the sum of the flows through thetwo lowest flow branch lines from greater than or equal to 384 gpm to greater than or equal to 359 gpm, and increase the total HHSI pump flow from less than or equal to 650 gpm to less than or equal to 660 gpm. This expanded acceptance range would ensure the system performance remains bounded by the existing safety analysis and would make test failures due to instrument inaccuracies less likely. In addition, a surveillance requirement would be added to define a value of greater than or equal to 48.3 gpm to be used for simulated reactor coolant pump (RCP) seal injection flow during cold leg injection balancing. A simulated RCP seal injection flow has been taken into account during actual surveillance tests. It would be added for completeness of the surveillance requirements, but would not change the way the surveillance test is currently being performed.

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:

Specifically, operation of North Anna Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes revise TS 4.5.2.h.1.a and b such that with one HHSI pump running, the sum of the flows through the two lowest flow branch lines shall be greater than or equal to 359 gpm and the total HHSI pump flow rate shall be less than or equal to 660 gpm. Changes to the branch line and pump flow rates do not affect the probability of an accident.

Likewise, the consequences of the accidents previously evaluated will not increase as a result of the proposed TS changes. The system performance will remain bounded by the existing safety analysis at the revised flow rates, and adequate NPSH [net positive suction head] is available at the increased maximum flow rate for all postulated accident conditions.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. These changes will not affect the capability of the ECCS to perform its design function. The changes proposed herein are bounded by the existing safety analysis and do not involve operation of plant equipment in a different manner from which it was designed to operate. Since a new failure mode is not created, a new or different type of accident is not created.

3. Involve a significant reduction in a margin of safety. The system performance will remain bounded by the existing safety analysis at the revised flow rates, and adequate NPSH is available at the increased maximum flow rate for all postulated accident conditions, therefore, safety margins are not reduced.

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: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 18, 1993

Description of amendment request: The proposed changes would revise the NA-1&2 Technical Specifications (TS) 3.1.3.1-Group Height, 3.1.3.5-Shutdown Rod Insertion Limits, 3.1.3.6-Control Rod Insertion Limits, and 3/4.1.3-Bases. The proposed changes address operation with a rod urgent failure condition with control rods out of service due to failures external to the individual rod drive mechanisms, such as programming circuitry. The proposed changes would allow plant personnel to effect repairs to the rod control system in an orderly manner while continuing to ensure that the control and shutdown banks are capable of performing their safety function as designed. The proposed TS 3.1.3.1 would provide for continued power operation with one or more control or shutdown banks which cannot be moved by the rod control system as a result of failures external to the individual rod drive mechanisms. The proposed TS changes 3.1.3.5 and 3.1.3.6 would define the shutdown bank and control bank insertion limits, respectively, and would provide for up to 72 hours of continued power operation for diagnosis and repair of the rod control system under certain restricted conditions. Finally, TS 3/4.1.3 Bases would be supplemented to discuss the technical basis for the allowances for operation with one or more banks out of service due to failures in a rod control system power or logic cabinet.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes will not involve a significant increase in either the probability of occurrence or potential consequences of an accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. Allowing for continued operation during diagnosis and repair associated with electronic or electrical malfunctions of the Rod Control System is acceptable, since the design safety function of the control rods (reactor trip) will remain unaffected during the repair period. During the extended troubleshooting and maintenance period, the requirements for control rod alignment, insertion limits (except for a small allowed deviation for one bank) and shutdown margin will be maintained. The small deviation from the control rod insertion limits allowed for one bank for up to 72 hours will not adversely impact the current Technical Specification requirements for normal operation core power distributions. The proposed changes do not affect the ability of the control rods to perform their intended safety function when a safety system setting is reached. Nor will any new or unique accident precursors be introduced by the proposed changes. Therefore the probability and consequences of accidents related to or dependent on control rod operation will remain unaffected.

The proposed change will result in a small increase in the probability that, at any given time, a control or shutdown bank will be inserted slightly below (i.e. up to 18 steps) its insertion limit. However, by design, the control and shutdown banks will continue to meet the safety analysis criterion for steady state and ANS Condition II (moderate frequency) transients. The allowed insertion is not a malfunction of equipment important to safety in this case and therefore the probability of such a malfunction is not increased.

2. The proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated. There are no new failure modes or mechanisms associated with plant operation for an extended period to perform maintenance on the Rod Control System. Limited periods of operation with immovable but trippable control rods does not involve any modification to the operational limits or physical design of the involved systems. There are no new accident precursors created due to the allowed maintenance period.

3. The results of the current accident analyses are not impacted by this change. Therefore the margin of safety is not impacted.

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: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

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 amendment request: January 26, 1993

Description of amendment request: The proposed changes would add the NRC standard fire protection license condition to each of the Surry Operating Licenses Nos. DRP-32 and DPR-37, and relocate the fire protection requirements from the Technical Specifications to the Updated Final Safety Analysis Report.

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, specifically, the proposed amendments will not:

1. Involve a significant increase in either the probability of occurrence or consequences of any accident or equipment malfunction scenario that is important to safety and which has been previously evaluated in the UFSAR. The requirements of the Fire Protection Program have not been changed by the proposed amendment. Relocation of the Fire Protection Program requirements into the UFSAR and station procedures does not decrease any portion of the program. The same fire protection requirements exist as before the change.

2. Create the possibility of a new or different type of accident than those previously evaluated in the safety analysis report. The requirements of the Fire Protection Program have not been changed by the proposed amendment. This is an administrative change to relocate the Fire Protection Program requirements from the Technical Specifications to the UFSAR and station procedures.

Consequently, the possibility of a new or different kind of accident from any accident previously evaluated has not been created.

3. Involve a significant reduction in a margin of safety. Implementation of the Fire Protection Program requirements is assured by the UFSAR and station procedures. Since the program is being retained intact, there is no 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 amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. BerkowPreviously 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.

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: March 9, 1993

Brief description of amendment: The amendment would revise Technical Specifications (TSs) 3/4.2, "Power Distribution Limits," and 3/4.3, "Instrumentation," to relax the requirements for the number and distribution of operable incore detectors for the remainder of Operating Cycle 11. The changes also apply penalties to the values measured by the incore detectors prior to their comparison with TS limits to assure that the TS limits monitored by the incore detectors will continue to be valid.Date of publication of individual notice in Federal Register: March 18, 1993 (58 FR 14594)

Expiration date of individual notice: April 19, 1993

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: January 25, 1993

Description of amendment request: The proposed amendment would increase the maximum number of spent fuel assemblies stored in the Maine Yankee fuel pool to 2019 from 1476. The proposed increase is required to provide spent fuel storage space through the duration of the current operating license, including the final full core offload.

Date of publication of individual notice in Federal Register: March 26, 1993 (58 FR 16423)

Expiration date of individual notice: April 26, 1993

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 5, 1993

Brief description of amendment request: The amendment would allow a one-time schedule extension from the snubbers transient event inspections requirement.

Date of individual notice in Federal Register: March 25, 1993 (58 FR 16247)

Expiration date of individual notice: April 26, 1993

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

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.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station,Plymouth County, Massachusetts

Date of application for amendment: February 7, 1992

Brief description of amendment: Revises Reactor Protection System (RPS) surveillance test intervals from 1 month to 3 months, provides for 12- and 6-hour allowable out-of-service times for repairs and tests, and deletes the water level perturbation requirement. Changes to Control Rod Block and Primary Containment Isolation System instrumentation common to RPS are also included, as well as appropriate bases changes. In addition, administrative changes are included to clarify nomenclature, correct a typographical error and provide information to operators.

Date of issuance: March 25, 1993

Effective date: March 25, 1993

Amendment No.: 147

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 4, 1992 (57 FR 7807)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: August 17, 1992, as supplemented January 22, 1993, and February 1, 1993.

Brief description of amendment: The amendment changes the low pressure isolation signal from the high pressure coolant injection steam inlet piping to the reactor vessel as sensed by the Analog Trip System.

Date of issuance: April 2, 1993

Effective date: April 2, 1993

Amendment No.: 148

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 23, 1992(57 FR 61107)

The January 22, 1993, and February 1, 1993, supplements provided information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

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: January 12, 1993, as supplemented February 8, March 1, and March 17, 1993.

Brief description of amendments: The amendments change the Technical Specification Section 3/4.3.5.5, Chlorine Detection System, Section 3/4.7.2, Control Room Emergency Filtration System, and their associated Bases sections, to reflect changes made to the actuation logic in the control building emergency ventilation system (CBEVS) chlorine detection logic to revise the present fail-safe design to a single-failure proof design. The modification of the logic requires revision of the Limiting Condition for Operation and Action statements and Surveillance Requirements in the TS to reflect the increased number of detectors being installed in each detection trip system of the CBEVS and the new type of detection equipment. Additionally, deficiencies in the Applicability requirements, as well as a lack of requirements for the radiation protection and smoke protection instrumentation in the CBEVS, are corrected.

Also included is a correction to page 3/4 3-34, issued as Amendment No. to Facility Operating License No. DPR-62 (Unit 2) on February 3, 1993. The page was inadvertently issued misnumbered as page 3/4 3-38. No other changes were made to this page.

Date of issuance: March 22, 1993

Effective date: March 22, 1993

Amendment Nos.: 161 and 192

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1993 (58 FR 8068)

The February 8, 1993, letter provided clarifying information; the March 1, 1993, letter provided typed Technical Specification pages and made an editorial change to reflect the more conservative guidance of Generic Letter 88-13; and, the March 17, 1993, letter provide updated TS pages and marked-up TS pages detailing all the changes requested. None of the three supplemental letters altered the proposed no significant hazards consideration made in the February 11, 1993, **Federal Register** Notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 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. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: September 2, 1992

Brief description of amendments: The amendments delete Table 3.7.1, "Primary Containment Isolation," and modify Section 3/4.7.D, per the guidance contained in Generic Letter 91-08, from the Dresden Technical Specifications.

Date of issuance: February 11, 1993

Effective date: Upon issuance, to be implemented within 30 days.

Amendment Nos.: 122 and 117

Facility Operating License Nos. DPR-19 and DPR-25. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45079)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 2, 1992

Brief description of amendments: The amendments revise the Facility Operating Licenses by deleting the license condition pertaining to accumulator discharge instrumentation.

Date of issuance: March 23, 1993

Effective date: March 23, 1993

Amendment Nos.: 106/100

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Facility Operating Licenses.

Date of initial notice in **Federal Register:** December 2, 1992 (57 FR 61111)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 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, 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: June 7, 1990, as supplemented April 22, 1992

Brief description of amendments: The amendments modify Technical Specification (TS) 3.7.5b. for the Standby Nuclear Service Water Pond to require an average water temperature less than or equal to 91.5 °F at 568 feet elevation. The TS Bases are also revised to reflect this change.

Date of issuance: March 30, 1993

Effective date: March 30, 1993

Amendment Nos.: 108, 102

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28474) The April 22, 1992, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 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

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One,Unit No. 1, Pope County, Arkansas

Date of amendment request: September 28, 1992

Brief description of amendment: The amendment modified the required sodium hydroxide (NaOH) tank level specified in Technical Specification (TS) 3.3.4(B), deleted the value for the weight of NaOH specified in TS 3.3.4(B), and revised the Bases for TS 3.3.4 to reflect the new value of the NaOH tank level.

Date of issuance: March 26, 1993

Effective date: March 26, 1993

Amendment No.: 164

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 6995)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: February 2, 1993

Brief description of amendments: The amendments revise Technical Specification (TS) 4.8.1.1.2.h.7 and its associated footnote to remove the requirement to have the diesel generators perform the LOOP/ESFAS test within 5 minutes after completing the 24-hour test and substitute the requirement to start the diesel generator in accordance with TS 4.8.1.1.2.a.4 within 5 minutes after the 24-hour test.

Date of issuance: March 22, 1993

Effective date: March 22, 1993

Amendment Nos.: 58 and 37

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 18, 1993 (57 FR 8999)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: May 27, 1992, as supplemented December 7, 1992

Brief description of amendments: The amendments would revise the Sections 3.0 and 4.0 of the Technical Specifications to incorporate the changes recommended in Generic Letter 87-09.

Date of issuance: March 22, 1993

Effective date: March 22, 1993

Amendment Nos.: 59 and 38

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 593).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: February 28, 1992, as supplemented June 26 and August 28, 1992, and February 12, 18, 23, and 25, 1993

Brief description of amendments: The amendments modify the Licenses and Technical Spsecifications by increasing the maximum core power level from 3411 magawatts thermal to 3565 megawatts thermal.

Date of issuance: March 22, 1993.

Effective date: To be implemented within 60 days of issuance

Amendment Nos.: 60 and 39

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications and Licenses.

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47132) The June 26, 1992, and February 12, 18, 23, and 25, 1993, letters provided additional information in support of the above proposed changes. The letters in February 1993 did not change the NRC staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1993, and an Environmental Assessment dated March 9, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: December 7, 1992

Brief description of amendments: The amendments modify the Technical Specifications 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: March 31, 1993

Effective date: To be implemented within 30 days from the date of issuance

Amendment Nos.: 61 and 40

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 595) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 5, 1992, as supplemented March 29, 1993.

Brief description of amendments: These amendments modify Technical Specification 5.3.1 to recognize use of zirconium alloy or stainless steel filler rods within fuel assemblies and use of lead test assemblies.

Date of issuance: April 1, 1993

Effective date: to be implemented within 30 days of issuance

Amendment Nos.: 62/41

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1993 (58 FR 6820) as corrected on February 12, 1993 (58 FR 8434)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: November 12, 1992

Brief description of amendment: The amendment revises the Technical Specifications to reflect changes that evolved in Section XI of the ASME Code and in the NRC's regulations and Revised Standard Technical Specifications (RSTS). The most significant of these changes is a revision to the operational testing frequency for the emergency feedwater system pumps from monthly to quarterly as specified in the current editions of the ASME Code and the RSTS. The two other changes are (1) redefinition of how the 10-year inservice inspection interval is to be divided into three subintervals, and (2) separation of the inservice inspection requirements from the inservice testing requirements to reflect a similar recent change in 10 CFR 50.55a.

Date of issuance: March 30, 1993

Effective date: March 30, 1993

Amendment No.: 172

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992, (57 FR 61113)

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 30, 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: October 16, 1992, as supplemented February 17, 1993

Brief description of amendment: The amendment revises the Clinton Power Station (CPS) Technical Specifications to support compliance with the new requirements of Title 10 of the Code of Federal Regulations, Part 20. These changes are needed to reflect implementation of the CPS Radiation Protection Program in accordance with 10 CFR 20.1101.

Date of issuance: March 29, 1993

Effective date: Immediately, to be implemented April 1, 1993

Amendment No.: 69

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8773) and February 24, 1993 (58 FR 11264).

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated March 29, 1993 (58 FR 16555), and in a Safety Evaluation dated March 29, 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.

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: December 15, 1992

Brief description of amendment: The amendment adds a requirement to Technical Specification 3/4.4.4, "Chemistry," to perform an engineering evaluation prior to plant restart of the impact on the reactor coolant system of chemistry parameters exceeding their limit for specified time periods during plant shutdown conditions.

Date of issuance: March 29, 1993

Effective date: March 29, 1993

Amendment No.: 70

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7000)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 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.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: February 12, 1992, as supplemented January 27, 1993

Brief description of amendments: The amendments change Technical Specifications to reflect the addition of clean water tanks and associated pumps, piping, and valves to the Unit 1 and Unit 2 fire suppression water systems.

Date of issuance: March 31, 1993

Effective date: March 31, 1993

Amendment Nos.: 171 and 154

Facility Operating License Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 596) The additional information contained in the supplemental letter dated January 27, 1993, served to clarify the amendments, was within the scope of the initial notice, and did not affect the Commission's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane ArnoldEnergy, Center, Linn County, Iowa

Date of application for amendment: January 29, 1993

Brief description of amendment: This amendment revised the Technical Specifications by changing the surveillance interval for the Source Range Monitor functional test.

Date of issuance: March 29, 1993

Effective date: March 29, 1993

Amendment No.: 192

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 3, 1993 (58 FR 12264)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: June 1, 1992, as supplemented September 24, 1992, and February 8, 1993

Brief description of amendment: The amendment revised the Technical Specifications to implement Generic Letter 89-01 concerning the Radiological Effluent Technical Specification (RETS) and revised the requirements for the containment radiation high signal following the guidance of NUREG-0133.

Date of issuance: March 25, 1993

Effective date: March 25, 1993

Amendment No.: 152

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 24, 1992 (57 FR 28203) The additional information contained in the supplemental letters dated September 24, 1992, and February 8, 1993, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 22, 1992

Brief description of amendments: These amendments change Diablo Canyon Power Plant Technical Specification (TS) 6.9.1.6, "Semiannual Radioactive Effluent Release Report," to extend the Radioactive Effluent Release Report submittal frequency from semiannual to annual and add a List of Effective Pages to the TS.

Date of issuance: March 23, 1993

Effective date: March 23, 1993

Amendment Nos.: 78 and 77

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 3, 1993 (58 FR 7003)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: October 27, 1992

Brief description of amendments: The amendment revises the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Units 1 and 2 to relocate Table 3.8-1, "Motor-Operated Valves (MOVs) Thermal Overload Protection and Bypass Devices," to DCPP procedures. The relocation is in accordance with the guidance provided in Generic Letter 91-08, "Removal of Component Lists from Technical Specificaitons," dated May 6, 1991. The associated Bases is also appropriately revised.

Date of issuance: April 1, 1993

Effective date: April 1, 1993

Amendment Nos.: 79 and 78

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 6, 1993 (58 FR 598)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 15, 1990, as supplemented June 20, 1991, October 8, 1991 and June 5, 1992 (Reference LAR 90-12)

Brief description of amendments: The amendments to the Diablo Canyon Power Plant, Units 1 and 2 Technical Specifications would permit leakage past the auxiliary building safeguard air filtration system dampers M2A and M2B at Diablo Canyon. The proposed change would modify surveillance requirement 4.7.6.1 to permit these dampers to have a leakage rate of 5 cubic feet per minute or less when tested in accordance with the American Society of Mechanical Engineers (ASME) Standard ASME N510-1989.

Date of issuance: April 1, 1993

Effective date: April 1, 1993

Amendment Nos.: 80 and 79

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9381) Supplemental responses were at the request of the NRC and did not affect the proposed determination of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in aSafety Evaluation dated April 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: December 8, 1992

Brief description of amendments: The amendments revised the Technical Specifications to reflect a modification which Pennsylvania Power and Light Company is proposing to install in April 1993, to add an undervoltage scheme to the Diesel Generator E auxiliaries.

Date of issuance: March 29, 1993

Effective date: March 29, 1993

Amendment Nos.: 124 and 94

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 17, 1993 (58 FR 8775)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 31, 1992, as supplemented by letters dated April 28, 1992, June 22, 1992, and November 9, 1992, and January 8, 1993

Brief description of amendments: These amendments change existing surveillance requirements and add additional surveillance requirements for the Emergency Diesel Generators (EDG). The changes establish 1) a more rigorous and comprehensive surveillance test program for the EDGs, 2) modified EDG test methodologies and schedules, 3) requirements consistent with NUREG-0123 for operability and for demonstrating operability of redundant components and systems when an Alternating Current (AC) source is not operable, and 4) more specific

requirements for minimum inventories of diesel fuel oil.

The letter of June 22, 1992, requested that the staff review and evaluate a provision of the proposed TS which eliminated immediate and daily testing requirements for EDGs when one EDG is out of service for planned preventive maintenance. The staff considered that request and issued Amendments 168 and 172 to the TS which incorporated that single change on July 6, 1992.

The letters of April 28, 1992, November 9, 1992, and January 8, 1993, provided additional information but did not change the intent of your original application.

Date of issuance: March 25, 1993

Effective date: March 25, 1993Amendments Nos.: 173 and 176

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20515)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 25, 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.

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 application for amendments: November 18, 1992

Brief description of amendments: For both units, the amendments change Technical Specifications 6.9.1.8, "Semiannual Radioactive Effluents Release Report," and 6.14, "Offsite Dose Calculation Manual," to extend the Radioactive Effluent Releases Report submittal frequency from semiannual to annual.

Date of issuance: March 23, 1993

Effective date: March 23, 1993

Amendment Nos.: 102 and 91

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8784)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: April 13, 1992, March 19, 1993 (TS 306)

Brief description of amendment:

Date of issuance: April 1, 1993

Effective date: April 1, 1993

Amendment Nos.: 192 - Unit 1; 207 - Unit 2; 164 - Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68:

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22270)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

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: December 27, 1991

Brief description of amendments: The amendments revise the pressure/temperature (P/T) operating limitations during heatup and cooldown and the low temperature/overpressure protection systems (LTOPS) setpoints for 12 and 17 effective full power years for NA-1&2, respectively.

Date of issuance: March 25, 1993

Effective date: March 25, 1993

Amendment Nos.: 170, 149

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 25, 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.

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: January 19, 1993

Brief description of amendments: These amendments revise the degraded voltage relay setpoints in Table 15.3.5-1, revise the actions required if the conditions specified in Table 15.3.5-3, Items 4.a and 4.b are not met, add the bus designations to Tables 15.3.5-1 and 15.3.5-3, and correct typographical errors which were contained in amendments 55 and 60 issued on September 30, 1981.

Date of issuance: March 26, 1993

Effective date: March 26, 1993

Amendment Nos.: 137 and 141

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8789)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 28, 1992 as supplemented by letters dated January 28, 1993 and March 8, 1993.

Brief description of amendment: The amendment revises various Technical Specifications to support the use of VANTAGE 5H fuel with Intermediate Flow Mixers, include results of revised transient, thermal-hydraulic, and nuclear design analyses, allow main steam safety valve setpoint tolerance increases, and relocates cycle-specific parameters to the Core Operating Limits Report.

Date of issuance: March 30, 1993

Effective date: March 30, 1993, to be implemented within 30 days of issuance.

Amendment No.:

Amendment No. 61

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 601)

The January 28, 1993, and March 8, 1993, supplemental submittals provided additional clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University,

William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent, Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By May 14, 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, 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 the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: March 9, 1993

Brief description of amendment: The amendment revises Technical Specifications (TSs) 3/4.2, "Power Distribution Limits," and 3/4.3, "Instrumentation," to relax the requirements for the number and distribution of operable incore detectors for the remainder of Operating Cycles 11. The changes also apply penalties to the values measured by the incore detectors prior to their comparison with TS limits to assure that the TS limits monitored by the incore detectors will continue to be valid.

Date of issuance: April 2, 1993

Effective date: April 2, 1993

Amendment No.: 180

Facility Operating License No. DPR-53: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (58 FR 14594, dated March 18, 1993). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice published March 18, 1993, also provided for a hearing by April 19, 1993, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 15, 1992, as supplemented February 5 and March 18, 1993

Brief description of amendments: The amendments revise the Technical Specifications to reflect the reloading of Unit 2 with fuel manufactured by the Babcock & Wilcox Fuel Company, and analyzed using Duke Power Company methodology. The amendments also change the steamline and feedwater parameter setpoints and isolation times; the reactor makeup water pump minimum flowrate; and the pressurizer safety valve lift setpoint tolerance.

Date of issuance: March 23, 1993

Effective date: March 23, 1993

Amendment Nos.: 107/101

Facility Operating License Nos. NPF 35 and NPF-52: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (58 FR 11260 dated February 24, 1993) That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination and provided for an opportunity to request a hearing by March 26, 1993. The notice also states that the Commission may issue the amendment before the expiration of the 30-day notice under certain circumstances provided it makes a final determination that the amendments involve no significant hazards consideration and provides an opportunity for a hearing subsequent to taking the action.

The Commission's related evaluation of the amendments, finding of certain circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated March 23, 1993.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Dated at Rockville, Maryland, this 7th day of April 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects - I/II Office Nuclear Reactor Regulation.

[FR Doc. 93-8541 Filed 4-13-93; 8:45 am]

BILLING CODE 7590-01-F

NUCLEAR REGULATORY COMMISSION

[General License 10 CFR 150.20 EA 92-102]

American Testing & Inspection, Inc. Joliet, Illinois 60433; Issuance of Confirmatory Order

The Nuclear Regulatory Commission is publishing the attached Confirmatory Order that restricts American Testing & Inspection, Inc. and Mr. Ronald Preston, the former President of American Testing & Inspection, Inc., from the performance of licensed activities The

purpose of this action is to provide public notice of a significant enforcement action.

Dated at Rockville, Maryland this 8th day of April 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

I

American Testing and Inspection, Inc. (ATI), was formerly holder of State of Illinois Byproduct Material License No. 01085–01 (License) issued on January 8, 1988. The License authorized the possession and use of sealed sources of iridium–192 in industrial radiographic exposure devices to perform licensed activities within the State of Illinois. Pursuant to 10 CFR 150.20 and its License, ATI was authorized to possess and use licensed byproduct materials to perform industrial radiography in non-Agreement States. ATI's License expired on August 31, 1992. The License was transferred to McNDT Leasing, Inc. and amended in its entirety in accordance with letters dated August 31, 1992 and September 3, 1992.

II

An inspection by the Nuclear Regulatory Commission (NRC) was conducted on February 12 through March 27, 1992, of ATI's activities that were conducted in the States of Indiana and Michigan (non-Agreement States). Six violations were identified, including (1) the failure to file NRC Form 241 on 174 days in 1991 when performing radiography in non-Agreement States in accordance with 10 CFR 150.20(b)(1); (2) performing radiography in non-Agreement States on more than 180 days within calendar year 1991 in violation of 10 CFR 150.20(b)(3); and (3) the failure of ATI to have a qualified independent organization observe ATI's radiographers or conduct an audit of ATI's radiation safety program in violation of Section IV.C. of an Order Modifying License that was issued by the NRC to ATI on November 30, 1989.

The NRC issued Enforcement Action (EA) 92–102 against ATI consisting of a Notice of Violation and Proposed Imposition of Civil Penalty—$15,000 (Notice) dated October 7, 1992. Mr. Ronald Preston, formerly President, ATI, responded on November 30, 1992, to the Notice admitting the violations, but requesting that the proposed civil penalty be vacated since ATI had gone into Chapter 7 bankruptcy and ceased industrial radiography operations. However, there is nothing in that Notice that precludes Mr. Preston from performing radiography under another licensee's Agreement State license and, pursuant to 10 CFR 150.20, from engaging in licensed activities in NRC jurisdiction.

III

The Notice proposed a civil penalty which is still outstanding. As the parties desire to resolve all matters pending between them, Mr. Preston agrees, for a period of three years from the date he signs this Confirmatory Order, that he, ATI, or a successor entity wherein Mr. Preston is an authorized user, radiographer, radiographer's assistant, Radiation Safety Officer, an Assistant Radiation Safety Officer, an officer, or a controlling stockholder, shall not apply to the NRC for a new license, nor shall Mr. Preston, ATI, or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.205, and 10 CFR Parts 30, 34, and 150, *It is Hereby Ordered, Stipulated and Agreed* between the NRC and Mr. Preston as follows:

1. The NRC withdraws the civil penalty of $15,000 as proposed in the Notice dated October 7, 1992 (EA 92–102);

2. For a period of three years from the date Mr. Preston signs this Confirmatory Order, Mr. Preston, ATI, or any successor entity, wherein Mr. Preston is an authorized user, radiographer, radiographer's assistant, Radiation Safety Officer, an Assistant Radiation Safety Officer, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Mr. Preston, ATI, or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

3. This Confirmatory Order constitutes settlement without payment of a civil penalty proposed in the Notice dated October 7, 1992 (EA 92–102). However, if Mr. Preston, ATI, or a successor entity violates paragraph 2 of this Section, then the civil penalty of $15,000 will be reinstated by an Order Imposing Civil Penalty and the civil penalty of $15,000 will be due in full within 30 days of the date of that Order Imposing Civil Penalty.

4. Mr. Preston, ATI, or any successor entity waive the right to contest this Order in any manner, including requesting a hearing on this Order or the Order Imposing Civil Penalty, should one be issued as provided in paragraph 3 of this Section.

For American Testing and Inspection, Inc.

Dated: March 19, 1993.

Ronald Preston.

Donna Baumrok,

Notary Public.

For the Nuclear Regulatory Commission.

Dated: March 24, 1993.

James Lieberman.

[FR Doc. 93–8681 Filed 4–13–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Company (Yankee Nuclear Power Station); Exemption

I

The Yankee Atomic Electric Company (YAEC or the licensee), is the holder of Possession Only License No. DPR–3, which authorizes possession and maintenance of the Yankee Nuclear Power Station (YNPS or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a permanently shut down pressurized water reactor, currently in the process of being prepared for decommissioning, and is located at the licensee site in Franklin County, Massachusetts.

II

The licensee, by letter dated February 27, 1992, informed the NRC that YAEC had permanently ceased power operations, removed the fuel from the reactor to the fuel pool and begun to develop detailed plans to decommission the facility. The NRC in a license amendment dated August 5, 1992, modified License DPR–3 to a Possession Only License (POL). The license is conditioned so that YAEC is not authorized to operate the reactor or place fuel in the reactor vessel, thus formalizing the licensee commitment to permanently cease power operations.

By letter dated September 28, 1992, the licensee requested an exemption from 10 CFR 50.54(w), which prescribes the minimum property insurance requirements for electric utility licenses issued under 10 CFR part 50. In response to a December 14, 1992, staff request for additional information, the licensee provided a supplement dated December 30, 1992. The September 28, 1992, request is the action being considered herein. The minimum property insurance requirement, under the regulation, is for $1.06 billion of

coverage. The NRC, in a letter dated June 10, 1983, granted an exemption to the licensee that reduced the minimum required coverage to $500 million; it was based on TMI–2 decontamination costs adjusted to the YNPS smaller size. The September 28, 1992, letter requests a full exemption from the requirements of 10 CFR 50.54(w), but commits the licensee to maintain a minimum coverage of $5 million in property damage insurance.

III

The licenses bases for the exemption request are that the reactor has been defueled, the fuel placed in the spent fuel storage pool, and that the reactor cannot be returned to operation. In addition, YAEC stated that the types of accidents defined in the regulation, 10 CFR 50.54(w)(2)(i), can no longer occur at the plant. The licensee also stated that the potential risk to the public was therefore significantly reduced and that the range of credible accidents and accident consequences for YNPS was greatly diminished. The licensee analysis shows that the worst cast accident at YNPS would not be a fuel handling accident and it demonstrates that the offsite consequences are negligible.

The NRC staff has independently calculated the offsite doses resulting from such a fuel handling accident and a beyond-design-basis event, namely the loss of all water from the pool. The staff based its review on the assumptions and parameters in the NRC Standard Review Plan, the Final Safety Analysis Report (FSAR), and the data in the licensee's previous submittal of May 22, 1992, in support of a request for an exemption to the Emergency Planning Rule. The staff analysis indicates that at the exclusion area boundary, the whole body dose, the thyroid dose and the skin dose are a small fraction of the Environmental Protection Agency (EPA) Protective Action Guides (PAGs). Therefore, we also concluded that the offsite consequences were insignificant.

The licensee has evaluated the onsite consequences of the same accident and states that $5 million represents a conservative upper bound for all onsite recovery costs, not just decontamination and site stabilization as required by 10 CFR 50.54(w). The staff agrees that the recovery costs from a design basis fuel handling accident or a beyond-design-basis accident will not exceed $5 million. In view of the substantial time elapsed since October 1, 1991, when the reactor was last operated, and the resultant significant decay of gap activity, doses from any fuel related accident are also significantly reduced, thus diminishing the consequences of such accidents. We base these conclusions on our independent review of the most recent such accidents occurring at other nuclear power plants, which are discussed below.

We found only two comparable events. The first event, the dropping of a fuel bundle that resulted in some ruptured fuel rods, incurred costs in excess of $2 million; however, we determined that most of the costs consisted of the capital cost of the fuel assembly replacement and three days of lost power generation due to the accident. Neither of these costs is pertinent to Yankee in its permanently shut down status. The remaining costs of about $45,000 were for recovery from the accident and are applicable to Yankee. The second accident, the dropping and rupturing of fuel rods during bundle reconstitution, occurred at a plant for which its licensee prepared an internal investigation report. The report contained detailed cost data and showed a recovery cost of $50,000. Therefore, we agree with YAEC that insurance coverage of $5 million represents an upper bound for recovery costs from a design basis fuel handling accident.

The staff requested information from Yankee regarding other potential site related events that might result in a property loss. We asked about the potential spillage of stored radioactive fluids that might incur significant cleanup costs. By letter dated December 30, 1992, the licensee provided a response with a detailed accident analysis of such stored fluids with a discussion of potential operator errors. The bounding event, leakage from the Safety Injection Tank, would conservatively incur a $3 million recovery cost for disposal of contaminated asphalt and soil as low level radioactive waste. The staff finds the December 30, 1992, analysis to be comprehensive and conservative and, therefore, acceptable.

The Commission will not consider granting an exemption unless special circumstances are present. In its letter of September 28, 1992, the licensee addressed these special circumstances as follows:

10 CFR 50.12(a)(2)(ii)—"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule * * *"

Licensee response: Approval of this exemption request will not undermine or reduce the obligations of YAEC to protect the public health and safety. Special circumstances, that is, permanent cessation of power operations and thus, a substantially reduced potential risk to public health and safety, exist such that the basis of 10 CFR 50.54(w) is no longer applicable.

10 CFR 50.12(a)(2)(iii)—"Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, * * *"

Licensee response: Continued compliance with Yankee's requirement of $500 million in nuclear property insurance limits presents an undue hardship in that it requires expenditures significantly in excess of those appropriate for a permanently shutdown and defueled plant or incurred by other permanently shutdown plants.

IV

The staff, based on its independent evaluation, agrees with the YAEC analysis and concludes that there are special circumstances presented that satisfy the requirements of 10 CFR 50.12(a)(2)(ii) and (iii).

V

Based on Sections III and IV above, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Pursuant to 10 CFR 51.22(c)(10), the Commission has determined that this exemption meets the eligibility criteria for categorical exclusion from the need for either an environmental assessment or environmental impact statement. The Commission has also determined that the issuance of this exemption will have no significant impact on the environment.

Accordingly, the Commission hereby grants an exemption to 10 CFR 50.54(w). However, the licensee shall either maintain a minimum limit of $5 million of property damage insurance or be able to demonstrate self-insurance of this amount. The YAEC letter of September 28, 1992, identified as BYR 92–079, contained a commitment to maintain this amount of protection.

The exemption is effective immediately.

Dated at Rockville, Maryland this 8th day of April 1993.

For the Nuclear Regulatory Commission.

James G. Partlow,

Associate Director for Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 93–8680 Filed 4–13–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposals

(1) *Collection title:* Supplemental Information on Accident and Insurance.

(2) *Form(s) submitted:* SI–1c, SI–5, ID–3s, ID–30k, ID–30q, and ID–3u.

(3) *OMB Number:* 3220–0036.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 12,426.

(9) *Total annual responses:* 33,550.

(10) *Average time per response:* .05872 hours.

(11) *Total annual reporting hours:* 1,970.

(12) *Collection description:* The RUIA provides for recovery of sickness benefits paid if the employee receives a settlement for the same injury for which benefits were paid. The collection obtains identifying information about the person or company responsible for such payments and information needed for determining the amount of the RRB's entitlement.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–8610 Filed 4–13–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 272–5407.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

New Collection File No. 270–380, Interviews With Members of Asset-Backed Securities Industry.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a request to interview up to 150 persons or entities to obtain background information for use in formulating proposals to enhance the disclosure in registration statements and subsequent periodic reports for asset-backed securities issuers and to establish procedural requirements for filing periodic reports. Asset-backed securities are securities that are primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholder. It is anticipated that each interview will take one hour to complete for a total of 150 burden hours. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for conducting the proposed interviews to John J. Lane, Associate Executive Director for Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Margaret H. McFarland,

Deputy Secretary.

April 5, 1993.

[FR Doc. 93–8641 Filed 4–13–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32119; File No. SR–NASD–93–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees for SelectNet Transactions and CTCI Port Connections

April 8, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing two amendments to Part IX of Schedule D of the NASD's By-Laws. First, effective April 1, 1993, the NASD proposes to decrease from $3.00/side to $2.50/side the service charge assessed to each side of a SelectNet transaction. Second, the NASD proposes to rescind the Computer-to-Computer Interface ("CTCI") port charge of $1,200/month retroactive to June 1, 1992.

The text of the proposed rule change is available at the Office of the Secretary, NASD, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In view of the securities industry's heightened sensitivity to cost and the NASD's commitment to reduce costs

where and to the extent possible, the Association is proposing to change two service charges imposed by the Association. First, effective April 1, 1993, the NASD is proposing to reduce from $3.00/side to $2.50/side the service charge assessed to each side of a SelectNet transaction.[1] The per transaction service charge has been reduced to take into account increased use of the system, while still recovering the costs of modifications to the service and the costs of operating the system. The costs of operating SelectNet include, among others: hardware acquisition and software development (recoverable over a four year period), computer operations in the primary site at Trumbull, Connecticut with full redundancy in the back-up site at Rockville, Maryland, SelectNet utilization of the Nasdaq network, software maintenance and enhancements, and personnel expenses associated with supporting the computer facilities and market operations.

In order to ensure that the SelectNet transaction charge is properly related to revenues required by the SelectNet service, the utilization of the service, the costs of past and future enhancements to the system, and the costs of operating the service, the NASD has undertaken to review periodically the SelectNet fee schedule as experience with SelectNet warrants. In this regard, the NASD originally determined that a $4.00/side transaction fee was appropriate.[2] Subsequently, in July 1991, the NASD determined that the fee should be reduced to $3.00.[3] Accordingly, based on the NASD's most recent review of the revenues and costs associated with SelectNet, the Association believes the per side transaction charge should be reduced further to $2.50.

Second, the NASD proposes to rescind the monthly CTCI port charge of $1,200, retroactive to June 1, 1992.[4] Presently, there are 163 firms using the CTCI interface, however, due to a CTCI fee waiver provision for members with a high volume of SOES orders and an alternative CTCI charge for users of the service in connection with participation in the Automated Confirmation Transaction ("ACT") service, only five firms are currently being charged the monthly CTCI fee. Specifically, Section A.7. of Part IX of Schedule D to the By-Laws provides that the CTCI charge for a given month shall be rebated if a CTCI subscriber enters or receives 1,000 or more SOES executions during that month. Section A.11 of Part IX also provides that the CTCI fee shall be $500/month if the CTCI port is used in connection with ACT. Accordingly, given the small number of members who are assessed the $1,200 fee, coupled with the fact that the costs for the CTCI service are now factored into the product profitability analyses of each NASD service that may be accessed through the CTCI system, the NASD believes that the stand alone CTCI fee is no longer necessary. In addition, given the apparent inequities of assessing the CTCI fee on only a small number of firms over the past few months, the NASD believes elimination of the CTCI fee should be applied retroactively to June 1, 1992.

The NASD believes that the proposed rule change is consistent with section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The NASD charges a transaction fee for SelectNet to recover development and operational costs and a monthly fee for CTCI to offset software and hardware development costs and operating expenses. The NASD continues to monitor these fees to ensure that the amount charged is reasonable and equitably allocated and, therefore, the reduction in the NASD's per transaction costs associated with SelectNet should be reflected in a reduced fee and the disparate charge associated with CTCI should be corrected retroactively.

(b) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder because the proposal establishes or changes a due, fee, or other charge imposed by the NASD. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 NASD. All submissions should refer to the file number in the caption above and should be submitted by May 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-8711 Filed 4-13-93; 8:45 am]

BILLING CODE 8010-01-M

[1] Modifications to the SelectNet service were approved by the Commission in November 1990, and since their implementation the SelectNet service has been used by members to facilitate screen-based transaction negotiations and locked-in executions for transmission to clearing. See Securities Exchange Act Release No. 28636 (November 21, 1990), 55 FR 49732 (November 30, 1990) (File SR-NASD-90-51).

[2] See Securities Exchange Act Release No. 28815 (January 24, 1991), 56 FR 3499 (January 30, 1991) (File SR-NASD-91-3).

[3] See Securities Exchange Act Release No. 29605 (August 23, 1991), 56 FR 43639 (September 3, 1991) (File SR-NASD-91-34).

[4] The CTCI system, which is maintained and operated by Market Services, Inc., is a high speed communication interface system between large member firms' mainframes and the Nasdaq system that is used for, among other things, the efficient transfer of trade information and the entry of orders into the Small Order Execution System ("SOES").

[5] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34–32118; File No. SR–NASD–93–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Publication of Clarification of Issues Relating to NASD Rule Governing Asset-Based Sales Charges in the Sale of Mutual Fund Shares

April 8, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 5, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a rule change clarifying the application of its rule relating to asset-based sales charges imposed in connection with the purchase of mutual fund shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD submitted to the SEC in SR–NASD–90–69 a proposed rule change to amend Article III, section 26 of the Rules of Fair Practice to limit investment company asset-based sales changes imposed in connection with the purchase of mutual fund shares. The proposed rule change was approved by the SEC on July 7, 1992,[1] but does not take effect until July 7, 1993. Pursuant to a letter dated September 18, 1991, from A. John Taylor, Vice President, Investment Companies/Variable Contracts, NASD, to Katherine A. England, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, the NASD, in response to a commenter's suggestion, undertook to issue a Question and Answer Release in order to address "technical issues raised during the one-year waiting period concerning implementation of the proposed rule change * * * if questions arise which would be appropriately answered in [a Notice to Members]."[2] Technical and other issues did, in fact, arise during the one-year period prior to effectiveness of SR–NASD–90–69, the answers to which were published in question and answer format in Notice to Members 93–12 ("NTM 93–12"), which is attached hereto as Exhibit 1.

NTM 93–12 addresses, in question and answer format, (1) Calculation of Sales Charges and Interest, (2) Retroactive Calculation of Remaining Amount, (3) Service Fees, (4) Exchanges, and (5) Miscellaneous questions. These questions and answers are self-explanatory and are, accordingly, incorporated herein by reference.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[3] in that it promotes just and equitable principles of trade, fosters cooperation and coordination with regulators, and generally provides for the protection of investors and the public interest by assisting members in applying the provisions of Article III, section 26 of the Rules of Fair Practice which limit the sales charges investors may be required to pay in connection with the sale of investment company shares.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective April 5, 1993 pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder, which render the rule effective upon the Commission's receipt of this filing, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 NASD. All submissions should refer to the file

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[1] *See* Securities Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985 (July 13, 1992) (SR–NASD–90–69).

[2] The SEC approval order states that the NASD represented it would issue a formal "Question and Answer" release following SEC approval, to be filed pursuant to Section 19(b)(3)(A) of the Act, clarifying issues raised by commenters regarding service fees, the appropriate amount for calculating interest charges for purposes of the rule, and exchange transactions. Securities Exchange Act Release No. 30897 (July 7, 1992) 57 FR 30985 (July 13, 1992) (SR–NASD–90–69), note 18. *See*, letter of July 30, 1992 from Suzanne E. Rothwell, Associate General Counsel, NASD, to Katherine A. England, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC.

[3] 15 U.S.C. § 78*o*–3.

number in the caption above and should be submitted by May 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).[4]

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1

NASD Notice to Members 93–12

Questions and Answers About New NASD® Rules Governing Investment Company Sales Charges—Article III, Sections 26 (b) and (d) of the Rules of Fair Practice

Suggested Routing

- ■ Senior Management
- □ Corporate Finance
- □ Government Securities
- □ Institutional
- □ Internal Audit
- ■ Legal & Compliance
- □ Municipal
- ■ Mutual Fund
- □ Operations
- □ Options
- □ Registration
- □ Research
- □ Syndicate
- □ Systems
- □ Trading
- □ Training

Executive Summary

Since the Securities and Exchange Commission (SEC) approved new NASD® rules governing investment company sales charges on July 7, 1992, the NASD has fielded numerous questions from member firms and mutual funds concerning the interpretation and application of these rules. In anticipation of the July 7, 1993, effective date of the new rules, the NASD has compiled in this Notice frequently asked questions and answers to help members understand and apply these rules. The categories addressed are calculation of sales charges and interest, retroactive calculation of remaining amounts, service fees, and exchanges.

Background

On July 7, 1992, the SEC approved amendments to Article III, Sections 26 (b) and (d) of the Rules of Fair Practice (Rules) relating to investment company sales charges as announced in *Notice to Members 92–41* (August 1992). The new Rules take effect on July 7, 1993. The text of the new Rules follows this Notice. The following questions and answers have been developed to assist members in interpreting and implementing the new Rules.

The statements contained in this *Notice to Members* supersede and replace any and all prior statements of the NASD on the subject of investment company sales charges to the extent such prior statements are inconsistent with this Notice. The NASD may publish other question and answer Notices as needed to answer member questions.

Members are also reminded that, while Article III, Section 26 of the Rules of Fair Practice addresses investment company issues, the Rules apply to members, not investment companies. Members are obligated under the Rule to ensure that the sales charges paid by the investment companies for the shares that they sell to the general public comply with the requirements of the Rules. A member that sells shares of an investment company in violation of the Rule is subject to disciplinary action, not the investment company. Nevertheless, members may rely on the statements in a fund's prospectus, or on statements from the fund about the amount of sales charges paid in the distribution of fund shares, unless the member knows, or should have known on the exercise of reasonable diligence, that the statements are not true.

Questions regarding this Notice may be directed to R. Clark Hooper, Vice President, Investment Companies at (202) 728–8329 and Elliott R. Curzon, Senior Attorney, Office of General Counsel at (202) 728–8451.

Questions and Answers

As an aid to understanding the questions and answers contained in this Notice, the NASD has developed a comprehensive example using a hypothetical investment company to show the calculations for remaining amount, balance for interest, and interest.[1] Readers are referred to this example on page 56 for illustrations of the concepts described in this Notice.

I. Calculation of Sales Charges and Interest

Question #1: How often should a fund[2] with an asset-based sales charge calculate the remaining amount[3] under its appropriate aggregate cap[4] to which its total sales charges are subject for purposes of ensuring that it is in compliance with the limits under the Rules?

Answer: The remaining amount should be calculated at least as frequently as the fund makes payments of an asset-based sales charge, but in no event less frequently than once each calendar quarter. Thus, for example, a fund that pays an asset-based sales charge quarterly should calculate its remaining amount at least quarterly, and a fund that pays daily should calculate its remaining amount daily.

Question #2: How would a fund that pays asset-based sales charges quarterly make monthly calculations of its remaining amount (i.e., what happens when the fund's payment period is different from the period for which it calculates its remaining amount)? How should such a fund calculate interest?

Answer: The remaining amount would be calculated by multiplying the appropriate aggregate cap times new gross sales for the month, subtracting any front-end or deferred sales charges collected and any asset-based sales charges accrued during the month. The remaining amount for the month is then added to any pre-existing remaining amount and interest on the entire remaining amount is then calculated in the manner described in Questions 3 and 4.

A fund may also track a separate "balance for interest," which would be the appropriate aggregate cap times new gross sales for the period, minus any front-end, deferred, or asset-based sales charges collected during the period, and then added to any pre-existing "balance for interest." This new "balance for interest" (to which the prime rate, or an average of the prime rates for the period, plus one percent, would be applied) differs from the fund's remaining amount before interest as described above in that asset-based sales charges accrued but not paid would not be deducted. Thus, interest can be assessed on the amount represented by the accrued, but unpaid, asset-based sales charges. This difference in the balance used to calculate interest takes into account the fact that a fund underwriter that advances money to pay up front for distribution costs will not be reimbursed until the asset-based sales charge is actually paid to the underwriter.

Question #3: The Rules permit funds to increase their remaining amount by adding interest at the prime rate plus one percent. How and when should a fund determine the appropriate interest rate?

Answer: NASD *Notice to Members 90–56* (September 1990) describes the prime rate as "the most preferential rate of interest charged by the largest commercial banks on loans to their corporate clients" and refers to the rate published daily in *The Wall Street Journal*. Thus, the prime rate used for this purpose should be the rate appearing in *The Wall Street Journal*, which represents "the base rate on corporate loans posted by at least 75 percent of the nation's 30 largest banks." The prime rate in effect on the date when the fund calculates its remaining amount plus one percent (see Question 1) if the fund calculates daily or, alternatively, if a fund calculates its remaining amount less frequently, an average of the prime rates over the period plus one percent should be used to calculate the amount by which a fund may increase its remaining amount. Funds generally should select and consistently use one of the above two alternatives.

Question #4: To calculate the increase in a fund's remaining amount based on the

[4] 17 CFR 200.30–3(a)(12) (1992).

[1] Readers should note that for purposes of the calculations discussed in this Notice each class of shares and each series may be treated as a separate investment company. In *Notice to Members 90–56* (September 1990) requesting member vote on the new Rule the NASD stated that "[t]he Board considers each class of shares to be a separate investment company for purposes of the sales charge Rule."

[2] The term "fund" as used in this Notice refers to open-end investment companies or single payment investment plans issued by a unit investment trust registered under the Investment Company Act of 1940.

[3] The term "remaining amount" as used in this Notice refers to the appropriate aggregate caps minus the amount of sales charges paid or accrued, including asset-based sales charges, front-end and deferred sales charges, plus the permitted interest. On the effective date of the new Rule, July 7, 1993, each fund will begin with either a zero remaining amount or a remaining amount calculated pursuant to new Subsection 26(d)(2)(C) on the basis of its historical sales and charges (see Question 11).

[4] The term "appropriate aggregate cap" refers to the appropriate maximum aggregate sales charge for the fund in question as specified in Subsection 26(d) of the new Rule. For a fund with an asset-based sales charge and a service fee (see Questions 18–26 with respect to service fees) the appropriate aggregate cap will be 6.25 percent of total new gross sales. For a fund with an asset-based sales charge and no service fee the appropriate aggregate cap will be 7.25 percent of total new gross sales.

interest allowed (referred to in Question 3), to what amount should the prime rate plus one percent be applied?

Answer: Subparagraphs (d)(2)(A), (B), and (C) of Article III, Section 26 of the NASD Rules of Fair Practice refer to "interest charges on such amount," and "such amount" is the appropriate aggregate cap on sales charges. As indicated in *Notice of Members 92–41* (August 1992), however, the NASD intended that interest be calculated not on the appropriate aggregate cap but rather on the fund's remaining amount before the current interest calculation (i.e., the portion of the amount permitted to be charged that has not yet been paid). In calculating the permitted interest allowance, the fund should apply the appropriate interest rate (prime plus one percent) (see answer to Question 3) to its remaining amount or "balance for interest" (see discussion in answer to Question 2). For example, if a fund calculates its remaining amount daily, but pays asset-based sales charges monthly, it should apply the prime rate plus one percent to the current day's "balance for interest." If a fund calculates its remaining amount monthly and pays asset-based sales charges monthly, it should apply an average of the month's prime rates plus one percent to its average remaining amount for the month. The NASD believes that if a fund adopts a particular method of accruing or paying charges and calculating its remaining amount and interest, it must consistently apply and adhere to the chosen practices. Funds may not change practices for short-term advantage to the distributor or underwriter.

Question #5: If a fund's remaining amount reaches zero, what do the Rules require?

Answer: If a fund's remaining amount reaches zero it must stop accruing asset-based sales charges and retain any deferred sales charges collected, until it has new sales that increase the remaining amount. In the NASD's view, the prudent fund whose remaining amount is approaching zero should calculate its remaining amount on a more frequent (even daily) basis so that it stops accruing asset-based sales charges when its remaining amount reaches zero.

The NASD is aware that in many cases front-end sales charges are paid directly to the selling member through deduction of the sales charge from the proceeds of sale; however, front-end sales charges deducted by the member will not exceed the remaining amount because each purchase will raise the remaining amount and the increase will not be consumed by the front-end sales charge.

Question #6: If a fund generates no sales or discontinues selling its shares, must it stop paying any asset-based sales charges?

Answer: No. The Rule provides only that the fund stop paying sales charges (either asset-based or deferred) when its remaining amount is depleted. A fund may fail to generate sales or stop selling its shares before its remaining amount is exhausted.

Question #7: For purposes of determining when a fund must begin to retain deferred sales charges because the remaining amount has been exhausted, must the fund determine on which day it exhausted the remaining amount?

Answer: The requirement that the fund retain deferred sales charges upon exhausting its remaining amount will be deemed to be met if the fund begins to retain those charges no later than the first day of the month following the month during which the remaining amount was depleted. As stated above, a fund should calculate its remaining amount more frequently as it approaches zero. In addition, a fund which has depleted its remaining amount must also continue to retain deferred sales charges in subsequent months until its remaining amount becomes positive as a result of new sales. If an underwriter/distributor is collecting the deferred sales charges in such cases, it has an obligation to turn such amounts over to the fund immediately.

Question #8: If a fund's remaining amount is depleted, so that it must stop accruing asset-based sales charges, and subsequently it has new sales which result in a positive remaining amount, can it resume accruing asset-based sales charges at a rate that, if annualized, would exceed .75 percent of its assets so long as the fund pays no more than .75 percent for the year?

Answer: No. It is contrary to the intent of the Rule for a member to sell the shares of a fund that on any given day has an asset-based sales charge in excess of .75 percent calculated on an annualized basis.

Question #9: If a fund has depleted its remaining amount and is retaining deferred sales charges, but subsequently has new sales that result in a positive remaining amount, can the underwriter recoup the deferred sales charges that were previously paid to the fund if the remaining amount increase occurs within the same fiscal period as exhaustion of the remaining amount?

Answer: No, Allowing the underwriter to recoup deferred sales charges paid to the fund in these circumstances is not consistent with the intent of the Rules.

Question #10: Can assets acquired through a statutory merger or a purchase of assets for shares be treated as new sales under the Rules?

Answer: But if a fund acquires a fund with an asset-based sales charge and a remaining amount, the acquiring fund is permitted (not required) to add the acquired fund's remaining amount to its own remaining amount. Further, this remaining amount carry-over is not limited to funds with the same underwriter.

II. Retroactive Calculation of Remaining Amounts

Subparagraph 26(d)(2)(C) permits a fund to "look back" to sales which occurred before the effective date of the Rules to calculate its remaining amount as of the effective date of the Rules. The following questions and answers address issues related to the determination of a fund's starting balance.[5]

Question #11: Subparagraph (d)(2)(C) of Article III, Section 26 permits a fund to increase its remaining amount to take into account sales made between the time the fund first adopted an asset-based sales charge and July 7, 1993 (the effective date of the new provisions). How should a fund calculate the appropriate remaining amount as of that date?

Answer: To calculate its starting balance, a fund looks back to the date when it began paying an asset-based sales charge. It calculates the appropriate aggregate cap based on new gross sales from that date, subtracts actual sales charges paid or accrued from that date (including asset-based, front-end, and deferred) and adds interest as permitted under the Rules (see answer to Question 16). This amount is the fund's starting balance as of July 7, 1993. For purposes of this provision the NASD will deem a fund to have begun paying an asset-based sales charge only if it was actually paying the charge. A fund with an approved asset-based sales charge which was never implemented (sometimes referred to as a "defensive 12b–1 Plan") may not rely on this provision.

Question #12: Must a fund calculate its starting balance on the same basis as it will calculate its remaining amount after July 7, 1993?

Answer: No. A fund is not required to calculate its starting balance on the same basis as it will calculate its remaining amount after the new provisions take effect. This flexibility is intended to accommodate funds that, for example, may wish to do daily calculations going forward but might not have the ability to make daily calculations based on prior sales. Thus, notwithstanding the answer to Question 1, a fund need not make its retroactive calculations on the same or greater frequency as the fund paid asset-based sales charges.

Question #13: In determining the starting balance, may a fund with an asset-based sales charge exclude fees paid pursuant to a 12b–1 plan that meet the definition of "service fees" under the new NASD provisions from the required reduction representing actual sales charges paid?

Answer: Yes. As noted in Question 11, a fund is permitted to make these calculations as though the new provisions (including all definitions thereunder) had been in effect from the time an asset-based sales charge was adopted. Therefore, to the extent "service fees" (as defined in subparagraph (b)(9) of the amended Rules and discussed in Questions 17–25), whether or not separately described as service fees at the time, were actually paid by the fund, the amount of such fees not exceeding .25 percent may be excluded from the reduction representing asset-based sales charges paid. The fund's records must be sufficiently detailed to identify payments of fees which meet the definition of service fees under the Rule. A fund is not permitted a "freebie" exclusion of .25 percent in the absence of documentary evidence that a service fee was actually paid. A fund that can establish that it paid a service fee should use the 6.25 percent aggregate cap in calculating its starting balance.

Question #14: In determining a fund's starting balance, which aggregate limit should be applied by a fund with an asset-based sales charge that did not pay a service fee before the effective date of the Rule but that will pay a service fee after the effective date of the Rule?

[5] The term "starting balance" as used in this Notice means the remaining amount of the fund as of the effective date of the Rule calculated pursuant to new subsection 26(d)(2)(C).

Answer: A fund that did not pay a service fee before the effective date may use the 7.25 percent limit to calculate its starting balance. As with the circumstances described in Question 13, a fund that paid a service fee as defined in the Rule may not opt to use the 7.25 percent limit by declining to declare that it paid such a service fee if its records show that it did. By the same reasoning, a fund that paid a service fee for only a portion of the prior period can apply the 7.25 percent limit for the portion of the period during which it did not pay a service fee.

Question #15: May a fund that, before the effective date of the new provisions, has had a 12b–1 plan limiting payments under the plan to a level lower than the new NASD aggregate limits, nonetheless, use the appropriate aggregate caps to calculate its starting balance?

Answer: Yes. The new Rules, however, do not amend a fund's 12b–1 plan and permit it to pay more than specified in the plan if such a plan has limits that are lower than the limits in the new Rules.

Question #16: If a fund calculates its starting balance without making interim (e.g., monthly, quarterly, etc.) calculations, how should the appropriate interest allowance be calculated?

Answer: A fund that calculates its starting balance based on new sales from the date of adopting an asset-based sales charge until the effective date of the amended Rules without making interim calculations should apply the average of the prime rates for the period, plus one percent, to an estimate of the average remaining amount over that period.

III. Service Fees

Question #17: What does the term "service fees" include or exclude?

Answer: The term "service fees" is defined in subparagraph (b)(9) of the amended Rules to mean "payments by an investment company for personal service and/or the maintenance of shareholder accounts."[6] As noted in the explanation section of NASD *Notice to Members 90–56* (September 1990), the term "service fees" is not intended to include transfer agent, custodian, or similar fees paid by funds. In addition, the phrase is not intended to include charges for the maintenance of records, recordkeeping, and related costs *Notice to Members 92–41* (August 1992) states that "service fees are intended to be distinguishable from other fees as a payment for personal service provided to the customer. It is essentially intended to compensate members for shareholder liaison services they provide, such as, responding to customer inquiries and providing information on their investments. It is not intended to apply to fees paid to a transfer agent for performing shareholder services pursuant to its transfer agent agreement. This fee does not include recordkeeping charges, accounting expenses, transfer costs, or custodian fees." Finally, the fact that a fund pays a fee pursuant to a "shareholder servicing" or similarly described plan does not conclusively determine whether the fee or any portion thereof constitute a "service fee" for purposes of the Rules.

In broad categories the term does not include subtransfer agency services, subaccounting services, or administrative services. Specific services not covered by the term "service fee" include:

- Transfer agent and subtransfer agent services for beneficial owners of the fund shares.
- Aggregating and processing purchase and redemption orders.
- Providing beneficial owners with statements showing their positions in the investment companies.
- Processing dividend payments.
- Providing subaccounting services for fund shares held beneficially.
- Forwarding shareholder communications, such as proxies, shareholder reports, dividend and tax notices, and updating prospectuses to beneficial owners.
- Receiving, tabulating, and transmitting proxies executed by beneficial owners.

Question #18: How does a fund that pays a member a single fee for investment advisory, administrative, shareholder liaison, and other services comply with the limitation on service fees in the new Rule?

Answer: To comply with the Rule a member receiving such a fee pursuant to an omnibus servicing plan must identify those portions of the fee which are covered by the limitations of the Rule and ensure that the fees comply. There is no restriction on such fees in general, provided the member can demonstrate compliance with the Rule.

Question #19: Are service fee payments limited to .25 percent?

Answer: Yes. A fund may not pay more than .25 percent and treat such payments as service fees for purposes of the Rules. This applies whether payments are made directly by the fund or through the underwriter/adviser as a conduit. The new Rule does not apply to additional amounts paid by the underwriter or adviser out of its own resources. However, such additional amounts should not be called service fees.

Question #20: Can an underwriter/adviser take the .25 percent from the fund and reallocate it so that some dealers receive more and some less than .25 percent?

Answer: No. This violates the intent of the Rule.

Question #21: Subparagraph (d)(5) imposes a limit on service fees paid to any member of .25 percent of the average annual net asset value of shares sold. Does this include shares acquired through reinvestments of distributions paid on shares sold by that member?

Answer: Yes. The NASD intended to have the limit apply to shares acquired through distribution reinvestments as well as shares actually sold.

Question #22: May a fund determine that it is in compliance with the limits on service fees by referring to the level of its net assets on the dates on which it calculates payments of service fees?

Answer: Yes. The fund should determine that it is in compliance with the limits on service fees that can be paid consistent with its method for calculating such fees. That is, a fund that uses a specific record date to calculate service fees should use its net assets on such date, while a fund that calculates fees based on average assets during a specific period should use the average net assets during such period (e.g., monthly or quarterly).

Question #23: Is there a clear distinction between asset-based sales charges and service fees?

Answer: Yes.

Question #24: If an item is a service fee, is it outside the scope of the Rule's limits on sales charges?

Answer: Yes.

Question #25: Is a fund's service fee counted as part of the 12b–1 fees?

Answer: Whether SEC Rule 12b–1 requires service fees to be included in a 12b–1 plan is not addressed by the NASD's Rule.[7]

IV. Exchanges

The following questions address exchanges or transfers between funds in the same family, and the transfer of a portion of a remaining amount corresponding to the amount exchanged. Notwithstanding the extensive discussion of exchanges, there is no obligation in the Rule to transfer any remaining amount.

Question #26: If Fund A chooses to increase its remaining amount based on exchanges from Fund B (a fund within the same complex), thus requiring the deduction of a corresponding amount from the remaining amount of Fund B, must Fund B treat exchanges from Fund A in the same manner?

Answer: Yes, except as provided in Question 30. This requirement will help ensure that inequities do not result as between the two funds.

Question #27: By what amount should Fund A increase its remaining amount based on exchanges from Fund B?

Answer: As indicated in NASD *Notice to Members 90–56* (September 1990), a fund may increase its remaining amount by treating the shares received through an exchange as new gross sales (if the amount of such increase is deducted from the remaining amount of the fund out of which shares are exchanged.) However, funds may choose to transfer less than this maximum amount allowed pursuant to a fund policy that is consistently applied in accordance with Question 26. Funds may determine to transfer some portion of the remaining amount, rather than the maximum amount allowed, for a variety of reasons. For example, applying the applicable maximum sales charge to the exchanged shares to determine the amount of the increase in Fund A's remaining amount—as will be the case if exchanges are treated as new gross

[6] The term "service fees," intended to describe payments that compensate members for providing personal service and maintenance of shareholder accounts, is being substituted for the previously used term "trail commission." The NASD believes the term "service fees" more accurately describes the intent of the payments and intends that the term "trail commission" not be used in the future to describe such payments

[7] The SEC has stated that "[w]hether particular shareholder or other services are starting balance" as used in this Notice means the remaining amount of the fund as of the effective date of the Rule calculated pursuant to new Subsection 26(d)(2)(C).

sales—does not take into account that asset-based sales charges already have been assessed on those shares or that they may have been in the original fund for some period of time, during which that funds's remaining amount was depleted.

Examples of policies that funds might adopt under which less than the maximum amount allowed of the remaining amount would be transferred include, but are not limited to: (1) a policy pursuant to which a percentage of Fund B's remaining amount that is the same as the percentage of net assets of Fund B being exchanged into Fund A is added to Fund A's remaining amount; (2) a policy under which a percentage less than the maximum appropriate aggregate cap, that takes into consideration the aging of the exchanged shares (e.g., 2 percent rather than 6.25 percent), is applied to the amount being transferred from Fund B to Fund A; or (3) a policy under which the applicable sales charge is multiplied by the value of the exchanged shares at the time of their original purchase (as opposed to their value at the time of the exchange) for purposes of determining the increase in Fund A's remaining amount.

Question #28: If Fund A, which has an asset-based sales charge, receives an exchange from Fund B, which does not have an asset-based sales charge (and, therefore, no "remaining amount" from which to deduct an increase in Fund A's remaining amount) may it increase its remaining amount? This could occur, for example, where a fund complex uses a money market fund (Fund B) as the initial repository for investments which will thereafter be transferred periodically into an equity fund (Fund A) pursuant to a "dollar-cost averaging" program.

Answer: In this case Fund A could treat the amount exchanged as new gross sales for purposes of the Rule even though there is no "remaining amount" in Fund B from which to deduct Fund A's increase. If Fund A does so, however, it should decrease its remaining amount on any exchange from Fund A to Fund B. This treatment would be the same whether the investor originally invested in Fund A directly or exchanged Fund B shares for Fund A shares.

Question #29: By what amount may a fund increase its remaining amount based on exchanges from a fund that has a front-end sales charge?

Answer: The fund into which shares are exchanged may increase its remaining amount by an amount that is no more than the appropriate aggregate cap, minus the other fund's maximum front-end sales charge (but not in any event less than zero), times the amount being exchanged, in order to reflect appropriately the assessment of the initial sales charges. This requirement applies whether or not the front-end sales charge fund has an asset-based sales charge.

Question #30: What happens if the fund from which shares are being exchanged has already exhausted its remaining amount?

Answer: No remaining amount adjustments should be made in this instance as the underwriter/adviser has already received all monies due from the prior sale.

Question #31: What happens if an exchange is made from a fund that has not exhausted its remaining balance to one that has?

Answer: If the fund's general policy on exchanges calls for the transfer of remaining amounts, then an appropriate amount may be transferred between the two funds.

Question #32: How are exchanges before the effective date of the Rule amendments treated?

Answer: A fund may treat these exchanges in any manner that would be permitted for exchanges occurring after the amendments become effective (including choosing not to make any adjustments based on exchanges), as long as any method chosen is applied consistently for the entire period.

Question #33: Can different funds within the same fund complex have different policies regarding exchanges?

Answer: Yes, as long as each fund treats exchanges into it from any other fund the same as that other fund treats exchanges from the first fund, as set forth in Question 26 (subject to the exception described in Question 30 concerning funds that have exhausted their remaining amounts). Thus, a fund's policy regarding treatment of exchanges may differ depending on the fund from which the exchange comes or to which it goes.

V. Miscellaneous

Question #34: May a particular class of securities within a given portfolio of a fund be referred to as a "no load" class, provided that the particular class has no front-end or deferred sales charges, and has no asset-based sales charges and/or service fees aggregating more than .25 percent, but where other classes of securities within the same portfolio do have front-end or deferred sales charges or asset-based fees in excess of .25 percent?

Answer: Yes. *Notice to Members 90–56* (September 1990) requesting member vote on the new Rule stated "[t]he Board considers each class of shares and each series to be a separate investment company for purposes of the sales charge Rule."

Question #35: The NASD's Rule separately defines asset-based sales charges and service fees. How should a fund that pays both asset-based sales charges and service fees pursuant to a Rule 12b–1 plan make disclosure that complies with the SEC's Form N–1A, and at the same time make clear that the fund is complying with the NASD's Rule?

Answer: Form N–1A requires adequate disclosure of fees paid and charges imposed by a mutual fund. While the NASD does not take a position on the adequacy of disclosures in Forms N–1A, either in general or in specific cases, in many cases the principal source of information for a member firm for such fees will be the prospectus. Funds would be well advised to include prospectus disclosure regarding the fees paid and charges imposed in a manner sufficient for member firms to prove that they can sell the fund's shares in compliance with the NASD's Rules.

COMPREHENSIVE EXAMPLE SHOWING REMAINING AMOUNT, BALANCE FOR INTEREST, AND INTEREST CALCULATIONS

		Remaining amount	Balance for interest
		0	0
Balance forward from prior calculation:			
New gross sales for month	10,000,000	.....	.....
Appropriate aggregate cap	6.25%	625,000	625,000
Deferred sales charges collected for month	.....	(10,000)	(10,000)
Asset-based sales charges accrued for month	.....	(3,000)	.....
Asset-based sales charges paid during month	.....	.....	0
Balance before interest	.....	612,000	615,000
Interest calculation:			
Average balance for interest [(Beginning + ending)/2]	307,500	.....	.....
Interest rate (average prime + 1%)/12	0.5833%	1,794	1,794
Balance at end of month 1:	.....	613,794	616,794
New gross sales for month	20,000,000	.....	.....
Appropriate aggregate cap	6.25%	1,250,000	1,250,000
Deferred sales charges collected for month	.....	(45,000)	(45,000)
Asset-based sales charges accrued for month	.....	(12,000)	.....
Asset-based sales charges paid during month	.....	.....	0

COMPREHENSIVE EXAMPLE SHOWING REMAINING AMOUNT, BALANCE FOR INTEREST, AND INTEREST CALCULATIONS—Continued

		Remaining amount	Balance for interest
		0	0
Balance before interest	.....	1,806,794	1,821,794
Interest calculation:			
Average balance for interest [(Beginning + ending)/2]	1,219,294	.....	.....
Interest rate (average prime + 1%)/12	0.5833%	7,113	7,113
Balance at end of month 2	.....	1,813,906	1,828,906
New gross sales for month	20,000,000	.....	.....
Appropriate aggregate cap	6.25%	1,250,000	1,250,000
Deferred sales charges collected for month	.....	(60,000)	(60,000)
Asset-based sales charges accrued for month	.....	(24,000)	.....
Asset-based sales charges paid during month:			
(Equals 3 months accrued)	.....	.....	(39,000)
Balance before interest	.....	2,979,906	2,979,906
Interest calaculation:			
Average balance for interest [(Beginning + ending)/2]	2,404,406	.....	.....
Interest rate (average prime + 1%)/12	0.5833%	14,026	14,026
Balance at end of month 3	.....	2,993,932	2,993,932

Assumptions used:
* Fund has a service fee, therefore appropriate aggregate cap = 6.25 percent.
* Fund calculates remaining balance monthly, based on aggregate data for month.
* Fund pays asset-based sales charges at end of quarter.
* Prime rate was 6 percent for entire period.

Text of Section 26 of the Rules of Fair Practice Reflecting Amendments Approved By the SEC in SR–NASD–91–61

Investment Companies

Sec. 26

* * * * *

Definitions

(b) * * *

* * * * *

(4) Person shall mean "percent" as defined in the Investment Company Act of 1940.

* * * * *

(8) "Sales charge" and "sales charges" as used in subsection (d) of this section shall mean all charges or fees that are paid to finance sales or sales promotion expenses, including front-end, deferred and asset-based sales charges, excluding charges and fees for ministerial, recordkeeping or administrative activities and investment management fees. For purposes of this section, members may rely on the sales-related fees and charges disclosed in the prospectus of an investment company.

(A) A "front-end sales charge" is a sales charge that is included in the public offering price of the shares of an investment company.

(B) A "deferred sales charge" is a sales charge that is deducted from the proceeds of the redemption of shares by an investor, excluding any such charges that are (i) nominal and are for services in connection with a redemption or (ii) to discourage short-term trading, that are not used to finance sales-related expenses, and that are credited to the net assets of the investment company.

(C) An "asset-based sales charge" is a sales charge that is deducted from the net assets of an investment company and does not include a service fee.

(9) "Service fees" as used in subsection (d) of this section shall mean payments by an investment company for personal service and/or the maintenance of shareholder accounts.

(10) "Prime rate" as used in subsection (d) of this section shall mean the most preferential interest rate on corporate loans at large U.S. money center commercial banks.

* * * * *

Sales Charges

(d) No member shall offer or sell the shares of any open-end investment company or any "single payment" investment plan issued by a unit investment trust (collectively "investment companies") registered under the Investment Company Act of 1940 if the sales charges described in the prospectus are excessive. Aggregate sales charges shall be deemed excessive if they do not conform to the following provisions.

(1) Investment Companies Without an Asset-Based Sales Charge:

(A) Front-end and/or deferred sales charges described in the prospectus which may be imposed by an investment company without an asset-based sales charge shall not exceed 8.5% of the offering price.

(B)(i) Dividend reinvestment may be made available at net asset value per share to any person who requests such reinvestment.

(ii) If dividend reinvestment is not made available as specified in subparagraph (B)(i), the maximum aggregate sales charge shall not exceed 7.25% of the offering price.

(C)(i) Rights of accumulation (cumulative quantity discounts) may be made available to any person in accordance with one of the alternative quantity discount schedules provided in subparagraph (D)(i) below, as in effect of the date the right is exercised.

(ii) If rights of accumulation are not made available on terms at least as favorable as those specified in subparagraph (C)(i) the maximum aggregate sales charge shall not exceed:

(A) 8% of offering price if the provisions of subparagraph (B)(i) are met; or

(b) 6.75% of offering price if the provisions of subparagraph (B)(i) are not met.

(D)(i) Quantity discounts, if offered, shall be made available on single purchases by any person in accordance with one of the following two alternatives.

(a) A maximum aggregate sales charge of 7.75% on purchases of $10,000 or more and a maximum aggregate sales charge of 6.25% on purchases of $25,000 or more, or

(b) A maximum aggregate sales charge of 7.50% on purchases of $15,000 or more and a maximum aggregate sales charge of 6.25% on purchases of $25,000 or more.

(ii) If quantity discounts are not made available on terms at least as favorable as those specified in subparagraphs (D)(i) the maximum aggregate sales charge shall not exceed:

(a) 7.75% of the offering price if the provisions of subparagraphs (B)(i) and (C)(i) are met.

(b) 7.25% of the offering price if the provisions of subparagraph (B)(i) are met but the provisions of subparagraph (C)(i) are not met.

(c) 6.50% of the offering price if the provisions of subparagraph (C)(i) are met but the provisions of subparagraph (B)(i) are not met.

(d) 6.25% of the offering price if the provisions of subparagraphs (B)(i) and (C)(i) are not met.

(E) If an investment company without an asset-based sales charge pays a service fee, the maximum aggregate sales charge shall not exceed 7.25% of the offering price.

(F) If an investment company without an asset-based sales charge reinvests dividends

at offering price, it shall not offer or pay a service fee unless it offers quantity discounts and rights of accumulation and the maximum aggregate sales charge does not exceed 6.25% of the offering price.

(2) Investment Companies With an Asset-Based Sales Charge:

(A) Except as provided in subparagraphs (2)(C) and (2)(D), the aggregate asset-based, front-end and deferred sales charges described in the prospectus which may be imposed by an investment company with an asset-based sales charge, if the investment company has adopted a plan under which service fees are paid, shall not exceed 6.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of shares of an investment company with multiple classes of shares or between series shares of a series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 6.25% of the amount invested.

(B) Except as provided in subparagraphs (2)(C) and (2)(D), if an investment company with an asset-based sales charge does not pay a service fee, the aggregate asset-based, front-end and deferred sales charges described in the prospectus shall not exceed 7.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of shares of an investment company with multiple classes of shares or between series shares of a series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 7.25% of the amount invested.

(C) The maximum aggregate sales charge on total new gross sales set forth in subparagraphs (2)(A) and (B) may be increased by an amount calculated by applying the appropriate percentages of 6.25% or 7.25% to total new gross sales which occurred after an investment company first adopted an asset-based sales charge until July 7, 1993, plus interest charges on such amount equal to the prime rate plus one percent per annum less any front-end, asset-based or deferred sales charges on such sales or net assets resulting from such sales.

(D) The maximum aggregate sales charge of an investment company in a single complex, a class of shares issued by an investment company with multiple classes of shares or a separate series of a series investment company, may be increased to include sales of exchanges shares provided that such increase is deducted from the maximum aggregate sales charges of the investment company, class or series which redeemed the shares for the purpose of such exchanges.

(E) No member shall offer or sell the shares of an investment company with an asset-based sales charge if:

(i) The amount of the asset-based sales charge exceeds .75 of 1% per annum of the average annual net assets of the investment company, or

(ii) Any deferred sales charges deducted from the proceeds of a redemption after the maximum cap described in subparagraphs (2)(A), (B), (C), and (D) has been attained are not credited to the investment company.

(3) No member or person associated with a member shall, either orally or in writing, describe an investment company as being "no load" or as having "no sales charge" if the investment company has a front-end or deferred sales charge or whose total charges against net assets to provide for sales related expenses and/or service fees exceed .25 of 1% of average net assets per annum.

(4) No member or person associated with a member shall offer or sell the securities of an investment company with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section. Such disclosure shall be adjacent to the fee table in the front section of a prospectus.

(5) No member or person associated with a member shall offer or sell the securities of an investment company if the service fees paid by the investment company, as disclosed in the prospectus, exceed .25 of 1% of its average annual net assets or if a service fee paid by the investment company, as disclosed in the prospectus, to any person who sells its shares exceeds .25 of 1% of the average annual net asset value of such shares.

[FR Doc. 93–8712 Filed 4–13–93; 8:45 am]
BILLING CODE 8010–01–M

[Investment Company Act Release No. 19392; 811–3272]

Dreyfus Liquid Reserve Fund, Inc.; Notice of Application

April 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT; Dreyfus Liquid Reserve Fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION; Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE; The application was filed on March 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 3, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 144 Glenn Curtiss Boulevard, Uniondale, New York 11556–0144.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3023, or Barry D. Miller, Senior Special Counsel, at (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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as an open-end, diversified management company under the Act and organized as a corporation under the laws of the State of Maryland. According to Commission records on September 29, 1981, Applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was declared effective on October 22, 1982. Applicant has not commenced a public offering of its shares.

2. Pursuant to written consent dated as of March 8, 1993, the Applicant's Board determined that it was advisable and in the best interest of the Applicant that the Applicant be dissolved and liquidate its assets and that the proceeds from the liquidation of Applicant's shares be returned to the Applicant's sole stockholder, The Dreyfus Corporation, which purchased the shares to enable the Applicant to meet the net worth requirements of section 14(a) of the Act. Applicant has no other securityholders.

3. As of the date of this application, Applicant has no securityholders; no assets, debts or liabilities; and is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8644 Filed 4–13–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19393; 811–4348]

Dreyfus Long-Term Government Fund; Notice of Application

April 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICATION: Dreyfus Long-Term Government Fund.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 3, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 144 Glenn Curtiss Boulevard, Uniondale, New York 11556–0144.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3023, or Barry D. Miller, Senior Special Counsel, at (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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as an open-end, diversified management company under the Act and organized as a business trust under the laws of the Commonwealth of Massachusetts. According to Commission records on July 8, 1985, Applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was declared effective on August 1, 1985. Applicant has not commenced a public offering of its shares.

2. Pursuant to written consent dated as of March 8, 1993, the Applicant's Board determined that it was advisable and in the best interest of the Applicant that the Applicant terminate its existence as a Massachusetts business trust and liquidate its assets and that the proceeds from the liquidation of Applicant's shares be returned to the Applicant's sole shareholder, The Dreyfus Corporation, which purchased the shares to enable the Applicant to meet the net worth requirements of section 14(a) of the Act. Applicant has no other securityholders.

3. As of the date of this application, Applicant has no securityholders; no assets, debts or liabilities; and is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8643 Filed 4–13–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19394; 811–4274]

Dreyfus Special Government Money Market Fund; Notice of Application

April 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dreyfus Special Government Money Market Fund.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 3, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 144 Glenn Curtiss Boulevard, Uniondale, New York 11556–0144.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3023, or Barry D. Miller, Senior Special Counsel, at (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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as an open-end, diversified management company under the Act and organized as a business trust under the laws of the Commonwealth of Massachusetts. According to Commission records on March 28, 1985, Applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was declared effective on July 15, 1985. Applicant has not commenced a public offering of its shares.

2. Pursuant to written consent dated as of March 8, 1993, the Applicant's Board determined that it was advisable and in the best interest of the Applicant that the Applicant terminate its existence as a Massachusetts business trust and liquidate its assets and that the proceeds from the liquidation of Applicant's shares be returned to the Applicant's sole shareholder, The Dreyfus Corporation, which purchased the shares to enable the Applicant to meet the net worth requirements of section 14(a) of the Act. Applicant has no other securityholders.

3. As of the date of this application, Applicant has no securityholders; no assets, debts or liabilities; and is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8642 Filed 4–13–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19398; 811–4696]

Dreyfus Strategic World Income; Notice of Application

April 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dreyfus Strategic World Income.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 3, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 144 Glenn Curtiss Boulevard, Uniondale, New York 11556–0144.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3023, or Barry D. Miller, Senior Special Counsel, at (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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as an open-end, diversified management company under the Act and organized as a business trust under the laws of the Commonwealth of Massachusetts. According to Commission records on June 4, 1986, Applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was declared effective on April 7, 1987. Applicant has not commenced a public offering of its shares.

2. Pursuant to written consent dated as of March 8, 1993, the Applicant's Board determined that it was advisable and in the best interest of the Applicant that the Applicant terminate its existence as a Massachusetts business trust and liquidate its assets and that the proceeds from the liquidation of Applicant's shares be returned to the Applicant's sole shareholder, The Dreyfus Corporation, which purchased the shares to enable the Applicant to meet the net worth requirements of section 14(a) of the Act. Applicant has no other securityholders.

3. As of the date of this application, Applicant has no securityholders; no assets, debts or liabilities; and is not a party to any litigation or administrative proceeding. Applicant is neither engaged in or proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8645 Filed 4–13–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2636; Amendment #2]

Florida (And Contiguous Counties In Georgia); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective April 1, 1993, to include Calhoun and Charlotte Counties in the State of Florida as a disaster area as a result of damages caused by excessive rainfall, tornadoes, flooding, high tides, gale force winds, cold temperatures and freezing conditions beginning on March 12 and continuing through March 16, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Jackson in the State of Florida may be filed until the specified date at the aforementioned location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 12, 1993 and December 13, 1993 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 7, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–8637 Filed 4–13–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 8, 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: 1545–0863.

Regulation ID Number: LR–218–78 Final.

Type of Review: Extension.

Title: Product Liability Losses and Accumulations for Product Liability Losses.

Description: Generally, a taxpayer who sustains a product liability loss must carry that back 10 years. However, a taxpayer may elect to have such loss treated as a regular net operating loss under section 172. If desired, such election is made by attaching a statement to the tax return. This

statement will enable the IRS to monitor compliance with the statutory requirements.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1545–1126.

Regulation ID Numbers: INTL–0121–90 NPRM; INTL–292–90 FINAL; INTL–361–89 FINAL; and INTL–103–89.

Type of Review: Extension.

Title: Treaty-Based Return Positions.

Description: Persons or entities subject to this reporting requirements must make the required disclosure on a statement attached to their return, in the manner set forth, or be subject to a penalty. Section 301.7701(b)–7(a)(4)(iv)(C) sets forth the reporting requirement for dual resident S corporation shareholders who claim treaty benefits as nonresidents or the U.S. Persons subject to this reporting requirement must enter into an agreement with S corporation to withhold tax pursuant to procedures prescribed by the Commissioner.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 5,000 hours.

OMB Number: 1545–1142.

Regulation ID Number: INTL–0939–86 NPRM.

Type of Review: Extension.

Title: Insurance Income of a Controlled Foreign Corporation (CFC) for Taxable Years Beginning After December 31, 1986.

Description: The information is required to determine the location of moveable property; allocate income and deductions to the proper category of insurance income, determine those amounts for computing taxable income that are derived from an insurance company annual statement, and permit a CFC to elect to treat related person insurance income as income effectively connected with the conduct of a U.S. trade or business. The respondents will be businesses or other for-profit institutions.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

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.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–8635 Filed 4–13–93; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 70
Wednesday, April 14, 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).

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at three o'clock p.m. on Tuesday, March 2, 1993 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about four o'clock p.m. The purpose of the meeting was to decide one appeal from a National Commissioner's decision pursuant to 28 CFR Section 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., and John R. Simpson.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: March 3, 1993.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 93–8887 Filed 4–12–93; 3:24 pm]

BILLING CODE 4410–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

STATUS: Open.

NCLIS COMMITTEE MEETINGS:

DATE AND TIME: May 17, 1993 (Monday), 10:00 a.m. to 5:00 p.m.

PLACE: Chicago Public Library, Board Room, 10th Floor South, 400 South State Street, Chicago, Illinois 60605.

NCLIS MEETING:

DATE AND TIME: May 18, 1993 (Tuesday), 9:30 a.m. to 4:15 p.m.

PLACE: Newberry Library, 60 W. Walton Street, Chicago, Illinois 60610.

MATTERS TO BE DISCUSSED:

Chairman's report
Open Forum on Children and Youth Services
International Conference on National Libraries
Executive Director's report
NCLIS committee reports
Presentation on education for library personnel by Officers and Executive Director of the Medical Library Association (MLA)
Presentation on MLA and National Library of Medicine, Donald Lindberg, Director, NLM and Director, National Coordinating Office for High Performance Computing and Communications (tentative)
Election of NCLIS Vice Chairman and Executive Committee Members
Public comment
Unfinished business
Optional tours: Chicago Public Library, Newberry Library, and/or Chinatown Branch of the Chicago Public Library

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: April 8, 1993.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 93–8881 Filed 4–12–93; 2:03 pm]

BILLING CODE 7527–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (closed portion), 2:00 p.m. (open portion), Tuesday, April 27, 1993.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: The first part of the meeting from 1:00 p.m. to 2:00 p.m. will be closed to the public. The open portion of the meeting will commence at 2:00 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 2:00 p.m.):

1. President's Report.
2. Information Reports.
3. Insurance Project in Trinidad & Tobago.
4. Insurance Project in Trinidad & Tobago.
5. Report on OPIC implementation of Credit Reform.
6. Approval of 1/14/93 Minutes (Closed Portion).

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 2:00 p.m.)

1. Approval of 1/14/93 Minutes (Open Portion).
2. Information Reports.
3. Recommendation for meeting schedule through end of September 1993.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 336–8403.

Dated: April 12, 1993.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 93–8886 Filed 4–12–93; 3:24 pm]

BILLING CODE 3210–01–M

Corrections

Federal Register
Vol. 58, No. 70
Wednesday, April 14, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32047; File No. SR-AMEX-93-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Waiver of Transaction Charges for SuperUnits and Standard & Poor's Corporation (S&P) Depository Receipts ("SPDRs")

Correction

In notice document 93-7441 beginning on page 16892 in the issue of Wednesday, March 31, 1993, the subject heading should have read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32039; File Nos. SR-AMEX-93-07; SR-BSE-93-08; SR-MSE-93-03; SR-NASD-93-11; SR-NYSE-93-13; SR-PSE-93-04; and SR-Phlx-93-09]

Self-Regulatory Organizations; The American Stock Exchange; Boston Stock Exchange; Midwest Stock Exchange; the National Association of Securities Dealers; the New York Stock Exchange; the Philadelphia Stock Exchange; and the Pacific Stock Exchange; Filing of Proposed Rule Changes Relating to the Book Entry Settlement of Securities Transactions

Correction

In notice document 93-7443 beginning on page 16893 in the issue of Wednesday, March 31, 1993, the subject heading should have read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32048; File No. SR-NYSE-93-04]

Self-Regulatory Organizations; Filing of Proposed Rule Changes, New York Stock Exchange, Inc.; Relating to End-of-Quarter Index Options

Correction

In notice document 93-7442 beginning on page 16895 in the issue of Wednesday, March 31, 1993, the subject heading should have read as set forth above.

BILLING CODE 1505-01-D

federal register

Wednesday
April 14, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Gaming, Rosebud Sioux Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Rosebud Sioux Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Gaming Compact Between the Rosebud Sioux Tribe and the State of South Dakota, enacted on February 4, 1993.

DATES: This action is effective April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: April 6, 1993.

Stan Speaks,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–8676 Filed 4–13–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
April 14, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Alcohol Beverage Ordinance of the Yankton Sioux Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Alcohol Beverage Ordinance of the Yankton Sioux Tribe

April 7, 1993.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. This notice certifies that by Resolution No. 91–90, The Alcohol Beverage Ordinance of the Yankton Sioux No. 91–89 was duly adopted by the Yankton Sioux Tribe of the Yankton Sioux Indian Reservation Council on August 6, 1991. The ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor in the area of Indian Country under the jurisdiction of the Yankton Sioux Tribe of the Yankton Sioux Indian Reservation and is in conformity with the laws of the state.

DATES: This ordinance is effective as of April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Yankton Sioux Tribe of South Dakota Liquor Ordinance No. 91–89 is to read as follows:

Alcohol Beverage Ordinance of the Yankton Sioux Tribe

Whereas, the Yankton Sioux Tribe of the Yankton Indian Reservation believe it is imperative that the Tribe enact an Alcohol Beverage Ordinance to protect the general welfare of tribal members and to promote the economic structure of the tribe as a whole.

Be it enacted by the Yankton Sioux Tribe and its business and claims committee by virtue of their inherent authority as a sovereign Indian tribe to provide for the protection and preservation of the welfare and safety of its members, to provide governmental services to residents of the Reservation, and to regulate the presence and conduct of persons conducting business within the exterior boundaries of the Yankton Sioux Tribe's Reservation, such authority being recognized and confirmed by and through the Yankton Sioux Tribal Constitution and By-laws of 1962 and pursuant to the inherent regulatory powers of the Tribal Business and Claims Committee as enumerated in the Amended By-Laws of the Yankton Sioux Tribe of the Yankton Sioux Reservation, Article IV, that a Alcohol Beverage Ordinance is hereby promulgated and imposed, and placed in the Yankton Sioux Tribe Law and Order Code, Title 16.000.

Section 16.0101

Definitions

(1) *Alcoholic Beverage* means any drink or drinkable liquid containing more than one-half of one percentum of alcohol by weight and all mixtures, compounds or preparations;

(2) *Beer* means any beverage produced by the fermentation of barley malt, hops, or a combination of these, including beverages commonly known as porter, ale, and malt liquor, if they contain not more than twelve (12) percent alcohol (ethanol), by volume;

(3) *Business and Claims Committee* means the Tribal Business and Claims Committee of the Yankton Sioux Tribe of the Yankton Sioux Indian Reservation;

(4) *License* means a liquor license issued pursuant to this Article;

(5) *Licensee* means any person issued a license pursuant to this Article;

(6) *Liquor* includes alcohol (ethanol) and beverages containing more than one-half of one percent (½%) by volume, including beverages commonly known as brandy, whiskey, rum, tequila, mescal, gin, wine, beer, malt, liquor, and absinthe;

(7) *Member or Members of the Tribe* means any enrolled member of the Yankton Sioux Tribe of the Yankton Sioux Indian Reservation, including members of other Tribes;

(8) *Minor* means any person who has not reached his/her twenty-first birthday;

(9) *Manufacture* means to distill, brew, rectify, blend, mix, compound, process, ferment, or otherwise make an alcoholic beverage;

(10) *Person* includes any individual, firm, partnership, corporation, association, group, or combination, and the plural as well as the singular number, or the agent of any of the foregoing;

(11) *Premises* or *Licensed Premises* means the specific location or address at which a licensee is authorized to manufacture or sell liquor by the terms of his license;

(12) *Public Place* means and includes any place, building or conveyance to which the public has, or is permitted to have access, and any highway, street, lane, park or place of public resort or amusement;

(13) *Restaurant* means a place of business where a variety of food is prepared and cooked and meals are served to the general public in connection with indoor dining accommodations;

(14) *Tavern* means a place where alcoholic beverages are sold for consumption on the premises;

(15) *Reservation* means the Yankton Sioux Indian Reservation of the Yankton Sioux Tribe;

(16) *Retailer* means a person engaged in the sale or distribution of alcoholic beverages to the consumer;

(17) *Sell* or *to sell* shall include all of the following: to solicit and/or receive an order for; to keep or expose for sale; to deliver for value; to peddle; to possess with intent to sell; to traffic in; for any consideration, promised or obtained, directly or indirectly or under any pretext or means whatsoever to procure or allow to be procured for any other person; "sale" shall include every act of selling defined herein;

(18) *Tribal Court* means the Tribal Court of the Yankton Sioux Tribe, including a Tribal CFR Court;

(19) *Tribe* means the Yankton Sioux Tribe.

Section 16.0102

Compliance With Yankton Sioux Tribe Indian Law

(1) All manufacture and sales of both on- and off-premises alcoholic beverages within the exterior boundaries of the Yankton Sioux Tribe shall comply with all the provisions and requirements of this ordinance and any rules, regulations, and licenses authorized hereunder and to the extent required by 18 U.S.C. 1161.

(2) To the extent, if any, that the Tribe shall enter into any agreements with the State of South Dakota or any department or agency thereof regarding the manufacture and sale of alcoholic beverages within the reservation, the terms of such agreement or agreements shall be deemed to be the laws of the Yankton Sioux Tribe for all matters covered by such agreements.

Section 16.0103

Unlawful Acts; Punishments

(1) It shall be unlawful and punishable as provided herein for any person:

(a) To manufacture and/or sell any alcoholic beverage within the reservation without having first obtained from the tribe all appropriate licenses related thereto.

(b) To manufacture and/or sell any alcoholic beverage within the reservation contrary to the terms of this ordinance, any rules or regulations adopted under authority of this Ordinance, or the terms or conditions of any license issued under authority of this ordinance.

(c) To manufacture or sell alcoholic beverages in a manner which is illegal under the laws of the Yankton Sioux Tribe; provided however, that if a member of the tribe violates any provision of this ordinance no consent or authority is given hereby to the State of South Dakota or any officer or agent of the State of South Dakota to enforce said laws against any member of the tribe; and provided further, that this provision does not in any way give, transfer or cede to the State of South Dakota any of the rights, powers or jurisdiction over manufacture and/or sale of an Alcoholic Beverage within the exterior boundaries of the Yankton Sioux Tribe.

(2) Violation of this ordinance shall be punishable by a fine of not more than $1,000.00 or by imprisonment of not more than six months, or by both such fine and imprisonment.

Section 16.0104

Registration of Salesmen

No person may take or solicit orders for liquor within the Reservation without first registering his name, address, purpose, and the name and address of his employer or principal, on the forms prescribed by the Business and Claims Committee pursuant to the Yankton Sioux Tribal Business Code Regulations which requires renewal each calendar year.

Section 16.0105

Licenses

(1) After the effective date of this ordinance, any person who engages in the manufacture or sale of alcoholic beverages within the reservation shall be required, as a precondition to such manufacture, sale or distribution to have obtained all appropriate licenses from the tribe.

(2) There are hereby established three (3) classes of license: Manufacturer's License, Tavern License, and Retailer's License.

(3) *Manufacturer's License:* A manufacturer's license shall entitle the holder thereof to manufacture within the reservation, such types of alcoholic beverages as may be specifically indicated on the license. No manufacturer's license may issue except upon proof to the issuing authority that the applicant has complied with any and all licensing rules and regulations of the Yankton Sioux Tribe and unless, in the judgment of the issuing authority, such manufacture will not detract from the health, safety, welfare or morals of the residents of the reservation.

(4) *Tavern License:* A tavern license shall entitle the holder thereof to sell alcoholic beverages for consumption on the premises specified in the license in accordance with the laws of the Yankton Sioux Tribe and any rules and regulations established by the issuing authority. Unless otherwise specifically stated on the Tavern License, a Tavern License shall only entitle the holder thereof to sell beer, wine, and distilled liquor.

(3) *Retailer's License:* A retailer's license shall entitle the holder thereof to sell alcoholic beverages for consumption off of the premises specified in the license in accordance with the laws of the Yankton Sioux Tribe and any rules and regulations of the issuing authority. Unless otherwise specifically stated on the Retailer's license, a Retailer's license shall only entitle the holder thereof to sell beer, wine and liquor. This license shall allow the licensee to sell on-sale alcoholic beverages.

(6) The issuing authority for all licenses shall be the Business and Claims Committee, based upon the prior approval of the Yankton Sioux Tribal General Council, unless and until such time as the General Council shall by resolution otherwise designate. Further, the tribe reserves the right to license any tribally owned liquor retail business and/or lounge under the provisions of this Ordinance and shall be exempt from any licensing fee hereunder. Any tribally owned on or off-sale liquor store or lounge shall only be licensed to do business by approval of the General Council, pursuant to the hearing requirements hereunder.

(7) The issuing authority shall have the authority to prescribe forms, rules and regulations, subject to the approval of the Yankton Sioux Tribal General Council, if some other body shall be designated as the issuing authority, which shall have the force of law when properly adopted. Such forms, rules and regulations may include any subject reasonably related to the sale or manufacture of alcoholic beverages and the obtaining of licenses hereunder.

(8) Licenses shall be issued for a period of not to exceed one year.

(9) Licenses for the sale or manufacture of alcoholic beverages within the reservation are a privilege granted by the tribe and no person shall have any vested rights therein.

(10) Fees: Unless and until altered by the issuing authority, the following annual fees shall be charged for licenses issued hereunder:

	Tribal member ($ per year)	Non-Tribal member ($ per year)
Manufacturer's License	1,000	2,500
Tavern License	150	250
Retailer's License	150	250

(11) Surety Bond: Each and every application for a license under this Ordinance shall be accompanied by a surety bond in the amount of $10,000.00, which shall become effective and in full force and effect upon the issuing of said license. The bond shall be with a corporate surety as surety, or shall be by cash deposit. If said bond is in the form of cash, it shall be deposited in a separate escrow account within a legally chartered bank. Any licensee shall agree that he/she will abide by any and all tribal laws and regulations including this Ordinance and will promptly pay any and all business licensing fees legally levied by the tribe and all taxes assessed by the tribe pursuant to this Ordinance and any other validly promulgated tribal law. Further, any costs or attorney fees associated with any action by the tribe to enforce any provision of this Ordinance, including but not limited to licensing fees and taxes, shall be payable be the licensee.

(12) Any aggrieved party, including the tribe who is injured by reason of the failure of any licensee to abide by any of the provisions of this Ordinance shall have a direct right to act upon the bond for purposes of recovering damages in the Yankton Sioux Tribal Court.

Section 16.0106

Special Event Licenses

(A) The Business and Claims Committee may issue on-sale Special Event licenses to qualified organizations authorizing the sale of beer only, for consumption on the premises specified for up to four (4) days. The fee for this license shall be fifty ($50.00) per day. Applications must be made on the forms prescribed by the Business and Claims Committee, and be accompanied by a nonrefundable application fee of ten dollars ($10.00).

(B) Application for a Special Event License must conform to the notice and hearing requirements of Section 16.0107 of this Ordinance.

(C) No organization may be issued more than four (4) Special Event Licenses in any single year.

Section 16.0107

Public Notice

(A) The Business and Claims Committee shall give at least thirty (30) days prior notice of any hearing on an application for a license. This shall include posting of a sign at a conspicuous place on the premises for which the application has been made, within the tribal administration building and publication in a local newspaper of general circulation on the Reservation.

(B) The notice posted on the premises must be at least twenty-two (22) inches wide and twenty-six (26) inches high, with letters at least one (1) inch high, and shall be placed so as to be conspicuous and plainly visible to the general public.

(C) All posted and published notices shall state the name and address of the applicant, the class of license applied for, the date of the hearing, and any other information the Business and Claims Committee deems appropriate to appraise the public (general council) fully of the nature of the application. If the applicant is a partnership, notice shall include the names and addresses of all of the partners, and if the applicant is a corporation, notice shall include the names and addresses of its managing officers.

Section 16.0108

Transfer or Modification

Any change in the terms of a license or, if the licensee is a partnership or corporation, change in its ownership, shall require the issuance of a new license in accordance with this Ordinance. Any attempt to transfer or assign a license is void and of no effect.

Section 16.0109

Revocation and Suspension License

(1) Any individual may file with the Business and Claims Committee, a duly notarized complaint as to any alleged violation of this Ordinance and immediately thereafter the Committee shall direct the tribal police and/or Bureau of Indian Affairs to investigate said allegations and if probable cause exists that a violation of any provision of this Ordinance has occurred which supports said complaint, the Committee shall temporarily suspend the license upon adequate notice to the licensee. Any temporary suspension shall become effective twenty-four (24) hours after service of the notice thereof upon the licensee.

(2) The Committee shall within 30 days conduct a hearing on said complaint at which time the licensee may produce witnesses and evidence in his/her own behalf and be represented by an attorney. Within 30 days of said hearing the Committee shall render a decision in writing, findings of fact as to every such violation alleged and as to whether the license in question shall be suspended for a time period to be determined by the Committee or permanently revoked.

(3) The Committee shall for the purposes of conducting a revocation hearing have the power and authority to subpoena witnesses and to administer oaths. Witnesses subpoenaed shall be paid a daily rate of $20.00 per day from the Tribal Liquor Control Fund.

(4) The licensee shall have the right to appeal any decision of the Committee to the General Council within ten (10) days of the final decision of the Committee and any decision rendered by the General Council shall be final and binding upon all parties. The setting of any appeal for review by the General Council shall be pursuant to the hearing requirements of section 16.0107. hereunder.

Section 16.0110

Enforcement

(1) Officers of the Tribal Police are hereby authorized to enforce the provisions of this Ordinance. Any alleged criminal offenders of this Ordinance shall be brought before the Yankton Sioux Tribal Court.

(2) The issuing authority may designate other persons to enforce the provisions of this Ordinance, either in addition to or instead of the Tribal Police.

(3) Actions to suspend, cancel or modify any license issued hereunder shall be handled as specified in 16.0109. of this Ordinance.

(4) Any person aggrieved by the action of the issuing authority for denial of a license shall request a rehearing within ten (10) days of denial before such body as a precondition to seeking review by the General Council.

(5) The Tribal Court shall have jurisdiction to hear challenges to the constitutionality and legality of this Ordinance and to try any person charged with a criminal violation of this Ordinance. A decision rendered by the tribal court shall be final and binding upon all parties.

Section 16.0111

Prohibited Sales

(1) No licensee shall sell any intoxicating alcohol beverage to any person under the legal age of twenty-one (21) years;

(2) No licensee shall sell any intoxicating alcohol beverage to any individual has been adjudged by a competent court to be an habitual alcoholic;

(3) No licensee shall sell any intoxicating alcohol beverage to any individual who is known by the licensee to be pregnant;

(4) No licensee shall sell any intoxicating alcohol beverage to any person who the licensee has been notified in writing by Court order not to sell to by the Business and Claims Committee, any police or peace officer, or the husband or wife of the person;

(5) No licensee shall sell any intoxicating alcohol beverage to any person who has been adjudged to be mentally ill or mentally retarded person;

(6) No licensee shall sell any intoxicating alcohol beverage that is known to the licensee to have been refilled and where the seal has been broken;

(7) No licensee shall sell any intoxicating alcohol beverage that is known to have been purchased from a bootleg operation;

(8) No tavern licensee shall sell any intoxicating alcohol beverage in a package, whether sealed or unsealed, or whether full or partially full;

(9) No person shall have an unsealed package containing intoxicating alcoholic beverage in his/her possession in any public place, other than in a duly licensed facility authorized under this Ordinance.

(10) It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, possess or transport intoxicating liquor or beer except upon the terms, conditions, limitations, and restrictions specified in this Ordinance.

(11) Any individual member or non-member, whom by him/herself, or through another acting for him/her, shall keep or carry on his/her person, or in a vehicle, or leave in a place for another to secure, any alcoholic beverage or otherwise in violation of law, or who shall, within the Reservation in any manner, directly or indirectly solicit, take, or accept any order for the purchase, sale, shipment, or delivery of such alcoholic liquor or beer in violation of tribal law, or aid in the delivery or distribution of any alcoholic beverage so ordered or shipped, or who shall in any manner procure for, sell, or give any alcoholic beverage to any person under legal age, for any purpose except as authorized and permitted in this Ordinance, shall be guilty of bootlegging and upon conviction may be subject to a fine and

imprisonment as set out in section 16.0103.(2).

Section 16.0112

Sales Tax Levied

There is hereby imposed on any licensee under this Ordinance including all tribally owned facilities a ten per cent (10%) sales tax on any retail selling price. Said sales tax shall be deposited in a special and separate account for use in the prevention and education on substance abuse. Said account shall be known as the Tribal Liquor Control Fund.

Section 16.0113

Severability

If any provision of this Article, or its application to any person or class of persons, or to any circumstances, is held invalid for any reason whatsoever, the remainder of its provision shall remain in full force and effect.

Section 16.0114

Effective Date

The provisions and requirements of this Ordinance shall take effect thirty (30) days after this ordinance has been certified by the Secretary of the Interior and published in the **Federal Register** as required by 18 U.S.C. 1161.

Stan Speaks,

Acting Assistant Secretary Indian Affairs.

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federal register

Wednesday
April 14, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming: Assiniboine and Sioux Tribes of Fort Peck Reservation, Mt; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming: Assiniboine and Sioux Tribes of Fort Peck Reservation, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Third Amendment to the April 6, 1992, Agreement Between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana Concerning Video Keno, Poker and Bingo Games, Simulcast Racing, and Other Class III Gaming, enacted on December 1, 1992.

EFFECTIVE DATES: April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director; Indian Gaming Management Staff; Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: April 7, 1993.

Stan Speaks,

Acting Secretary, Indian Affairs.

[FR Doc. 93–8675 Filed 4–13–93; 8:45 am]

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federal register

Wednesday
April 14, 1993

Part V

Department of Agriculture

Cooperative State Research Service
Agricultural Research Service

Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1993; Solicitation of Application Guidelines; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Agricultural Research Service

Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1993; Solicitation of Applications and Application Guidelines

Purpose

Proposals are invited for competitive grant awards under the Biotechnology Risk Assessment Research Grants Program for fiscal year 1993. The authority for the Program is contained in section 1668 of Public Law No. 101–624 (the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 5921). The Program is administered by the Cooperative State Research Service (CSRS) and the Agricultural Research Service (ARS) of the U.S. Department of Agriculture (USDA).

The purpose of the program is to assist Federal regulatory agencies in making science-based decisions about the safety of introducing genetically modified plants, animals, and microorganisms into the environment. The program accomplishes this purpose by providing scientific information derived from the risk assessment research conducted under it. Research proposals submitted to the program must be applicable to the purpose of the program to be considered. Proposals based upon field research and whole organism-population level study are strongly encouraged. Awards will not be made for clinical trials, commercial product development, product marketing strategies, or other research not appropriate to risk assessment.

Proposals should be applicable to current regulatory issues surrounding the ecological impacts of genetically modified organisms, with special emphasis on natural ecosystem consequences.

Eligibility

Proposals may be submitted by any public or private research or educational institution or organization. To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including by proposed subagreements);

(2) Ability to comply with the proposed or required completion schedule for the project;

(3) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants or contracts from the Federal government;

(4) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets; and

(5) Otherwise be qualified and eligible to receive a grant under the applicable laws and regulations.

Available Funding

Totaling available funding in fiscal year 1993 for support of the Program is $1,700,000.

Applicants should note that, pursuant to section 726 of Public Law No. 102–341 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993), funds available in fiscal year 1993 to pay indirect costs on research grants awarded competitively by CSRS may not exceed 14 per centum of the total Federal funds provided under each award.

Definitions

As used in the Solicitation of Applications and Application Guidelines for the fiscal year 1993 Program:

(a) *Ad hoc reviewers* means experts or consultants qualified by training and experience in particular scientific or technical fields to render special expert advice, through written evaluations of grant applications on the scientific or technical merit of grant applications.

(b) *Administrator* means the Administrator of the Cooperative State Research Service (CSRS) and/or the Administrator of the Agricultural Research Service (ARS) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(c) *Awarding official* means the Administrator and any other officer or employee of the Department to whom the authority to issue or modify grant instruments has been delegated.

(d) *Biotechnology* means any technique that uses living organisms (or parts of organisms) to make or modify products, to improve plants or animals, or to develop microorganisms for specific uses. The development of materials that mimic molecular structures or functions of living systems is included.

(e) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(f) *Department* or *USDA* means the U.S. Department of Agriculture.

(g) *Grant* means the award by the Administrator of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information on the underlying mechanisms relating to a research program area identified in the program solicitation.

(h) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this Program.

(i) *Methodology* means the project approach to be followed to carry out the project.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications.

(k) *Principal investigator* means a single individual who is responsible for the scientific and technical direction of the project, as designated by the grantee in the grant application and approved by the Administrator.

(l) *Project* means the particular activity that is supported by a grant under this Program.

(m) *Project period* means the total time approved by the Administrator for conducting the proposed project as outlined in an approved grant application.

(n) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

Program Description

Under the Program, USDA will competitively award research grants to support science-based biotechnology regulation and thus help address concerns about the effects of introducing genetically modified organisms into the environment and to help regulators develop policies concerning such introduction. Proposals are invited in the areas of: (1) Biotechnology risk assessment research as appropriate to agricultural plants, animals and microbes, and (2) the organization of an annual conference of funded researchers to help communicate research needs, findings, and emerging opportunities. Emphasis will be given to risk assessment researcl involving genetically modified

organisms, but model systems using nongenetically modified organisms also will be considered if they can provide information that could lead to improved assessment of potential risks associated with the introduction of generically modified organisms into the environment.

Proposals will be evaluated by a peer panel of scientists for, among other things, science quality; relevance for current regulatory issues; and intent to advance the safe application of biotechnology to agriculture by providing new knowledge for science-based regulatory decisions. The development of better methods for field testing genetically modified organisms will also be considered.

Proposal Types

Type I—Research Proposals

Research proposals which address the needs of regulatory agencies will be given priority consideration for funding. Examples of such topics include the following:

(a) Direct assessment of the environmental fate (e.g., survival, reproduction, fitness, genetic stability, horizontal gene transfer) and effects (e.g., loss of genetic diversity, enhanced competition) of genetically modified organisms introduced into the environment (i.e., not in a contained laboratory, greenhouse, or building); and studies of particular traits which may influence fate and effects;

(b) Development of new methods (e.g., monitoring organism escape, measuring biological impacts), and procedures (e.g., comparative analysis of ecosystems, models to predict risks) that could be used in biotechnology risk assessment;

(c) Creation of information systems to support regulatory agency decisionmaking (e.g., geographic information systems for endangered species; computer models to interpret site-specific effects of environmental factors on organismal development or dispersal);

(d) Investigations into unresolved risk assessment issues such as:

- The potential for recombinant plant viral genes to recombine with other plant viruses. Such studies should identify recombination potentials and, if demonstrated, define frequencies, associated and contributing DNA sequences, and determination of differences with the specific interest in the geminiviruses, carmoviruses, and luteoviruses;
- The relative fitness of sunflower, canola, wheat, and rice carrying transgenes for insect resistance and herbicide tolerance, especially for multiple-gene transformation genotypes; and the potential for hybrid formation with nontransgenic wild types where sexually compatible weedy relatives exist in the United States;
- The environmental consequences of *Bacillus thuringiensis* delta-endotoxin in genetically modified plants on non-target species.

(Note: This would not include studies on the management of the potential for the development of resistance to *Bacillus thuringiensis* delta-endotoxins which are appropriately funded by other programs, and which do not represent a regulatory issue for biosafety per se);

- The environmental consequences of genetically modified animals (mammals, fish, birds, reptiles, insects, amphibians, etc.) escaped from confinement;
- The environmental fate and effects of genetically modified plant-associated microorganisms introduced into the environment, with special reference to agricultural relevance.

Type II—Conference Proposals

Proposals are being solicited to organize (i.e., administer and support) a conference to bring together scientists and regulatory officials relevant to this program. At the conference, the participants may offer individual opinions regarding research needs, update information, or may offer individual opinions on areas of risk assessment research appropriate to agricultural biotechnology.

Applicants considering submitting a proposal under this category are strongly advised to consult the Program Directors before beginning preparations of such a proposal (see the "Programmatic Contact" information below for telephone numbers and addresses for the Program Directors).

Note: Individual investigators whose research projects are funded under the Biotechnology Risk Assessment Research Grants Program will be required to attend and present data on the results of their research at an Annual Conference. Attendance costs at such a conference do not need to be included in the budgets of proposed research projects as they will be awarded as part of the Conference Grant (Type II Proposal). Additionally, a final project report on research results will be required in a fixed protocol, electronic format, suitable for distribution by USDA on CD-ROM.

Programmatic Contact

For additional information on the Program, please contact:

Dr. David MacKenzie, Cooperative State Research Service, U.S. Department of Agriculture, suite 330, Aerospace Center, Washington, DC 20250–2220, Telephone: (202) 401–4892,

or

Dr. Robert Faust, Agricultural Research Service, U.S. Department of Agriculture, Room 336, Building 005, BARC-West, Beltsville, MD 20705, Telephone: (301) 504–5059.

How To Obtain Application Materials

An Application Kit and a copy of this solicitation will be made available upon request. The Application Kit contains required forms, certifications, and instructions for preparing and submitting grant applications. Copies of the Application Kit and this solicitation may be requested from: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2245, Telephone Number: (202) 401–5048.

Proposal Format

Type I—Research Proposals

The following general format applies for the preparation of research proposals under this program in fiscal year 1993:

(1) Application Cover Page. All proposals submitted by eligible applicants must contain an Application Cover Page (Form CSRS–661), which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Investigators who do not sign the Application Cover Page will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major thrust of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(2) Project Summary. Each research proposal must contain a project summary, the length of which may not exceed two (2) single- or double-spaced pages. This summary is not intended for the general reader; consequently, it may contain technical language comprehensible primarily by persons in disciplines relating to the food and agricultural sciences. The project summary should be a self-contained, specific description of the activity to be undertaken and should focus on:

(i) Overall project goal(s) and

supporting objectives;
(ii) Plans to accomplish project goal(s); and
(iii) Relevance or significance of the project to United States agriculture.

(3) Project Description. The specific aims of the project must be included in all proposals. The text of the project description may not exceed 15 single- or double-spaced pages. The Department reserves the option of not forwarding for further consideration proposals in which the project description exceeds this page limit. The project description must contain the following components:

(i) Introduction. A clear statement of the long-term goal(s) and supporting objectives of the proposed project should preface the project description. The most significant published work in the field under consideration, including the work of key project personnel on the current application, should be reviewed. The current status of research in the particular scientific field also should be described. All work cited, including that of key personnel, should be referenced.

(ii) Progress Report. If the proposal is a renewal of an existing project supported under this program, include a clearly marked performance report describing results to date from the previous award. This section should contain the following information:

(A) A comparison of actual accomplishments with the goals established for the previous award;

(B) The reasons established goals were not met, if applicable; and

(C) A listing of any publications resulting from the award. Copies of reprints or preprints may be appended to the proposal if desired.

(iii) Rationale and Significance. Present concisely the rationale behind the proposed project. The objectives' specific relationship and relevance to the area in which an application is submitted and the objectives' specific relationship and relevance to potential regulatory issues of United States biotechnology research should be shown clearly. Any novel ideas or contributions that the proposed project offers also should be discussed in this section.

(iv) Experimental Plan. The hypotheses or questions being asked and the methodology to be applied to the proposed project should be stated explicitly. Specifically, this section must include:

(A) A description of the investigations and/or experiments proposed and the sequence in which the investigations or experiments are to be performed;

(B) Techniques to be used in carrying out the proposed project, including the feasibility of the techniques;

(C) Results expected;

(D) Means by which experimental data will be analyzed or interpreted;

(E) Pitfalls that may be encountered;

(F) Limitations to proposed procedures; and

(G) Tentative schedule for conducting major steps involved in these investigations and/or experiments.

In describing the experimental plan, the applicant must explain fully any materials, procedures, situations, or activities that may be hazardous to personnel (whether or not they are directly related to a particular phase of the proposed project), along with an outline of precautions to be exercised to avoid or mitigate the effects of such hazards.

(4) Facilities and equipment. All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed.

(5) Collaborative arrangements. If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for a conflict(s) of interest.

(6) Personnel support. To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. The vitae shall be no more than two pages each in length, excluding the publication lists. The Department reserves the option of not forwarding for further consideration a proposal in which the vitae exceed the two-page limit; and

(iii) Publication List(s). A chronological list of all publications in referred journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(7) Budget. A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form (CSRS–55) which must be used for this purpose, along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

Applicants should note that, pursuant to section 726 of Public Law No. 102–341 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993), funds available in fiscal year 1993 to pay indirect costs on research grants awarded competitively by CSRS may not exceed 14 per centum of the total Federal funds provided under each award.

(8) Research involving special considerations. A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If any such situation is anticipated, the proposal must so indicate. It is expected that a significant number of proposals will involve the following:

(i) Recombinant DNA and RNA molecules. All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Application Kit contains a form (CSRS–662) which

is suitable for such certification of compliance.

(ii) Human subjects at risk. Responsibility for safeguarding the rights and welfare of human subjects used in any proposed project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the project plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit contains a form (CSRS–6621) which is suitable for such certification.

(iii) Experimental vertebrate animal care. The responsibility for the humane care and treatment of any experimental vertebrate animal, which has the same meaning as "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any project supported with grant funds rests with the performing entity. In this regard, all key personnel associated with any supported project and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. The applicant must submit a statement certifying that the proposed project is in compliance with the aforementioned regulations, and that the proposed project is either under review by or has been reviewed and approved by an Institutional Animal Care and Use Committee. The Application Kit contains a form (CSRS–662) which is suitable for such certification.

(9) Current and pending support. All proposals must list any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator or experts or consultants engaged by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The Application Kit contains a form (CSRS–663) which is suitable for listing current and pending support.

(10) Additions to project description. Each project description is expected by the Administrator, the members of peer review groups, and the relevant program staff to be complete while meeting the page limit established herein. However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), the number of copies submitted should match the number of copies requested herein (i.e., 14 copies). Each set of such materials must be identified with the name of the submitting organization, the name(s) of the principal investigator(s), and the title of the proposed project. Information may not be appended to a proposal to circumvent page limitations prescribed for the project description.

(11) Organizational Management Information. Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. If necessary, the Department will contact an applicant to request organizational management information once a proposal has been recommended for funding.

Type II—Conference Proposals

Proposals requesting support for a conference should include:

(1) An Application Cover Page. All proposals submitted by eligible applicants must contain an Application Cover Page (Form CSRS–661), which must be signed by the proposing project director(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Project directors who do not sign the Application Cover Page will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major thrust of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible.

(2) A Project Summary stating the objectives of the conference (i.e., to bring together scientists and regulatory officials to offer individual opinions on research needs, update information, or to offer individual opinions on areas of risk assessment research appropriate to agricultural biotechnology), as well as the proposed location and proposed inclusive date(s) of the conference;

(3) Names and affiliations of the chairperson and other members of the organizing committee;

(4) A proposed program (or agenda) for the conference;

(5) The method of announcement or invitation that will be used;

(6) A curriculum vita for the submitting project director(s) and a brief listing of relevant publications, not to exceed two pages;

(7) An estimated total budget (Form CSRS–55) for the conference, together with an itemized breakdown of support requested from USDA. The budget for the conference may include an appropriate amount for transportation and subsistence costs for participants and for other conference-related costs; and

(8) Current and pending support. All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator or experts or consultants engaged by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The Application Kit contains a form (CSRS–663) which is suitable for listing current and pending support.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (the CSRS regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to

CSRS so that CSRS may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

(1) Department of Agriculture Categorical Exclusions. (7 CFR 1b.3)

(1) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS Categorical Exclusions. (7 CFR 3407.6)

Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusions must be identified. The information submitted shall be identified as "NEPA Considerations" and the narrative statement shall be placed after the coversheet of the proposal.

Even though a project may fall within the categorical exclusions, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Proposal Submission

What To Submit

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (Do Not Bind). All copies of the proposal must be submitted in one package.

Where and When To Submit

Proposals submitted through the regular mail must be received by June 14, 1993, and must be sent to the following address: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2245, Telephone: (202) 401–5048.

Hand-delivered proposals must be submitted by June 14, 1993, to an express mail or courier service or brought to the following address (note that the zip code differs from that shown above): Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Telephone: (202) 401–5048.

Proposed Review, Evaluation Criteria, and Disposition

Proposal Review

All grant applications will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (e.g., relationship of application to announced program area). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant. All responsive applications will be carefully reviewed by the Administrator, qualified officers or employees of the Department, the respective peer review group, and *ad hoc* reviewers, as required. Written comments will be solicited from *ad hoc* reviewers when deemed appropriate, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total funding available in fiscal year 1993.

Evaluation Criteria

The peer review group will take into account the following criteria in carrying out its review of responsive proposals submitted under the fiscal year 1993 program:

(a) Scientific merit of the proposal.

(1) Conceptual adequacy of hypothesis;

(2) Clarity and delineation of objectives;

(3) Adequacy of the description of the undertaking and suitability and feasibility of methodology;

(4) Demonstration of feasibility through preliminary data;

(5) Probability of success of project;

(6) Novelty, uniqueness and originality; and

(7) Appropriateness to regulation of biotechnology and risk assessment.

(b) Qualifications of proposed project personnel and adequacy of facilities.

(1) Training and demonstrated awareness of previous and alternative approaches to the problem identified in the proposal, and performance record and/or potential for future accomplishments;

(2) Time allocated for systematic attainment of objectives;

(3) Institutional experience and competence in subject area; and

(4) Adequacy of available or obtainable support personnel, facilities, and instrumentation.

(c) Relevance of project to solving biotechnology regulatory uncertainty for United States agriculture.

(1) Scientific contribution of research in leading to important discoveries or significant breakthroughs in announced program areas; and

(2) Relevance of the risk assessment research to agricultural and environmental regulations.

Proposal Disposition

When the peer review group(s) has completed its deliberations, the USDA program staff, based on the recommendations of the peer review group(s), will recommend to the awarding official that the project be: (a) approved for support from currently available funds, or (b) declined due to insufficient funds or unfavorable review. USDA reserves the right to negotiate with the Principal Investigator/Project Director and/or the submitting entity regarding project revisions (e.g., reductions in scope of work, funding level, or period of support) prior to recommending any project for funding.

A proposal may be withdrawn at any time before a final funding decision is made. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by USDA for one year, and remaining copies will be destroyed.

Supplementary Information

Within the limit of funds available for such purpose, the awarding official shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the evaluation criteria and procedures set forth in these solicitation and applications guidelines.

The date specified by the awarding official as the beginning of the project period shall be not later than September 30, 1993.

All funds granted under the Biotechnology Risk Assessment Research Grants Program shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of any resulting award, the applicable Federal cost principles, and the Department's assistance regulations.

Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to provide further support of a project or any portion thereof.

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the final rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this program. These include, but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act;

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR part 520—ARS implementation of the National Environmental Policy Act;

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–121, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Public Law No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR part 3407—CSRS implementation of the National Environmental Policy Act;

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

Done at Washington, DC, on this 7th day of April, 1993.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

R. Dean Plowman,

Administrator, Agricultural Research Service.

[FR Doc. 93–8699 Filed 4–13–93; 8:45 am]

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Parts 3280 and 3282
Manufactured Home Construction and Safety Standards; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 3280 and 3282

[Docket No. R-93-1632; FR-3380-P-01]

Manufactured Home Construction and Safety Standards on Wind Standards

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing to amend the Federal Manufactured Home Construction and Safety Standards (FMHCSS) to improve the resistance of manufactured homes to wind forces in areas prone to high winds. Under this rule, manufactured homes would have to be designed to withstand wind speeds of 80–110 miles an hour depending on the location of the home. Also, the Department would make certain other changes to the standards to ensure that structural assemblies, components, connectors, and fasteners would be adequate for the area in which each manufactured home would be placed. The purpose of this rule is to increase the safety of manufactured homes in areas where wind-induced damage is a special hazard.

DATES: *Comment due date:* Comments must be submitted on or before May 14, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: G. Robert Fuller, Director, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street SW., ATTN: Mailroom B–133, Washington, DC 20410–8000. Telephones: (Voice) (202) 708–2210; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Justification for Shortened Comment Period and Statement on Effective Date

Under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act), manufactured homes shall be designed to reduce the risk of loss of life to building occupants to the maximum extent feasible and reduce the risk of property damage to the maximum extent practicable. The Secretary has the authority under section 604 of the Act (42 U.S.C. 5403) to issue, amend, or revoke any Federal manufactured home construction or safety standard. Subpart C of 24 CFR part 3282 contains the procedures that apply to the formulation, issuance, amendment, and revocation of rules pursuant to the Act.

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, for this rule the Department is shortening the public comment period to 30 days. The Secretary finds that it is not contrary to the public interest to expedite review of this proposed standard, because unnecessary delay could allow many manufactured homes to be produced under inadequate wind standards. Many of these homes could be sold and sited in high wind areas before the 1993 hurricane season. The Secretary believes that amended standards should be issued as soon as possible, to allow stronger homes to replace those destroyed in Hurricane Andrew and to assure that new homes facing probable future hurricanes are capable of withstanding stronger wind forces. Further, because the manufactured housing industry is aware of the Department's development of new wind standards and of the issues involved in the new regulations, the need for a longer comment period is mitigated.

In addition, section 605 of the Act (42 U.S.C. 5404) requires that the Secretary, to the extent feasible, consult with the National Manufactured Home Advisory Council before establishing, amending, or revoking any manufactured home construction or safety standard. Because of the need to accelerate the notice and comment period, as well as the time the Department intends to take to review and address the comments received, it will not be feasible to convene the Advisory Council and to seek a consensus on the proposed standard. Instead, the Department will provide direct notice of the proposed standard to each of the members of the Advisory Council and will request his or her comments.

Under section 604 of the Act (42 U.S.C. 5403), standards are to become effective not sooner than 180 days following publication of a final rule in the **Federal Register**, unless the Secretary finds, for good cause shown, that an earlier effective date is in the public interest. For the reasons stated above, it is anticipated that the Secretary will find that it is in the public interest to shorten the period following which the final rule would become effective. The Department expects to provide a shortened period of 30 days following publication of a final rule before the rule would become effective.

Because high priority will be given in the Department to the review of public comments received on this proposed rule and the development of a final rule, the total elapsed time between the publication of this proposed rule and the effective date of a final rule may be as brief as 90 days. The necessity of better standards for manufactured homes in high wind areas is evident. By this statement, the Department is trying to provide maximum reasonable notice to interested persons that they should expect to comply with some increased level of standards within a relatively short time.

I. Background

Hurricane Andrew was the third most severe hurricane to hit the continental United States in the past century. It was exceeded in wind pressure only by the Key West Hurricane in 1935, which established the record low barometric pressure, and Hurricane Camille, which killed more than 200 people when it hit the Gulf Coast in 1969.

Preliminary estimates of the number of manufactured homes destroyed or severely damaged from Hurricane Andrew range from 14,500 to 18,000 homes. The damage estimate from this hurricane is $20–30 billion, and federal monies in excess of $10 billion are being appropriated to pay for the cleanup and restoration of property damaged by the hurricane.

Many areas of the United States are susceptible to hurricanes, including major sections of the Atlantic and Gulf coasts of the United States. Hurricanes, therefore, present a major threat to public safety and welfare for a large segment of the population.

II. Manufactured Home Design and Construction Standards

A. HUD Review of Current and Alternate Standards

The Manufactured Home Construction and Safety Standards (24

CFR part 3280) currently require that manufactured housing be designed and constructed to resist certain wind loads. Resistance is normally provided by anchorage tie-downs and foundations, which are covered by installation standards and building codes regulated and enforced by State and local jurisdictions.

On September 9, 1992, then-Secretary Kemp ordered a full-scale review of the HUD manufactured home standards to ensure that the standards provide adequate protection to manufactured home residents during hurricane conditions. The Department conducted field investigations and has completed its review of on-site investigations of the damage caused by the hurricane. In examining the adequacy of the current Federal standards, the Department has taken into consideration an evaluation prepared by the National Institute of Standards and Technology (NIST), in addition to the Department's own review. NIST compared the current wind standards in 24 CFR 3280.305 to wind design requirements of the American Society of Civil Engineers (ASCE) standard, ASCE 7–88, "Minimum Design Loads for Buildings and Other Structures," and also the Standard Building Code (SBC) and the South Florida Building Code, and analyzed a proposal from the Manufactured Housing Institute.

As a result of its investigations and review of materials and recommendations, the Department determined the ASCE 7–88 Standard to contain the most suitable wind load requirements among the various building codes and standards. The ASCE 7–88 standard, when compared to the SBC and other analogous codes, generally provides the highest protection against wind damage. Furthermore, ASCE 7–88 is widely recognized as a consensus standard with national stature.

By contrast, the SBC basic design wind loads for horizontal drag and uplift forces are generally 25% less than the design wind loads required by ASCE 7–88. Although both documents make use of the same low-rise wind tunnel test data, the SBC permits a reduction of 20% to account for different wind directions at the time of highest wind speeds. For various reasons, ASCE 7–88 does not recognize this reduction in any wind region. In particular, for hurricane-prone areas, the sponsoring organization determined that there is a greater likelihood that extreme wind conditions will coincide with the critical direction for wind loading the structure and, therefore, did not consider the reduction to be appropriate.

In addition, ASCE 7–88 requires the use of a higher importance factor (1.05) than the SBC for residential and ordinary buildings located near the oceanline in hurricane-prone areas. The importance factor is used to modify the wind speed in the calculation of design wind pressure; assign different levels of risk; and, in effect, provide a higher level of safety to building occupants. Because the SBC applies a lower importance factor (1.0) for these buildings, there is a further 11% disparity in basic design wind load requirements between the two standards. Finally, analysis of localized effects on the edges and corners of components and cladding indicate even greater disparities between ASCE 7–88 and the SBC for certain of these elements.

Because the SBC is a model code, and is often adopted by reference either completely or partially, other State and local codes comparable to the SBC, such as the South Florida Building Code (SFBC), have similar defects as the SBC, with respect to wind load requirements. For example, in its Final Report (Fla. Cir. Ct., 11th Cir; filed December 14, 1992) the Grand Jury that was convened to investigate the aftermath of Hurricane Andrew found that the SFBC wind load requirements are "insufficient and need to be strengthened" (see page 3).

The Department is aware of reports and opinions that discourage outright adoption of the ASCE 7–88 standard. However, in light of Congress' mandate to the Secretary to establish reasonable manufactured home construction and safety standards that "meet the highest standards of protection," the Department is persuaded by its own analysis, and the conclusions and opinions of other studies and experts in the field of wind engineering, that ASCE 7–88 is the most appropriate standard to propose in this rule.

Commenters are invited to address the Department's preference of the ASCE 7–88 standard over other possible standards that could be used to address design requirements for manufactured housing in high wind areas. In accordance with Office of Management of Budget Circular A–119 (January 17, 1980), the Department encourages commenters to focus on appropriate existing consensus standards that could be adopted by reference in the Department's regulations.

B. Description of Changes to the Standards

Because of the existing risk of loss of life to building occupants and the extraordinary loss of property due to Hurricane Andrew, the Department has determined that it is necessary to amend the Federal Manufactured Home Construction and Safety Standards (FMHCSS) to raise the level of wind resistance standards, especially in areas subject to high winds. Specifically, the Department is proposing to amend the FMHCSS to include a Basic Wind Speed Map that is based on the map contained in the incorporated standard ASCE 7–88, "Minimum Design Loads for Buildings and Other Structures."

The revised map would contain two wind zones for high wind areas as compared to one high wind zone area in the present map. The boundary between Wind Zones I and III generally would follow the 80 mph contour in the ASCE map, while the boundary between Wind Zones II and III generally would follow the 100 mph contour in the ASCE map. Based on the revised map, this proposed rule would specify the States and counties in which the more stringent standards would be applicable. The States and counties enumerated are those that the Department has determined to be substantially within the highest wind zone demarcated on the revised map. The design wind speed for the higher wind zone areas would be designated as 100 and 110 mph, respectively.

The current wind standards for manufactured housing are considered inadequate in high-wind areas because they address only a positive (external) design wind pressure for walls without specifying that designs must take into account the effect of negative pressure (suction) on the structure. In addition, the formulas used in ASCE 7–88 include other factors that account for higher horizontal forces on walls, glazing, exterior coverings, and fastenings, and uplift forces on roof trusses, exterior coverings, fastenings, gables, eaves, and corners than are currently provided for in the Federal Standards. These and other issues would now be addressed by requiring the manufactured home structure, components, and cladding to be designed to resist the design wind forces for Exposure C specified in ASCE 7–88.

The requirements for structural assemblies, components, connectors, and fasteners would be strengthened so that the roof, walls, and other parts of the home would be able to resist the same level of wind forces typically required for site-built and modular hosing in high wind areas. In addition, the increased wind loads that would be required by the proposed rule would be applicable whether structural systems, components, or other aspects of the

design are substantiated by engineering analysis or by suitable load tests (see subpart E of part 3280).

Ground anchoring and support systems would continue to be designed by a registered engineer or architect, in a manner adequate to withstand the higher wind forces specified.

Increasing wind standards to the same level provided in the model building codes used for conventional and modular housing would improve the safety and durability of manufactured homes under high wind forces, at a reasonable additional cost. The annual cost is estimated at $89,000,000 for a production of 200,000 units. The bulk of those additional costs would be associated with an estimated 25,000 units shipped annually to Wind Zones II and III. This estimate is discussed further under Part IV, Other Matters, at the end of this preamble.

In addition to adding to the durability and quality of manufactured homes, the Department anticipates the increased resistance to wind forces would have a favorable long-term impact on loan terms and insurance premiums currently being charged to consumers.

III. Section-by-Section Analysis

The Secretary is proposing the following changes to the standards:

(1) Section 3280.4

The American Society of Civil Engineers (ASCE) would be added to the list of organizations issuing standards that are incorporated by reference. The street addresses would be corrected for two other organizations listed.

(2) Section 3280.5

Technical and conforming corrections would be made to standardize paragraph designations to **Federal Register** format and clarify the information to be included on data plates.

(3) Sections 3280.302(a)(8), 3280.303(d), 3280.305(c)

The definition and references to "hurricane resistive design" in these sections would be deleted, in favor of the Wind Zone II and Wind Zone III designations in the revised Basic Wind Speed Map. These changes would result in the identification of the actual design wind forces and wind speeds for which the home has been designed, rather than the designation of the homes as "hurricane resistive."

(4) Section 3280.304

The incorporated standards would be amended to require that the minimum design loads be based on ASCE 7–88, which would replace the obsolete ANSI A58.1–1982 standard currently referenced in this section.

In addition, the National Design Specification for Wood Construction, incorporated by reference, would be updated to the most current specification issued by the National Forest Products Association (NFPA). The Department believes that because manufacturers would have to redesign the structure's resistance to wind forces, the redesign should be accomplished with the most current design values for wood. Accordingly, the 1991 (NFPA) would be incorporated in its entirety into the standards, except for the maximum load duration factor that may be used to increase the allowable stresses of wood members and their fastenings designed to resist wind forces. The lower maximum load duration factor of 1.33 is consistent with the provisions of the latest edition of the Uniform Building Code, and would reduce the likelihood of undersized wood members and connections for high wind load design conditions.

(5) Sections 3280.305 (a), (c)

The standards would be amended to require that the manufactured home and each wind resisting part, including components and cladding, be completely designed to resist the design wind forces specified by ASCE 7–88, or the forces specified in a table of equivalent design wind load provisions. The Department would designate three wind zones: Zone I (80 mph or less); Zone II (81–100 mph); and Zone III (101–110 mph).

In addition, the standards for eaves, overhangs, and cornices would be revised to limit to 12 inches the amount by which these elements can project outward from the structure. Roof corners and edges would be subject to measurable increased wind uplift forces, as determined by wind tunnel tests and other research and analysis. Thus, excessive overhangs would require significant increases in the design loads to be resisted by trusses, connectors, or fasteners. Therefore, excessive overhangs would increase the likelihood of failure under high wind conditions. Manufactured home roof system failures were a major cause of damage in Hurricane Andrew.

(6) Section 3280.305(e)

The standards for fastening of the roof framing to the wall framing, wall to floor framing, and floor framing to chassis would be changed to include a minimum gauge for steel strapping and specific spacing of the steel strapping, depending on the wind zone. Investigations after Hurricane Andrew revealed that current designs allowing 30 gauge steel straps with staples for connections of roofs to walls, and walls to floors, were inadequate to resist even moderate wind forces.

(7) Section 3280.306(a)

The wind design loads used for calculating resistance of support and anchoring systems to overturning and lateral movements would include the simultaneous application of the horizontal drag and uplift forces determined in § 3280.305(c), increased by a safety factor of 1.5.

(8) Section 3280.306(b)

The standards would be revised to require the manufacturer to provide a design and instructions for anchorage to a site-built permanent foundation system for homes designed to be located in Wind Zones II and III. These instructions would have to be based on drawings or specifications certified by a professional engineer or architect. If the manufactured home is designed for wind speeds of more than 80 mph, the Department believes the forces and pressures on the support system cannot be resisted by typical ground anchors. However, because HUD does not have jurisdiction over the foundations and installations, the manufacturer would only be required to provide a design for anchorage to a permanent foundation in Wind Zones II and III. Enforcement would remain under the auspices of State and local governments.

If ground anchoring systems are to be used, the instructions would have to include the minimum anchor capacity required. Also, the ground anchors would be required to be embedded to their full depth, and retainer or stabilizer plates would have to be installed.

(9) Sections 3280.306(c–f)

In addition to technical and conforming corrections, the standards would be amended to specify new requirements for ties in Wind Zones II and III and to require the manufacturer's instructions to include a specific certification relating to anchoring equipment.

(10) Section 3280.306(g)(2)

The standards would be amended to require that the manufacturer's instructions for anchoring equipment be certified in accordance with the testing procedures found in ASTM D3953–87, Standards Specification for Strapping, Flat Steel and Seals. The certification would have to be made by a registered engineer, architect, or independent third

party testing agency. This would be an updated standard for steel strapping that would supersede the standard originally referenced in the Federal Standard.

(11) Sections 3280.403, 3280.404

These sections would be amended to require all primary windows, including egress windows and sliding glass doors, to resist the design exterior and interior wind pressure requirements in § 3280.305(c)(1) for components and cladding, instead of the lower test pressures required by the American Architectural Manufacturers Association (AAMA) standards.

(12) Section 3282.362

Minor conforming changes would be made in paragraph (c)(3)(i)(E).

IV. Other Matters

Major Rule

The Director of the Office of Management and Budget has indicated that this rule would constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. However, analysis indicates that the proposed rule may cause a major increase in costs or prices for consumers; individual industries; federal, state, or local government agencies; or geographic regions. In addition, the rule may have an annual effect on the economy of $100 million or more.

The Director of the Office of Management and Budget, in accordance with section (6)(a)(4) of the Executive Order, has waived the requirement for the preparation of a preliminary regulatory impact analysis under section 3 of the Executive Order. This waiver is based on the Director's determination that compliance with the requirement for a preliminary regulatory impact analysis may unduly delay the rule and may prohibit the issuance of a final rule by May 1993. However, a final regulatory impact analysis will be prepared before the publication of the final rule, in accordance with established OMB guidance.

As such, this analysis is expected to address both costs and benefits associated with the rule. The cost analysis also is expected to include the indirect costs associated with the higher standards (e.g., additional costs for proper anchorage of the higher-standard units in accordance with State and local requirements), and the distributional impact of the added costs. The discussion of the benefits is expected to include such items as the long-term impact on loan terms, insurance premiums, and insurance claims, as well as the net reduction in personal injury and property damage. The analyses and discussions of costs and benefits in the final regulatory impact analysis is expected to compare the standard determined by the Secretary to be most appropriate to alternative available standards. Because of the difficulty in collecting information on indirect costs, the Department invites commenters to address these cost items particularly, as well as unintended but foreseeable consequences.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would establish additional safety standards for manufactured housing, and therefore would affect the construction requirements in specified areas of the country. The nature of the rule and its purpose do not present an opportunity for the Department to vary the rule's requirements so as to reduce burdens on small entities.

Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule have federalism implications, and are subject to review under the Order. Specifically, the rule would provide for mandatory specifications for the construction of manufactured homes that exceed the standards currently permitted in certain areas of the country. States and local governments would no longer have the option of imposing separate requirements that exceed current standards, but are less stringent than these new standards. However, because the Federal standards already preempt local discretion in the construction of manufactured homes, this marginal degree of preemption is not believed to be significant for purposes of identifying federalism concerns.

In addition, while the new standards would require manufacturers of homes designed for high wind areas to provide a design for anchorage to a permanent foundation, the Department would not be usurping the authority of State and local governments to require such anchorages.

Therefore, for these reasons and because of the emergency health and safety aspect of this rule, the General Counsel has determined that the federalism implications are not sufficient to warrant the preparation of a federalism assessment under the Order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Incorporation by reference, Manufactured homes.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 3280 and 3282 of title 24 of the Code of Federal Regulations are proposed to be amended as follows.

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for part 3280 would be revised to read as follows:

Authority: 42 U.S.C. 5403 and 5424; 42 U.S.C. 3535(d).

2. Section 3280.4(b) would be amended by adding an additional organization in the listing of organizations issuing referenced standards immediately following the listing for the Air Conditioning and Refrigeration Institute (ARI), and correcting the addresses for two previously listed organizations, to read as follows:

§ 3280.4 Incorporation by reference.

* * * * *

(b) * * *

ASCE—American Society of Civil Engineers, 345 East 47th Street, New York, New York 10017

* * * * *

(N)FPA—National Forest Products Association, 1250 Connecticut Avenue NW., Washington, DC 20036

* * * * *

SJI—Steel Joist Institute, 1205 48th Avenue North, suite A, Myrtle Beach, South Carolina 29577

* * * * *

3. Section 3280.5 would be revised to read as follows:

§ 3280.5 Data plate.

Each manufactured home shall bear a data plate affixed in a permanent manner near the main electrical panel or other readily accessible and visible location. The data plate shall contain the following information:

(a) The name and address of the manufacturing plant in which the manufactured home was manufactured.

(b) The serial number and model designation of the unit, and the date the unit was manufactured.

(c) The statement: "This manufactured home is designed to comply with the Federal manufactured home construction and safety standards in force at the time of manufacture."

(d) A list of major factory-installed equipment, including the manufacturer's name and the model designation of each appliance.

(e) Reference to the roof load zone and wind load zone for which the home is designed and duplicates of the maps as set forth in § 3280.305(c). This information may be combined with the heating/cooling certificate and insulation zone map required by §§ 3280.510 and 3280.511.

(f) The statement: "Design Approval by", followed by the name of the agency that approved the design.

§ 3280.302 [Amended]

4. Section 3280.302 would be amended by removing and reserving paragraph (a)(8).

§ 3280.303 [Amended]

5. Section 3280.303 would be amended by removing and reserving paragraph (d).

6. Section 3280.304 would be amended by revising the item "National Design Specification for Wood Construction" listed under the heading "Wood and Wood Products:" and by revising the item listed under the heading "Unclassified:" in paragraph (b)(1), to read as follows:

§ 3280.304 Materials.

* * * * *

(b)(1) * * *

Wood and Wood Products:

* * * * *

National Design Specification for Wood Construction.—(N)FPA–1991 with 1991 Supplement, except that a 1.33 maximum load duration factor can be applied to increase the allowable stresses of wood members and their fastenings that are designed to resist wind forces.

* * * * *

Unclassified: Minimum Design Loads for Buildings and Other Structures.—ASCE 7–88

* * * * *

7. Section 3280.305 would be amended by removing paragraph (c)(2) and redesignating paragraphs (c)3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively; revising paragraphs (a), (b)(3), (c)(1), the paragraph heading for newly redesignated (c)(2), (c)(3) and the Wind Zone Map at the end of (c)(3), and (e), to read as follows:

§ 3280.305 Structural design requirements.

(a) *Generally.* Each manufactured home shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this standard, and shall be capable of transmitting these loads to stabilizing devices without exceeding the allowable stresses or deflections. Roof framing shall be securely fastened to wall framing, walls to floor structure, and floor structure to chassis to secure and maintain continuity between the floor and chassis, so as to resist wind overturning, uplift, and sliding as imposed by design loads in this part. Uncompressed finished flooring greater than⅛ inch in thickness shall not extend beneath load-bearing walls that are fastened to the floor structure.

(b) *Design loads—* * * *

* * * * *

(3) When engineering calculations are performed, allowable unit stresses may be increased as provided in the documents referenced in§ 3280.304 except as otherwise indicated in §§ 3280.304(b)(1) and 3280.306(a).

(c) *Wind, snow, and roof loads—*

(1) *Wind loads.* Each manufactured home structure and wind resisting part (including shear walls, diaphragms, ridge beams, and their fastening and anchorage systems), and components and cladding materials (including roof trusses, wall studs, exterior sheathing and covering materials, exterior glazing, and their fastening systems), shall be designed to resist the design wind loads for Exposure C specified in ASCE 7–88, Minimum Design Loads for Buildings and Other Structures, or be completely designed to resist the wind pressures specified in the following table:

TABLE OF DESIGN WIND FORCES

Element	Wind Zone I (80 MPH or less) (PSF)	Wind Zone II (81–100 MPH) (PSF)	Wind Zone III(101–110 MPH) (PSF)
Anchorage for lateral and vertical stability (See § 3280.306(a)):			
Horizontal drag	±23	±39	±47
Uplift	−16	−27	−32
Main Wind Force Resisting System:			
Shearwalls, diaphragms and their fastening and anchorage systems	±23	±39	±47
Ridge beams and other main roof support beams (beams supporting expanding room sections, etc.)	−17	−30	−36

TABLE OF DESIGN WIND FORCES—Continued

Element	Wind Zone I (80 MPH or less) (PSF)	Wind Zone II (81–100 MPH) (PSF)	Wind Zone III(101–110 MPH) (PSF)
Components and Cladding:			
Roof trusses in all areas; trusses shall be doubled within 3'–0" from each end of the roof	−23	−39	−47
Exterior coverings and fastenings in all areas except the following	−23	−39	−47
3'–0" From each end and edge of the roof	−43	−73	−89
Eaves and areas 3'–0" from the ridge	−30	−51	−62
Eaves (overhangs at sidewalls)	−30	−51	−62
Gables (overhangs at endwalls)	−43	−73	−89
Wall studs in sidewalls and endwalls, exterior glazing, exterior coverings and fastenings within 3'–0" from each corner sidewall or endwall	±28	±48	±58
Wall studs in sidewalls and endwalls, exterior glazing, exterior coverings and fastenings: all other areas	±22	±38	±46

NOTE: + sign would mean forces are acting towards or on the structure; − sign means forces are acting away from the structure; ± sign means forces can act in either direction, towards or away from the structure.

(i) The Wind Zone and specific wind design load requirements are determined by the fastest basic wind speed within each Zone and the intended location, based on the Basic Wind Speed (mph) Map, as follows:

(A) *Wind Zone I* . . . . . 80 mph (80 mph or less). Wind Zone I consists of those areas on the Basic Wind Speed Map that are not identified in paragraph (c)(1)(i) (B) or (C) of this section as being within Wind Zone II or III.

(B) *Wind Zone II* . . . . . 100 mph (81–100 mph). The following areas are deemed to be within Wind Zone II on the Basic Wind Speed Map:

(*1*) *States:* The entire State of Rhode Island.

(*2*) *Counties:* The following counties, listed by State:

Alabama: Baldwin, Clarke, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, Mobile, Monroe, Washington.

Connecticut: Fairfield, Middlesex, New Haven, New London, Tolland, Windham.

Delaware: Sussex.

Florida: All counties except those identified in paragraph (c)(1)(i)(C) of this section as being within Wind Zone III.

Georgia: Appling, Atkinson, Bacon, Baker, Berrien, Brantley, Brooks, Bryan, Bulloch, Camden, Candler, Charlton, Chatham, Clinch, Coffee, Colquitt, Cook, Decatur, Early, Echols, Effingham, Evans, Glynn, Grady, Lanier, Liberty, Long, Lowndes, McIntosh, Miller, Mitchell, Pierce, Screven, Seminole, Tannall, Thomas, Ware, Wayne.

Louisiana: Acadia, Allen, Ascension, Assumption, Auoyelles, Beauregard, Calcasieu, Cameron, Catahoula, Concordia, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, LaFayette, Livingston, Pointe Coupee, Rapides, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermillion, Vernon, Washington, West Baton Rouge, West Feliciana.

Maine: Androscoggin, Cumberland, Hancock, Kennebec, Knox, Lincoln, Penobscot, Sagadahoc, Waldo, Washington, York.

Maryland: Somerset, Wicomico, Worcester.

Massachusetts: Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, Worcester.

Mississippi: Adams, Amite, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Jackson, Jefferson, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Pearl River, Perry, Pike, Stone, Walthall, Wayne, Wilkinson.

New Hampshire: Rockingham, Strafford.

New Jersey: Atlantic, Burlington, Cape May, Monmouth, Ocean.

New York: Kings, Nassau, Queens, Richmond, Suffolk.

North Carolina: Beaufort, Bertie, Bladen, Brunswick, Camden, Chowan, Columbus, Craven, Currituck, Duplin, Edgecombe, Gates, Greene, Hertford, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Washington, Wayne.

South Carolina: Allendale, Bamberg, Beaufort, Berkeley, Charleston, Clarendon, Colleton, Dillion, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Marion, Orangeburg, Williamsburg.

Texas: Aransas, Bee, Brazoria, Calhoun, Cameron, Chambers, Fort Bend, Galveston, Goliad, Hardin, Harris, Jackson, Jasper, Jefferson, Kennedy, Kleberg, Liberty, Matagorda, Newton, Nueces, Orange, Retugio, San Patricio, Tyler, Victoria, Wharton, Willacy.

Virginia: Accomack, Isle of Wight, Northampton, York.

(C) *Wind Zone III* . . . 110 mph (101–110 mph). The following areas are deemed to be in Wind Zone III on the basic Wind Speed Map:

(*1*) *States and Territories:* The entire States of Alaska and Hawaii, and all of the United States Territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, Trust Territory of the Pacific Islands, and the United States Virgin Islands.

(*2*) *Counties:* The following counties, listed by State:

Florida: Broward, Collier, Dade, Franklin, Gulf, Hendry, Lee, Martin, Monroe, Palm Beach, Pinellas, and Sarasota.

Louisiana: Jefferson, La Fourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. Mary, and Terrabonne.

North Carolina: Carteret, Dare, and Hyde.

(ii) For exposures in coastal and other areas where wind records indicate basic wind speeds in excess of 110 mph, the Department may establish more stringent requirements.

(iii) Eaves and cornices may only project a maximum of 12 inches in Wind Zones II and III.

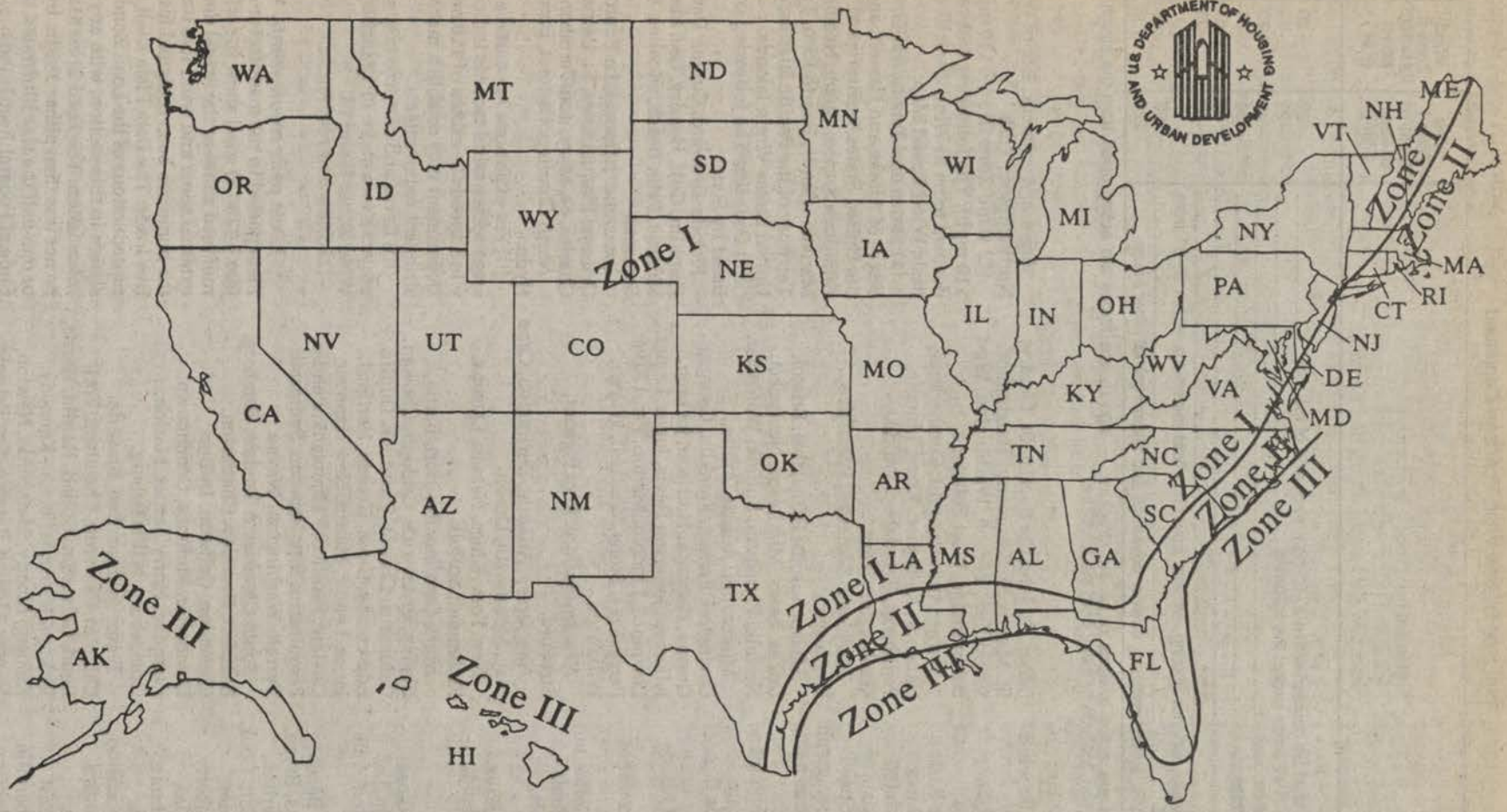
(2) *Snow and roof loads.*

* * * * *

(3) *Data plate requirements.* The Data Plate posted in the manufactured home (see § 3280.5) shall show the wind and roof load zones or the actual design external snow and wind live loads when the home has been designed for higher live loads. The Data Plate shall include reproductions of the Load Zone Maps shown in this section, with any related information. The Load Zone Maps shall be not less than either 3½ in. by 2¼ in., or one-half the size illustrated in the Code of Federal Regulations.

BILLING CODE 4210–27–M

Basic Wind Zone Map for Manufactured Housing



NOTE: The boundary line between Zones I & II is based on the 80 MPH contour line in ASCE-7. The boundary line between Zones II & III is based on the 100 MPH contour line in ASCE-7. Guam and Puerto Rico are Zone III areas.

BILLING CODE 4210-27-C

* * * * *

(e) *Fastening of structural systems.*

(1) Roof framing shall be securely fastened to wall framing, walls to floor structure, and floor structure to chassis to secure and maintain continuity between the floor and chassis, so as to resist wind overturning, uplift, and sliding as imposed by design loads in this part.

(2) As a part of the fastening requirements in Wind Zones II and III, roof trusses shall be secured to exterior wall framing members (studs), and exterior wall framing members (studs) secured to floor framing members, with 26 gauge minimum steel strapping or brackets. The steel strapping or brackets shall be placed at 24" maximum spacing in Wind Zone II, and at 16" maximum spacing in Wind Zone III. The number and type of fasteners used to secure the straps or brackets shall be capable of transferring all of the uplift forces between the elements being joined.

* * * * *

8. Section 3280.306 would be revised to read as follows:

§ 3280.306 Windstorm protection.

(a) *Provisions for support and anchoring systems.* Each manufactured home shall have provisions for support and anchoring systems that, when properly designed and installed, will resist overturning and lateral movement (sliding) of the manufactured home as imposed by the respective design loads. The design wind loads to be used for calculating resistance to overturning and lateral movement shall be the simultaneous application of the horizontal drag and uplift wind loads, as determined in accordance with § 3280.305(c)(1), increased by a factor of safety of 1.5. The basic allowable stresses of materials required to resist overturning and lateral movement shall not be increased in the design and proportioning of these members.

(1) The provisions of this section shall be followed and the support and anchoring systems shall be designed by a Registered Professional Engineer or Architect.

(2) The manufacturer of each manufactured home is required to make provision for the support and anchoring systems, but is not required to provide the anchoring equipment or stabilizing devices. When the manufacturer's installation instructions provide for the main frame structure to be used as the points for connection of diagonal ties, no specific connecting devices need be provided on the main frame structure.

(b) *Contents of instructions.* The manufacturer shall provide printed instructions with each manufactured home specifying the location and required capacity of stabilizing devices on which the design is based. The manufacturer shall provide drawings and specifications certified by a registered professional engineer indicating at least one acceptable system of anchorage, including the details of required straps or cables, their end connections, and all other devices needed to transfer the wind loads from the manufactured home to ground anchors or to a site-built permanent foundation. However, in Wind Zone I, the manufacturer need not provide instructions, designs, or details for a site-built permanent foundation system.

For systems designed to be connected to ground anchors, the instructions shall indicate:

(i) The minimum anchor capacity required;

(ii) That anchors shall be certified as to their resistance based on the maximum angle of diagonal tie and/or vertical tie loading (see paragraph (c)(3) of this section) and angle of anchor installation, and type of soil in which the anchor is to be installed;

(iii) Anchors shall not exceed a horizontal displacement of 3 inches and a vertical displacement of 2 inches at their certified resistance capacity;

(iv) Ground anchors shall be embedded below the frost line and be at least 12 inches above the water table; and

(v) Ground anchors shall be installed to their full depth, and retainer or stabilizer plates shall be installed to achieve the required ground anchor resistance capacity.

(2) In Wind Zones II and III, the manufacturer shall also provide printed instructions and drawings and specifications certified by a registered professional engineer indicating at least one acceptable method of anchoring the home to a permanent foundation system to resist the design wind forces. (See § 3282.12(b)(1)(ii) for a description of a site-built permanent foundation system).

(c) *Design criteria.* The provisions made for anchoring systems shall be based on the following design criteria for manufactured homes.

(1) The minimum number of ties required per side shall be provided to resist the design loads stated in § 3280.305(c)(1).

(2) Ties shall be as evenly spaced as practicable along the length of the manufactured home, with not more than two (2) feet open-end spacing on each end.

(3) When continuous straps are provided as vertical ties, these ties shall be positioned at rafters and studs. Where a vertical tie and a diagonal tie are located at the same place, both ties may be connected to a single ground anchor, provided that the anchor used is capable of carrying both loadings.

(4) Add-on sections of expandable manufactured homes shall have provisions for vertical ties at the exposed ends.

(d) *Requirements for ties.* Manufactured homes in Wind Zone I require only diagonal ties. These ties shall be placed along the main frame and below the outer side walls. All manufactured homes designed to be located in Wind Zones II and III shall have a vertical tie installed at each diagonal tie location.

(e) *Protection requirements.* Protection shall be provided at sharp corners where the anchoring system requires the use of external straps or cables. Protection shall also be provided to minimize damage to roofing or siding by the cable or strap.

(f) *Anchoring equipment—load resistance.* Anchoring equipment shall be capable of resisting an allowable working load equal to or exceeding 3,150 pounds and shall be capable of withstanding a 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home. The manufacturer's instructions shall indicate that anchoring equipment must be certified by a registered professional engineer or architect or independent third-party testing agency to resist these specified forces in accordance with the testing procedures in ASTM Standard Specification D3953–87, Standard Specification for Strapping, Flat Steel and Seals.

(g) *Anchoring equipment—weatherization.* Anchoring equipment exposed to weathering shall have a resistance to weather deterioration at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 ounces per square foot of surface coated, and in accordance with the following:

(1) Slit or cut edges of zinc-coated steel strapping do not need to be zinc coated.

(2) Type 1, Finish B, Grade 1 steel strapping, 1¼ inches wide and 0.035 inches in thickness, certified by a registered professional engineer or architect or independent third-party testing agency as conforming with ASTM Standard Specification D3953–87, Standard Specification for Strapping, Flat Steel, and Seals, is deemed to conform with the provisions of paragraphs (f) and (g) of this section.

(Sec. 625 of the National Manufactured Housing and Construction and Safety Standards Act of 1974, 42 U.S.C. 5424)

9. Section 3280.403 would be amended by revising paragraph (b) and the introductory text of paragraph (e), to read as follows:

§ 3280.403 Standard for windows and sliding glass doors used in manufactured homes.

* * * * *

(b) *Standard.* All primary windows and sliding glass doors shall comply with AAMA Standard 1701.2–1985, Primary Window and Sliding Glass Door Voluntary Standard for Utilization in Manufactured Housing, except that the exterior and interior pressure tests for components and cladding shall be conducted at the design wind pressures required by § 3280.305(c)(1).

* * * * *

(e) *Certification.* All primary windows and sliding glass doors to be installed in manufactured homes shall be certified as complying with AAMA Standard 1701.2–1985, except as otherwise indicated by paragraph (b) of this section.

(1) * * *

10. Section 3280.404 would be amended by revising paragraphs (b) and (e), to read as follows:

§ 3280.404 Standard for egress windows and devices for use in manufactured homes.

* * * * *

(b) *Performance.* Egress windows including auxiliary frame and seals, if any, shall meet all requirements of AAMA Standard 1701.2–1985, Primary Window and Sliding Glass Door Voluntary Standard for Utilization in Manufactured Housing and AAMA Standard 1704–1985, Voluntary Standard Egress Window Systems for Utilization in Manufactured—Housing, except as otherwise indicated in § 3280.403(b).

* * * * *

(e) *Certification of egress windows and devices.* Egress windows and devices shall be listed in accordance with the procedures and requirements of AAMA Standard 1704–1985, except as otherwise indicated by paragraph (b) of this section.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

11. The authority citation for part 3282 would be revised to read as follows:

Authority: 42 U.S.C. 5424; 42 U.S.C. 3535(d).

12. Section 3282.362(c)(3)(i)(E) would be revised to read as follows:

§ 3282.362 Production Inspection Primary Inspection Agencies (IPIAs).

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) Reference to the roof load zone and wind load zone for which the home is designed, and duplicates of the maps as set forth in § 3280.305(c) of this chapter. This information may be combined with the heating/cooling certificate and insulation zone map required by §§ 3280.510 and 3280.511 of this chapter.

* * * * *

Dated: April 8, 1993.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 93–8584 Filed 4–14–93; 8:45 am]

BILLING CODE 4210–27–M

federal register

Wednesday
April 14, 1993

Part VII

Environmental Protection Agency

Request for Comment on Petition To Modify EPA Policy on Pesticide Tolerances; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-260053A; FRL-4582-5]

Request for Comment on Petition To Modify EPA Policy on Pesticide Tolerances; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and availability of petition; reopening of comment period.

SUMMARY: On February 5, 1993, EPA issued a **Federal Register** Notice announcing the receipt and availability of a petition filed by the National Food Processors Association (NFPA) to modify certain EPA policies on regulating pesticide residues in foods. In response to numerous requests from various organizations, EPA is reopening the comment period, which expired April 6, 1993, extending the deadline to submit comments to April 30, 1993.

DATES: Written comments, identified by the document control number OPP260053, must be received by EPA on or before April 30, 1993.

ADDRESSES: By mail, requests for copies of the petition and comments should be forwarded to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Copies of the NFPA petition are available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, at the Public Docket and Freedom of Information Section, Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703-305-5805.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information "Confidential Business Information" (CBI). Information so marked will not be disclosed to the public except in accordance with the 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 CBI may be disclosed to the public by the EPA without prior notice to the submitter. The public docket is available for public inspection and photocopying at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Lisa Engstrom, Special Review Branch (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 2N6, Westfield Building, 2800 Crystal Drive, VA (703) 308-8031.

SUPPLEMENTARY INFORMATION:

ELECTRONIC AVAILABILITY: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. EPA's "Pesticides; Request for Comment on Petition to Modify EPA Policy on Pesticide Tolerances; Notice of Receipt and Availability of Petition", published as a Separate Part IV in the **Federal Register** of February 5, 1993, 58 FR 7470, and is currently available on *The Federal Bulletin Board*. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. Both files are available in Postscript, Wordperfect 5.1 and ASCII.

In the **Federal Register** of February 5, 1993 (58 FR 7470), EPA published a notice announcing the availability of a petition, filed by the NFPA, which asked EPA to modify several policies used to establish and maintain tolerances for pesticide residues in raw and processed foods. EPA requested comments on the policies raised in the petition, as well as other policies used in regulating pesticide residues in raw and processed foods.

The National Agricultural Chemicals Association (NACA) submitted a request on March 11, 1993 asking that the comment period be extended 30 days past the April 6, 1993 closing date. In the request, NACA noted that the additional time would be used to analyze and present collected data on residue values for raw and processed foods, as well as data on other requested information. Since then, additional requests have been received from organizations representing growers, environmental groups, state agencies and food processors asking for similar timeframes for an extension.

Given the amount and complexity of information requested in the February 5, 1993 notice, EPA believes it would be in the public's interest to allow the additional time for comment. Accordingly, EPA is reopening the comment period for the February 5, 1993 notice; comments are now due April 30, 1993.

Dated: April 7, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93-8877 Filed 4-13-93; 8:45 am]

BILLING CODE 6560-50-F

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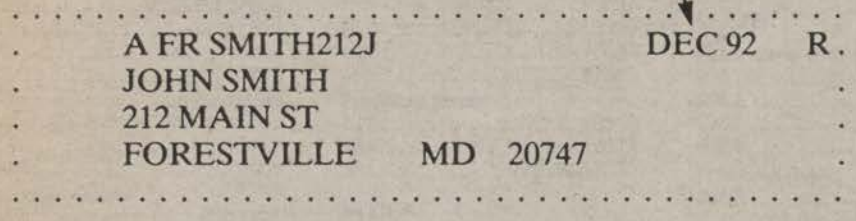

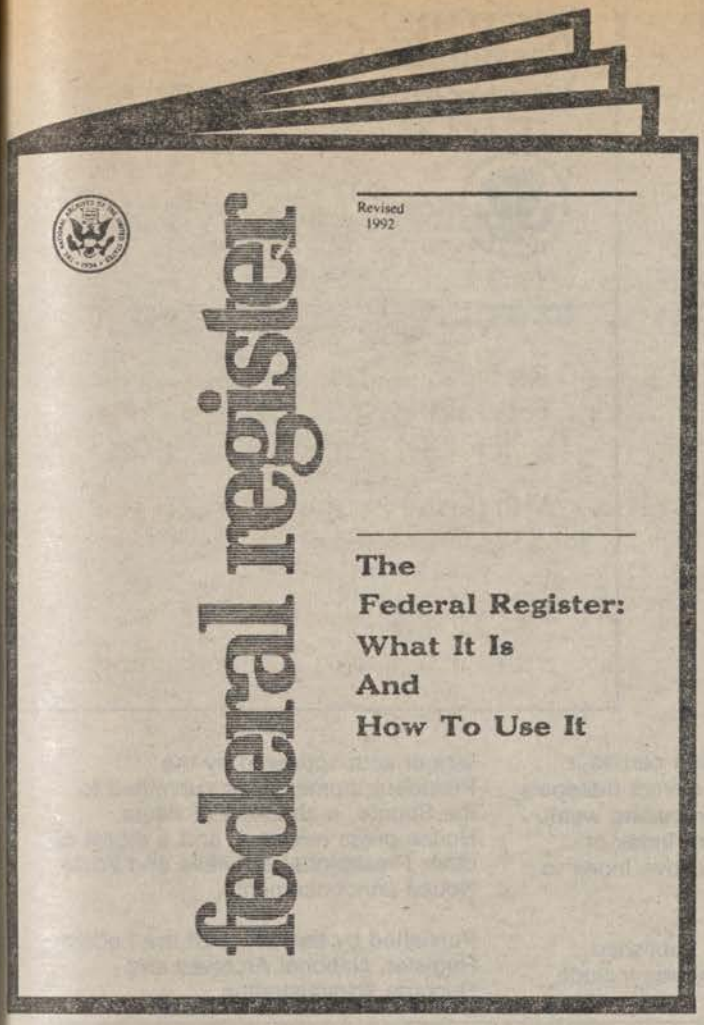

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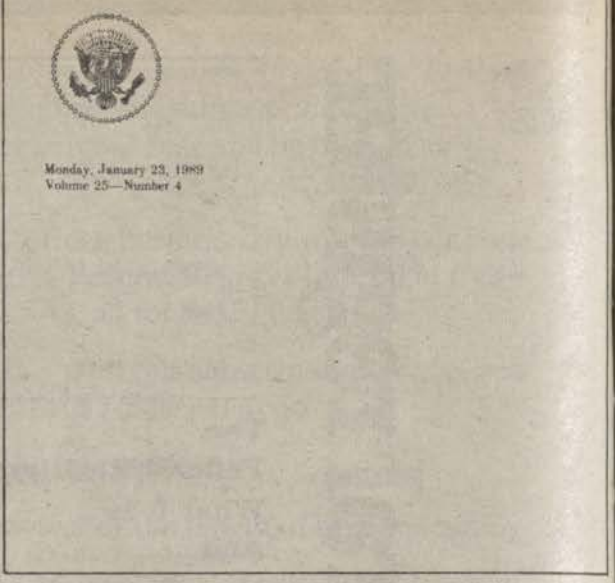

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