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Presidential Documents

Title 3—

The President

Presidential Determination No. 93–24 of May 31, 1993

Withdrawal of Russian Armed Forces From Lithuania, Latvia, and Estonia

Memorandum for the Secretary of State

Pursuant to the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391) (the "Act"), including subsection (e) under the heading "Assistance for the New Independent States of the Former Soviet Union" in Title II of the Act, I hereby certify that substantial withdrawal has occurred of the armed forces of Russia and the Commonwealth of Independent States from Lithuania, Latvia, and Estonia.

You are authorized and directed to notify the Congress of this determination and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 31, 1993.

Memorandum of Justification Regarding Certification Under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391)

The United States continues to give its active support to Estonia, Latvia and Lithuania in their efforts to achieve the complete and expeditious withdrawal of Russian and CIS troops from their territory. This Administration has placed a high priority on promoting troop withdrawals from the Baltic states. At the Vancouver summit, in meetings with President Yeltsin and Foreign Minister Kozyrev, the Russians were urged to abide by their political commitment to withdraw their forces from the Baltics as soon as possible. As a tangible step to help promote troop withdrawals from the Baltics, at the Vancouver summit the U.S. announced contributions of $6 million to a housing program for demobilized Russian army officers. Furthermore, the Administration is proposing to the Congress that we extend an additional $160 million for officer resettlement as part of our $1.8 billion assistance program.

In the summer of 1992, President Yeltsin stated publicly that the political decision had been made to withdraw Russian/CIS forces from the Baltics. We have continually urged Russia to carry out that commitment as soon as possible.

At a meeting of NACC Defense Ministers in Brussels on March 29, Russian Defense Minister Grachev reiterated an October 1992 statement by President Yeltsin to suspend troop withdrawals from the Baltics. The United States joined other NACC members in challenging Grachev's statement. Defense

Minister Grachev subsequently assured the Baltic governments that withdrawals would continue.

Some Russian officials, including President Yeltsin, have raised alleged human rights abuses of ethnic Russians living in the Baltics as a factor in the pace of troop withdrawals. The United States believes that withdrawals should continue unconditionally but recognizes that the treatment of ethnic Russians in the Baltics is of great political significance. This Administration, therefore, has supported international fact-finding missions to the Baltic states and has encouraged all parties concerned to engage in a constructive dialogue in order to find mutually satisfactory resolutions to these issues.

Estonia, Latvia and Lithuania have separately held regular rounds of talks with Russian officials on key bilateral issues, with troop withdrawals being one of the highest priorities.

In an agreement signed by the Russian and Lithuanian Defense Ministers on September 8, 1992, Russia agreed to withdraw all Russian/CIS forces from Lithuania by August 31, 1993. Russian/CIS forces have been withdrawing steadily from Lithuania since last fall. The 7th armored division left Vilnius at the end of 1992. In a visit to Vilnius on April 8, Sergei Stepashin, the Chairman of the Defense and Security Committee of the Russian Parliament stated publicly that he could confirm that all Russian forces would depart Lithuania by August 31, 1993. Both President Yeltsin and Defense Minister Grachev have reaffirmed that commitment.

Russian/CIS forces have steadily departed Estonia over the past year. The final four Russian military aircraft based in Estonia were withdrawn on March 26, 1993. Estonia's chief negotiator on troop withdrawal issue, Juri Luik, stated on April 8 that preparations for a troop withdrawal agreement were in their final states. The major roadblock remains an agreement on the schedule of withdrawals.

Of the three Baltic Republics, Latvia has experienced the slowest rate of withdrawal. In mid-March, Latvian and Russian negotiators were able to initial seven additional troop-related agreements (for a total of nine). They included agreements on railway transportation of troops, the entry of Russian warships, usage of airspace, postal services, and the crossing of the Latvian border. The key difficulty in the negotiations has been determination of a mutually acceptable timetable for withdrawals.

Although we are encouraged by signs of progress in the negotiations, we recognize that they are difficult and there remain considerable obstacles to achieving agreements on a schedule of withdrawals. Despite the lack of agreed timetables with Latvia and Estonia, there have been substantial withdrawals in all three Baltic Republics. Although hard figures on Russian/CIS troop levels in the Baltics are difficult to obtain, best estimates are that there were at least 120,000 Russia/CIS forces in the Baltics at the beginning of 1992. As a result of withdrawals mainly in the latter half of 1992 and early 1993, the remaining Russian troop presence in the individual Baltic states is in the following ranges:

	Remaining Troop Level
Estonia	5,900–9,000
Latvia	20,000–23,000
Lithuania	12,500–17,000

Troop levels have, therefore decreased by 60–70 percent over the course of the past year.

The United States will continue to work with Estonia, Latvia, Lithuania, Russia and other concerned countries in seeking a satisfactory resolution of the troop withdrawal issue leading to a complete withdrawal.

[FR Doc. 93–13743
Filed 6–7–93; 3:14 pm]
Billing code 4710–10–M

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 532, 550, and 591

RIN 3206–AE88

Conversion to Metric System

AGENCY: Office of Personnel Management.
ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to convert measurements in the existing regulations to the International System of Units (SI), the modernized metric system, in three areas of compensation policy regulations: the Federal Wage System (FWS) definitions of wage areas and schedule of environmental differentials; General Schedule (GS) hazardous duty differentials and remote worksite allowances; and nonforeign area cost-of-living allowances. Conversion from the inch-pound measurement system is required by the Metric Conversion Act of 1975, Public Law 94–168, as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418. Executive Order 12770, July 25, 1991, directed Federal agencies to implement metric usage in Government programs. Under these final regulations, the information contained in the revised parts of title 5, Code of Federal Regulations will now be available to users in modern SI units.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: These regulations revise the following parts of title 5, Code of Federal Regulations: appendix C to subpart B of part 532—Appropriated Fund Wage and Wage Survey Areas; appendix A to subpart E of part 532—Schedule of Environmental Differentials Paid for Exposure to Various Degrees of Hazards, Physical Hardships, and Working Conditions of An Unusual Nature; appendices A and A–1 to subpart I of part 550—Schedule of Pay Differentials Authorized for Hazardous Duty Under Subpart I and Windchill Chart; section 591.204 of subpart B of part 591—Establishment of Allowance Areas; appendix A of subpart B of part 591—Places and Rates at Which Allowances Shall Be Paid; subpart C of part 591—Allowance Based on Duty at Remote Worksites; and Schedule III—Effective on or After December 28, 1980, under appendix A of subpart C of part 591—Daily Transportation Allowance Schedule, Commuting Over Land by Private Motor Vehicle to Remote Duty Posts. (Schedules I and II under appendix A of subpart C of part 591 are not being revised because they are no longer used and will be deleted when OPM further revises Schedule III in the future.)

This direct mathematical conversion was accomplished by multiplying the inch-pound magnitude in the existing regulations by the appropriate conversion factor to determine the metric magnitude equivalent. This value was then rounded in a manner reflecting the precision of the original inch-pound value. The following references were used in making these determinations: the National Institute of Standards and Technology Special Publication 811, Guide for the Use of the International System of Units, U.S. Department of Commerce, September 1991; Metric Handbook for Federal Officials, Recommendations of the Interagency Committee on Metric Policy, August 1989; and Federal Standard 376A, May 5, 1983, Preferred Metric Units for General Use by the Federal Government, General Services Administration.

For a time, the corresponding, predecessor inch-pound measurements will remain in the text in parentheses to ease the conversion process for users. (In the case of the added metric windchill charts, the corresponding inch-pound charts will remain separately in the text, following the SI charts.) Should a question arise as to whether a particular measurement is more correct in the SI or the inch-pound units (because of differences resulting from rounding in the conversion process), the SI measurement will take precedence.

Because these are technical changes that are not substantive in nature, but are required by law and Executive order, they are being published without comment period or public hearing.

In addition, this regulation includes technical amendments to correct section references in §§ 532.241, 532.247, 532.251, 532.279, and 532.403 and makes an editorial correction in § 532.251(a)(1).

OPM conducted national consultation with labor unions on this regulation. The Federal Prevailing Rate Advisory Committee reviewed and concurred in the portion of these revisions pertaining to Federal Wage System regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Parts 532, 550 and 591

Administrative practice and procedure, Government employees, Wages, Claims, Travel and transportation expenses.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

Accordingly, OPM is amending 5 CFR parts 532, 550, and 591 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart B—Prevailing Rate Determinations

§ 532.241 [Amended]

2. In § 532.241, amend paragraph (a)(1) by removing the word "a" where it occurs in the first sentence, by removing the section reference "532.215" and inserting "532.235" in its place, and by removing the section reference "532.227" and inserting "532.247" in its place.

§ 532.247 [Amended]

3. In § 532.247, amend paragraph (c) by removing the section reference "532.213(e)" and inserting in its place "532.233(e)" amend paragraph (g)(1) by removing the section reference "532.225(a)" and inserting in its place "532.245(a)"; amend paragraph (g)(2) by removing the section reference "532.223" and inserting in its place "532.243"; amend paragraph (g)(3) by removing the section reference "532.225(b)" and inserting in its place "532.245(b)"; and amend paragraph (h) by removing the section reference "532.225" and inserting in its place "532.245".

§ 532.251 [Amended]

4. In 532.251, amend paragraph (a)(3) by removing the section reference "532.229" and inserting in its place "532.249".

§ 532.279 [Amended]

5. In § 532.279, amend paragraph (b) by removing the section reference "532.227" and inserting in its place "532.245".

6. In appendix C to subpart B of part 532, the listing for Juneau, Alaska, is revised to read as follows:

Appendix C to Subpart of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Definitions of Wage and Wage Survey Areas

* * * * *

Alaska

Survey Area

* * * * *

Juneau (and the areas within a 24-kilometer (15-mile) radius of their corporate city limits)

* * * * *

Subpart D—Pay Administration

§ 532.403 [Amended]

7. In section 532.403, amend paragraph (c) by removing the section reference "532.229" and inserting in its place "532.249".

Subpart E—Premium Pay and Differentials

8. Appendix A to subpart E of part 532 is amended as follows:

Appendix A to Subpart E of Part 532—Schedule of Environmental Differentials Paid for Exposure to Various Degrees of Hazards, Physical Hardships, and Working Conditions of an Unusual Nature

a. Under "Part I.—Payment for Actual Exposure": In the list below, for each paragraph listed in the left column, remove the measurement indicated in the middle column from wherever it appears in the paragraph and add the measurement indicated in the right column:

Paragraph	Remove	Add
1.g	500 feet	150 meters (500 feet).
	1000 feet	300 meters (1000 feet).
1.h	200 feet	60 meters (200 feet).
1.j	2 gravity	20 meters per second^2 (2 gravity)
2.a	100 feet	30 meters (100 feet).
5.a	32 degrees Fahrenheit	0 degrees Celsius (32 degrees Fahrenheit).
5.b	32 degrees Fahrenheit	0 degrees Celsius (32 degrees Fahrenheit).
6.a	110 degrees Fahrenheit	43 degrees Celsius (110 degrees Fahrenheit).
6.b	110 degrees Fahrenheit	43 degrees Celsius (110 degrees Fahrenheit).
7	150 degrees Fahrenheit	66 degrees Celsius (150 degrees Fahrenheit).
9	100 feet	30 meters (100 feet).
	10 feet	3 meters (10 feet).
10	six feet	1.8 meters (6 feet).
12	three feet	0.9 meter (3 feet).
14	35 m.p.h.	56 km/h (35 m.p.h.).
	14 feet	4.3 meters (14 feet).
	3 feet	0.9 meter (3 feet).
	15 knots	7.7 meters per second (15 knots).
	12-knot	6.2-meter-per-second (12-knot).
	3-foot	0.9 meter (3 foot).
15	100 feet	30 meters (100 feet).
18	14 feet	4.3 meters (14 feet).

b. Under "Part II.—Payment on Basis of Hours in Pay Status": In the list below, for each paragraph listed in the left column, remove the measurement indicated in the middle column from wherever it appears in the paragraph and add the measurement indicated in the right column:

Paragraph	Remove	Add
8	18,000 to 150,000 feet	5500 to 45,700 meters (18,000 to 150,000 feet).
	5 G's	49 meters per second^2 (5 G's).
13	250,000 pounds	113,400 kilograms (250,000 pounds).

c. Under Exhibit 1, the title of the existing WINDCHILL CHART is revised to read as follows: WINDCHILL CHART IN NON-METRIC UNITS.

d. Under Exhibit 1, the WINDCHILL CHART IN METRIC UNITS set out below is added immediately preceding the existing WINDCHILL CHART IN NON-METRIC UNITS.

BILLING CODE 6325-01-M

WINDCHILL CHART IN METRIC UNITS

Local Temperature (°C)											
Wind Speed (KPH)	0	-5	-10	-15	-20	-25	-30	-35	-40	-45	-50
Calm	0 C	-5	-10	-15	-20	-25	-30	-35	-40	-45	-50
8	-2	-7	-12	-17	-23	-28	-33	-38	-44	-49	-54
16	-8	-14	-20	-26	-32	-38	-44	-51	-57	-63	-69
24	-11	-18	-25	-32	-38	-45	-51	-58	-65	-72	-78
32	-14	-21	-28	-36	-42	-49	-57	-64	-71	-78	-85
40	-16	-23	-31	-39	-46	-53	-61	-68	-76	-83	-90
48	-17	-24	-33	-41	-48	-56	-63	-72	-78	-86	-94
56	-18	-26	-34	-42	-49	-57	-65	-73	-81	-88	-97
64	-19	-27	-35	-43	-51	-59	-66	-74	-82	-91	-98
72	-19	-28	-36	-43	-52	-59	-67	-76	-83	-91	-99
80	-20	-28	-36	-44	-52	-60	-68	-76	-84	-92	-100
	Little danger		Considerable danger			Very great danger					
For properly clothed persons						Danger of freezing of exposed flesh					

BILLING CODE 6325-01-C

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart I—Pay for Irregular or Intermittent Duty Involving Physical Hardship or Hazard

9. The authority citation for subpart I continues to read as follows:

Authority: 5 U.S.C. 5545(d), 5548(b).

10. The table titled "Hazard Pay Differential, of Part 550 Pay Administration (General)" under Appendix A—Schedule of Pay Differential Authorized for Hazardous Duty Under Subpart I, is amended as follows:

a. Under the heading, "Exposure to Hazardous Weather or Terrain," remove "100 feet" and add in its place "30 meters (100 feet)" under paragraph (2)(a); remove "10 feet" and add in its place "3 meters (10 feet)" under paragraph (2)(b); remove "35 m.p.h." and add in its place "56 km/h (35 m.p.h.)" under paragraph (4); remove "15 knots" and add in its place "7.7 meters per second (15 knots)" under paragraph (5)(a); and remove "(3 feet and above)" and add in its place "(0.9 meter (3 feet) and above)" under paragraph (6).

b. Under the heading, "Exposure to Physiological Hazards," remove "18,000 to 150,000 feet" and add in its place "5500 to 45,700 meters (18,000 to 150,000 feet)" under paragraph (2); remove "5 G's" and add in its place "49 meters per second^2 (5 G's)" under paragraph (3); and remove "110° F" and add in its place "43° C (110° F)" under the paragraph titled "Hot Work."

c. Under the heading, "Participating in Liquid Missile Propulsion Tests and Certain Solid Propulsion Operations," remove "50-foot" and add in its place "15-meter (50-foot)" under paragraph (6).

d. Under the heading, "Work in Open Trenches," remove "15 feet" and add in its place "4.6 meters (15 feet)."

e. Under the heading, "Underwater Duty," remove "20 feet" and add in its place "6 meters (20 feet)" under paragraph (2)(a).

f. Under the heading, "Sea Duty Aboard Deep Research Vessels," remove "(12-knot winds and 3-foot waves)" and add in its place "(6.2 meter-per-second winds (12-knot winds) and 0.9-meter waves (3-foot waves))."

g. Under the heading, "Height Work," remove "50 feet" and add in its place "15 meters (50 feet)."

h. Under the heading, "Flying, participating in," remove "+ 2 gravity conditions" and add in its place "+ 20 meters per second^2 (+ 2 gravity conditions)" under paragraph (4).

11. Under Appendix A–1—WINDCHILL CHART, immediately preceding the existing WINDCHILL CHART IN NON-METRIC UNITS, a second windchill chart titled "WINDCHILL CHART IN METRIC UNITS" is added to read as follows:

BILLING CODE 6325–01–M

WINDCHILL CHART IN METRIC UNITS

Local Temperature (°C)											
Wind Speed (KPH)	0	-5	-10	-15	-20	-25	-30	-35	-40	-45	-50
Calm	0 C	-5	-10	-15	-20	-25	-30	-35	-40	-45	-50
8	-2	-7	-12	-17	-23	-28	-33	-38	-44	-49	-54
16	-8	-14	-20	-26	-32	-38	-44	-51	-57	-63	-69
24	-11	-18	-25	-32	-38	-45	-51	-58	-65	-72	-78
32	-14	-21	-28	-36	-42	-49	-57	-64	-71	-78	-85
40	-16	-23	-31	-39	-46	-53	-61	-68	-76	-83	-90
48	-17	-24	-33	-41	-48	-56	-63	-72	-78	-86	-94
56	-18	-26	-34	-42	-49	-57	-65	-73	-81	-88	-97
64	-19	-27	-35	-43	-51	-59	-66	-74	-82	-91	-98
72	-19	-28	-36	-43	-52	-59	-67	-76	-83	-91	-99
80	-20	-28	-36	-44	-52	-60	-68	-76	-84	-92	-100
	Little danger		Considerable danger			Very great danger					
For properly clothed persons						Danger of freezing of exposed flesh					

BILLING CODE 6325-01-C

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

12. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10,000; 3 CFR, 1943–1948 Comp., p. 792; E.O. 12,510; 3 CFR, 1985 Comp., p. 338.

13. Section 591.204 is amended by revising paragraph (b)(2) to read as follows:

§ 591.204 Establishment of allowance areas.

* * * * *

(b) * * *

* * * * *

(2) State of Alaska. (i) City of Anchorage and 80-kilometer (50-mile) radius by road.

(ii) City of Fairbanks and 80-kilometer (50-mile) radius by road.

(iii) City of Juneau and 80-kilometer (50-mile) radius by road.

* * * * *

Appendix A of Subpart B—Places and Rates at Which Allowances Shall Be Paid

14. In appendix A of subpart B, the listing for the State of Alaska is amended by removing the 3 occurrences of the words "50-mile" and inserting in their place the words "80-kilometer (50-mile)."

Subpart C—Allowance Based on Duty at Remote Worksites

15. The authority citation for subpart C continues to read as follows:

Authority: 5 U.S.C. 5942; sec. 8, E.O. 11609, 3 CFR 1971–1975 Comp., p. 591; 5 U.S.C. 1104, Pub. L. 95–454, 92 Stat. 1120 and sec. 3(5) of Pub. L. 95–454; 92 Stat. 1120.

§ 591.304 [Amended]

16. In § 591.304, paragraph (a)(1) is amended by removing the words "50 miles" from the first sentence and adding, in its place, the words "80 kilometers (50 miles)," and by removing the word "miles" from the second sentence and adding, in its place, the words "kilometers (miles)"; and paragraph (b)(2) is amended by removing the 2 occurrences of the words "50 miles" and adding in their place the words "80 kilometers (50 miles)."

17. The table titled "Schedule III—Effective on or After December 28, 1980," under Appendix A of Subpart C—Daily Transportation Allowance Schedule, Commuting Over Land by Private Motor Vehicle to Remote Duty Posts, is revised to read as follows:

Appendix A of Subpart C—Daily Transportation Allowance Schedule, Commuting Over Land by Private Motor Vehicle to Remote Duty Posts

* * * * *

SCHEDULE III.—EFFECTIVE ON OR AFTER DECEMBER 28, 1980

Round-trip distance in excess of 80 kilometers (50 miles)	Degree A commuting conditions	Degree B commuting conditions	Degree C commuting conditions
Up to 15 km (up to 9 mi)	$0.40	$0.42	$0.44
16 to 31 km (10 to 19 mi)	1.40	1.47	1.54
32 to 47 km (20 to 29 mi)	2.40	2.52	2.64
48 to 63 km (30 to 39 mi)	3.40	3.57	3.74
64 to 79 km (40 to 49 mi)	4.40	4.62	4.84
80 to 95 km (50 to 59 mi)	5.40	5.67	5.94
96 to 111 km (60 to 69 mi)	6.40	6.72	7.04
112 to 127 km (70 to 79 mi)	7.40	7.77	8.14
128 to 144 km (80 to 89 mi)	8.40	8.82	9.24
145 to 160 km (90 to 99 mi)	9.40	9.87	10.00
161 to 176 km (100 to 109 mi)	10.00	10.00	10.00
177 to 192 km (110 to 119 mi)	10.00	10.00	10.00
193 to 208 km (120 to 129 mi)	10.00	10.00	10.00
209 to 224 km (130 to 139 mi)	10.00	10.00	10.00
225 to 240 km (140 to 149 mi)	10.00	10.00	10.00
241 to 256 km (150 to 159 mi)	10.00	10.00	10.00
257 to 272 km (160 to 169 mi)	10.00	10.00	10.00
273 km and over (170 mi and over)	10.00	10.00	10.00

Under the statute, $10 a day is the maximum allowance.

* * * * *

[FR Doc. 93–13381 Filed 6–8–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–59–AD; Amendment 39–8590; AD 92–22–09 R1]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes, that currently requires the implementation of a corrosion prevention and control program either by the accomplishment of specific corrosion tasks or by revising the FAA-approved maintenance program to include such a program. The actions specified by that AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This amendment revises a provision in the rule that specifies a mandatory rate of task accomplishment for aircraft areas that have exceeded a certain threshold. This action is intended only to clarify this portion of

the rule, which has created general confusion among affected operators and is subject to misinterpretation.

DATES: Effective January 12, 1993.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of January 12, 1993 (57 FR 57901, December 8, 1992).

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: On October 1, 1992, the FAA issued AD 92–22–09, Amendment 39–8395 (57 FR 57901, December 8, 1992), to require the implementation of a corrosion prevention and control program either by the accomplishment of specific corrosion tasks or by revising the FAA-approved maintenance program to include such a program. That action was prompted by reports of incidents involving fatigue cracking and corrosion in various transport category airplanes; these incidents have jeopardized the airworthiness of the affected airplanes. The actions required by that AD are intended to prevent degradation of the structural capabilities of the affected airplanes.

Since the issuance of that AD, it has come to the FAA's attention that paragraph (a)(1)(iv) of the AD is subject to misinterpretation. That paragraph states:

> In all cases, accomplishment of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

This provision was intended to specify a rate of task accomplishment for aircraft areas on which tasks are required to be performed by the preceding provisions of paragraph (a). Those provisions do not require the accomplishment of tasks until after the subject area has reached a specified "implementation age" (IA).

Paragraph (a)(1)(iv) was intended to implement the following provision of McDonnell Douglas Document Number MDC K4607, "DC–10/KC–10 Corrosion Prevention and Control Document," Revision 1, dated December 1990, which is referenced in the AD:

> The first accomplishment of each corrosion task should be at a minimum rate equivalent to one aircraft per year for each applicable task.

The phrase, "each applicable task," is generally understood to mean each task to which an aircraft is subject because it has exceeded the specified IA for a particular area.

On the other hand, it appears that the introductory phrase, "In all cases," can be interpreted as requiring performance of tasks at the specified rate on all aircraft, regardless of whether they have exceeded the specified IA's for any area.

Because of this ambiguity, and because of general confusion regarding the effect of this provision, the FAA is revising paragraph (a)(1)(iv) of the rule to clarify that it specifies a mandatory rate of task accomplishment only for aircraft areas that have exceeded their IA's.

Action is taken herein to revise the rule in order to clarify this provision. The effective date of the rule remains January 12, 1993. The revised rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only clarifies a provision in an existing rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8395 (57 FR 57901, December 8, 1992), and by adding a new airworthiness directive (AD), amendment 39–8590, to read as follows:

92–22–09 R1 McDonnell Douglas: Amendment 39–8590. Docket No. 93–NM–59–AD. Revises AD 92–22–09, Amendment 39–8395.

Applicability: All Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes; and KC–10A (Military) airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD references McDonnell Douglas Document Number MDC K4607, "DC–10/KC–10 Corrosion Prevention and Control Document," Revision 1, dated December 1990 (hereinafter referred to as "the Document"), for corrosion tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in Section 4 of the Document in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 3: A "corrosion task," as defined in Section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note 4: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note 5: Where non-destructive inspection (NDI) methods are employed, in accordance with Section 4 of the Document, the standards and procedures used must be

acceptable to the Administrator in accordance with FAR Section 43.13.

(1) Complete the initial corrosion task of each "corrosion inspection area" defined in Section 4 of the Document as follows:

(i) For aircraft areas that have not yet reached the "implementation age" (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For aircraft areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the R interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one R interval, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) Notwithstanding paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD, accomplish the initial task, for each area that exceeds the IA for that area, at a minimum rate of one such area per year, beginning one year after the effective date of this AD.

Note 6: This paragraph does not require inspection of any area that has not exceeded the IA for that area.

Note 7: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each "corrosion inspection area" must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR Section 91.417 or Section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

Note 8: Notwithstanding Section 2.1, paragraph 14, of the Document, any extension to an IA must be approved in accordance with paragraph (h) of this AD.

(d) (1) If, as a result of any inspection conducted in accordance with paragraph (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) of this AD within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model DC–10 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model DC–10 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 9: Notwithstanding the provisions of Section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model DC–10 series airplanes in the operator's fleet.

(e) If, as a result of any inspection, after the initial inspection, conducted in accordance with paragraph (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas Corporation in accordance with Section 5 of the Document.

Note 10: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspection is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note 11: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(j) Reports of corrosion inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(k) The completion of the corrosion tasks shall be done in accordance with McDonnell Douglas Document Number MDC K4607, "DC–10/KC–10 Corrosion Prevention and Control Document," Revision 1, dated December 1990. This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of January 12, 1993 (57 FR 57901, December 8, 1992). 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, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment is effective on January 12, 1993.

Issued in Renton, Washington, on May 24, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–13501 Filed 6–8–93, 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93-NM-60-AD; Amendment 39-8591; AD 92-22-08 R1]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, Including Model DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 series airplanes, including Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (Military) airplanes, that currently requires the implementation of a corrosion prevention and control program either by the accomplishment of specific corrosion tasks or by revising the FAA-approved maintenance program to include such a program. The actions specified by that AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This amendment revises a provision in the rule that specifies a mandatory rate of task accomplishment for aircraft areas that have exceeded a certain threshold. This action is intended to clarify this portion of the rule, which has created general confusion among affected operators and is subject to misinterpretation.

DATES: Effective January 12, 1993.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of January 12, 1993 (57 FR 57895, December 8, 1992).

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5323; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: On October 1, 1992, the FAA issued AD 92-22-08, Amendment 39-8394 (57 FR 57895, December 8, 1992), to require the implementation of a corrosion prevention and control program either by the accomplishment of specific corrosion tasks or by revising the FAA-approved maintenance program to include such a program. That action was prompted by reports of incidents involving fatigue cracking and corrosion in various transport category airplanes; these incidents have jeopardized the airworthiness of the affected airplanes. The actions required by that AD are intended to prevent degradation of the structural capabilities of the affected airplanes. Since the issuance of that AD, it has come to the FAA's attention that paragraph (a)(1)(iv) of the AD is subject to misinterpretation. That paragraph states:

> In all cases, accomplishment of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

This provision was intended to specify a rate of task accomplishment for aircraft areas on which tasks are required to be performed by the preceding provisions of paragraph (a). Those provisions do not require the accomplishment of tasks until after the subject area has reached a specified "implementation age" (IA).

Paragraph (a)(1)(iv) was intended to implement the following provision of McDonnell Douglas Document Number MDC K4606, "DC-9/MD-80 Corrosion Prevention and Control Document," Revision 1, dated December 1990, which is referenced in the AD:

> The initial accomplishment of each corrosion task should be at a minimum rate equivalent to one aircraft per year for each applicable task.

The phrase, "each applicable task," is generally understood to mean each task to which an aircraft is subject because it has exceeded the specified IA for a particular area.

On the other hand, it appears that the introductory phrase, "In all cases," can be interpreted as requiring performance of tasks at the specified rate on all aircraft, regardless of whether they have exceeded the specified IA's for any area.

Because of this ambiguity, and because of general confusion regarding the effect of this provision, the FAA is revising paragraph (a)(1)(iv) of the rule to clarify that it specifies a mandatory rate of task accomplishment only for aircraft areas that have exceeded their IA's.

Action is taken herein to clarify this provision. The effective date of the rule remains January 12, 1993. The revised rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only clarifies a provision in an existing rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8394 (57 FR 57895, December 8, 1992), and by adding a new airworthiness directive (AD), amendment 39-8591, to read as follows:

92-22-08 R1 McDonnell Douglas: Amendment 39-8591. Docket No. 93-NM-60-AD. Revises AD 92-22-08, Amendment 39-8394.

Applicability: All Model DC-9 series airplanes, including Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD references McDonnell Douglas Document Number MDC K4606, "DC-9/MD-80 Corrosion Prevention and Control Document," Revision 1, dated December 1990 (hereinafter referred to as "the Document"), for corrosion tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those

operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Note 3: Throughout this AD, the term "Model DC–9 series" is used to refer to all McDonnell Douglas Model DC–9 series airplanes, including Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (Military) airplanes.

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in Section 4 of the Document in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 4: A "corrosion task," as defined in Section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note 5: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note 6: Where non-destructive inspection (NDI) methods are employed, in accordance with Section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR Section 43.13.

(1) Complete the initial corrosion task of each "corrosion inspection area" defined in Section 4 of the Document as follows:

(i) For aircraft areas that have not yet reached the "implementation age" (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For aircraft areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the R interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one R interval, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) Notwithstanding paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD, accomplish the initial task, for each area that exceeds the IA for that area, at a minimum rate of one such area per year, beginning one year after the effective date of this AD.

Note 7: This paragraph does not require inspection of any area that has not exceeded the IA for that area.

Note 8: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each "corrosion inspection area" must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR Section 91.417 or Section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

Note 9: Notwithstanding Section 2.1, paragraph 14, of the Document, any extensions to an IA must be approved in accordance with paragraph (h) of this AD.

(d) (1) If, as a result of any inspection conducted in accordance with paragraph (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) of this AD within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model DC–9 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model DC–9 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 10: Notwithstanding the provisions of Section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model DC–9 series airplanes in the operator's fleet.

(e) If, as a result of any inspection, after the initial inspection, conducted in accordance with paragraph (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas Corporation in accordance with Section 5 of the Document.

Note 11: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspection is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note 12: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(j) Reports of corrosion inspection results required by this AD have been approved by

the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(k) The completion of the corrosion tasks shall be done in accordance with McDonnell Douglas Document Number MDC K4606, "DC–9/MD–80 Corrosion Prevention and Control Document," Revision 1, dated December 1990. This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, as of January 12, 1993 (57 FR 57895, December 8, 1992). 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, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment is effective on January 12, 1993.

Issued in Renton, Washington, on May 24, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–13502 Filed 6–8–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Revegetation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with exceptions, of a proposed amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Kentucky Administrative Regulations (KAR) at 405 KAR 16:200 and 18:200 and Technical Reclamation Memorandum (TRM) No. 19—Field Sampling Techniques for Determining Ground Cover, Productivity and Stocking Success of Reclaimed Surface Mined Lands and TRM No. 20—Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations. These revisions establish requirements for the revegetation of areas affected by surface and underground mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

EFFECTIVE DATE: June 9, 1993.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Background information on the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Amendment

By letter dated June 28, 1991 (Administrative Record No. KY–1059), Kentucky submitted as part of a larger rulemaking proposed regulations to revise 405 KAR 16:200 and 18:200—the regulations governing the revegetation of lands affected by surface coal mining operations. These proposed revisions were undertaken in response to the promulgation of revised Federal rules and legislative initiatives by the Kentucky General Assembly.

OSM announced receipt of the proposed amendment in the July 22, 1991, **Federal Register** (56 FR 33398), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 21, 1991.

By letter dated January 22, 1992 (Administrative Record No. KY–1107), Kentucky revised the proposed program amendment in response to changes made during its promulgation process. OSM announced receipt of the revised amendment in the April 13, 1992, **Federal Register** (57 FR 12775), and in the same notice, reopened the public comment period and provided an opportunity for a public hearing. The public comment period closed on May 13, 1992.

On September 25, 1992, OSM sent Kentucky a letter summarizing questions and concerns raised during OSM's review of Kentucky's revised amendment. Kentucky has not responded to this letter (Administrative Record No. KY–1181).

III. Director's Findings

Set forth below pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Kentucky program. Only substantive changes will be discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

The proposed amendment consists of nine sections: (1) General requirements, (2) Use of introduced species, (3) Timing, (4) Soil amendments and stabilization, (5) Success standards for ground cover and productivity, (6) Tree and shrub stocking, (7) Use of reference areas, (8) Planting report, and (9) Measurement of vegetation success. Also included are the three documents which are incorporated in the proposed rules by reference: TRM No. 19 (Field Sampling Techniques for Determining Ground Cover, Productivity and Stocking Success of Reclaimed Surface Mined Lands), TRM No. 20 (Methodologies for the Evaluation, Protection and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations), and Kentucky Agricultural Statistics published by the Kentucky Agricultural Statistics Service (KASS) in cooperation with the United States Department of Agriculture (USDA), National Agricultural Statistics Service.

The proposed amendment governs both surface mining activities (405 KAR 16:200) and underground mining activities (405 KAR 18:200) which are, with a few exceptions, substantively identical. OSM will discuss the proposed changes to the rules governing surface mining activities with the understanding that such discussion also applies to the proposed changes to the rules at Part 817 governing underground mining activities. All exceptions will be discussed separately.

1. General Requirements 405 KAR 16:200 Section 1

Kentucky proposes to amend 405 KAR 16:200 section 1(1)(a) to clarify that each permittee must in addition to meeting the requirements of 405 KAR 16:200 also satisfy the revegetation provisions of 405 KAR 16:180 which pertains to the enhancement of fish and wildlife values where practicable. While there is no direct Federal counterpart, it is consistent with 30 CFR 816.111. Subsection (1)(a) is also deleting language that is duplicative of wording found elsewhere and, therefore, its deletion does not render the program less effective. The amendment at 405 KAR 16:200 section 1(1)(b) clarifies that prime farmland areas are subject to the prime farmland productivity standards at 405 KAR 20:040, unless exempted, in which case the standards at 405 KAR 16:200 shall apply. While there is no direct Federal counterpart, it is consistent with 30 CFR 823.11. Kentucky proposes to amend 405 KAR 16:200 section 1(3) by expanding the exceptions to the general requirement to establish a permanent vegetative cover to include rock areas such as those used for drainage control and wildlife enhancement provided the approved postmining land use is not cropland or pastureland. These rock areas are otherwise authorized under Kentucky's program to remain without vegetative cover. Therefore, the Director finds that the proposal is consistent with 30 CFR 816.111(a) which also provides for exceptions to the general requirement to establish a permanent vegetative cover. Kentucky is also moving language within subsection (3) which does not render its program less effective.

Finally, in 405 KAR 16:200 section 1(3), Kentucky is adding the requirement that the permanent vegetative cover shall be capable of soil stabilization. This is no less effective than 30 CFR 816.111(a)(4), which also requires the cover to be capable of stabilizing the soil from erosion.

Kentucky proposes to amend 405 KAR 16:200 section 1(4) to provide that if the postmining land use is cropland or pastureland, establishment of crops or pasture species normally grown in the mine vicinity and normal husbandry practices will meet the requirements of 405 KAR 16:200 section 1(1)(a). Section 1(1)(a) requires that each permittee shall establish on all affected land a diverse, effective and permanent vegetative cover that meets the requirements of this regulation and the revegetation provisions of 405 KAR 16:180. Section 3(j) of 405 KAR 16:180 requires that where cropland is to be the postmining land use and where appropriate for wildlife and crop management practices, the permittee shall intersperse fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Kentucky's proposed rule at 405 KAR 16:200 section 1(4) is inconsistent with 405 KAR 16:180 section 3(j) and its Federal counterpart at 30 CFR 816.97(h). The Federal rules require the permittee, where appropriate for wildlife and crop management practices, to break up large blocks of monoculture and to diversify habitat types. Proposed 405 KAR 16:200 section 1(4) would nullify this performance standard. The Director finds that 405 KAR 16:200 section 1(4) is less effective than the Secretary's rules at 30 CFR 816.97(h), 816.111 and 816.116. 405 KAR 16:200 section 1(4) is not approved.

Proposed 405 KAR 16:200 section 1(5)(a) requires that plant species used in revegetation shall be compatible with the plant and animal species of the area and shall meet the requirements of applicable State and Federal laws or regulations for seeds, poisonous and noxious plants, and introduced species. This proposed rule is substantively identical to 30 CFR 816.111(b)(4) and (b)(5). The Director, therefore, finds that 405 KAR 16:200 section 1(5)(a) is no less effective than the Federal rules.

Proposed 405 KAR 16:200 section 1(5)(b) requires that, except for cropland, selection of species, distribution patterns, seeding rates and planting arrangements shall be approved on a case-by-case basis by the Cabinet based upon TRM No. 20—Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations which is proposed for incorporation into the Kentucky State Program by reference. TRM No. 20 covers many subjects including: fish and wildlife information requirements; terrestrial habitat analysis; wetland delineation, restoration and mitigation; reclamation plans and methodologies; baseline aquatic resource information; protection and enhancement of aquatic resources; threatened and endangered species; descriptions of habitat types; biological station characterization; and herbaceous mixtures for wildlife habitat and erosion control.

Under 30 CFR 816.116(b)(3)(i), minimum stocking and planting arrangements must be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program-wide basis or a permit-specific basis. The Kentucky Department of Fish and Wildlife Resources is a coauthor of TRM No. 20 indicating that the necessary consultation and approval has occurred with this State agency. However, there is no indication that TRM No. 20 has been reviewed and approved by the Kentucky Department of Forestry even though certain sections apply to forestry. The Director, therefore, finds proposed 405 KAR 16:200 section 1(5)(b) not as effective as 30 CFR 816.116(b)(3)(i). 405 KAR 16:200 section 1(5)(b) and TRM No. 20 is not approved.

Proposed section 405 KAR 16.200 section 1(7) requires the period of extended liability to begin after the last augmented seeding, fertilizing, irrigating or other work and to continue for a minimum of five years. This language is no less effective than the language at 30 CFR 816.116 (c)(1) and (c)(2), which requires for areas with more than 26 inches of annual rainfall, like Kentucky, to have a minimum of five years of extended responsibility for successful revegetation. This five year period of responsibility begins after the last augmented seeding, fertilizing, irrigation or other work. However, subsection (7) also allows for exceptions to the period of responsibility, which will be discussed more fully below.

Proposed section 405 KAR 16:200 section 1(7)(a) allows quarter acres or less to be reseeded without restarting the responsibility period, if the areas meet one of the five exemptions and the total of these areas is no more than 3 percent of the permit acreage. These five exemptions will not restart the responsibility period if the revegetation is disturbed and then reseeded due to: Rill and gully repair; a third party's vehicular traffic; the installation or removal of oil or gas wells or utility lines; poor seed germination; and reclamation activity. The Federal rules at 30 CFR 816.116 (c)(2) and (c)(4) allow the performance of normal husbandry practices during the period of responsibility, without restarting the responsibility period, if the State regulatory authority and OSM approves such practices. Pursuant to 30 CFR 816.116(c)(4), these practices must be "expected to continue as part of the postmining land use or if discontinuance of the practices will not reduce the probability of permanent revegetation success." Before OSM can approve the practices, the State must submit administrative record information supporting each practice

and "demonstrate (1) that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of [SMCRA]." 53 FR 34636, 34641 (September 7, 1988) quoting 52 FR 28012, 28016 (July 27, 1987).

Other States have submitted husbandry practices, but before such practices were approved, the States were required to supply adequate administrative record information. See, e.g., "Missouri has not made the required demonstration with regard to any of the specific practices, including the repair of rills and gullies, proposed in this amendment as normal husbandry practices. The Director finds the proposed rules to be less effective than the Federal program and is not approving them." 57 FR 44660, 44673 (September 29, 1992); "[T]he proposed amendment, along with Ohio's policy statements and administrative record information submitted concerning Ohio's proposed implementation of its revegetation standards for the repair of rills and gullies, is no less effective than the corresponding Federal rules at 30 CFR 816/817.116(c)(4)." 56 FR 6983, 6985 (February 21, 1991); and "[S]ince Illinois has demonstrated that rill and gully repair is, in fact, a normal husbandry practice on noncropland-capable land in that state, the Director finds the proposed state regulations no less effective than the Federal regulations." 56 FR 64986, 64989 (December 13, 1991). Kentucky, unlike other States, has not submitted any administrative record information to demonstrate that these are normal husbandry practices within Kentucky. Without this information, OSM cannot determine if these practices are either (1) the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands or are (2) an augmentative practice prohibited by section 515(b)(2) of SMCRA. Therefore, the Director finds the 405 KAR 16:200 section 1(7)(a), (7)(a) 1. through 5. to be less effective than 816.116(c) and is not approving these subsections.

Kentucky proposes four additional exceptions to the general requirement that the extended liability period shall begin after the last time of augmented seeding, fertilization, irrigation or other related work and shall continue for five full years. These exceptions concern areas where reclamation has been delayed to ensure water quality and to provide access to the site. Under proposed 405 KAR 16:200 section 1(7)(b), the liming, fertilization, mulching, seeding or the stocking of haul roads; locations where sedimentation ponds and off-site temporary diversions that divert water away from sediment ponds have been removed; and locations where collected sediment and embankment material from sedimentation pond removal have been disposed shall not restart the five-year liability period. Vegetation established in such areas must be in place for at least two years before final bond release.

In the May 8, 1984, **Federal Register** (49 FR 19472), OSM considered a similar State program amendment from Missouri which would have clarified that roads, sediment ponds, diversions and small stockpiles of soil and overburden associated with such areas where reclamation was delayed would not be subject to a revegetation responsibility period distinct from that applicable to the permit area as a whole. OSM did not approve this amendment because it believed the proposal was inconsistent with the intent and purpose of sections 509, 519, and 520 of SMCRA and would defeat the purpose of the establishment of bond and/or liability. In addition to the Kentucky proposed rule, OSM is considering State program amendments on this subject from Oklahoma (57 FR 12784, April 13, 1992) and Ohio (58 FR 17173, April 1, 1993). These States have presented information in support of their proposals which OSM had not considered when rendering its May 8, 1984, Missouri decision. In order to consider this information and its affect on OSM's interpretation of SMCRA and the Federal rules, OSM has decided to defer making a finding on proposed 405 KAR 16:200 section 1(7)(b). OSM will, in a separate **Federal Register** notice, request public comment on how SMCRA and the Federal rules should be interpreted regarding this issue.

Proposed 405 KAR 16:200 section 1(7)(c) requires for cropland that the five-year liability period shall commence at the date of initial planting for the long-term intensive agricultural postmining land use. This provision is substantively identical to language found in section 515(b)(2) of SMCRA in that it allows for the applicable period of responsibility to commence at the date of initial planting for long-term intensive agricultural postmining land uses. Therefore, the Director finds that proposed 405 KAR 26:200 section 1(7)(c) is no less stringent than SMCRA.

Proposed 405 KAR 16:200 section 1(7)(d) states that irrigating, reliming, and refertilizing pastureland; reseeding cropland; and renovating pastureland by overseeding after Phase II bond release and after three years from the initial seeding shall be considered normal husbandry practices and shall not restart the liability period if the amount and frequency of these practices do not exceed normal agricultural practices on unmined land in the region. Kentucky has not submitted information as to how it will determine when the amount and frequency of these practices exceed normal agricultural practices on unmined land. As stated earlier, in promulgating 30 CFR 816.116(c)(4), the Director stated that State regulatory authorities would be expected to demonstrate that the practice is the usual or expected State, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction, or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands (53 FR 34641). Because Kentucky has not made the required demonstration, the Director is unable to determine whether the proposed practices are augmentative. He, therefore, finds that proposed 405 KAR 16:200 section 1(7)(d) is less effective than the Federal rules. 405 KAR 16:200 section 1(7)(d) is not approved.

Proposed 405 KAR 16:200 section 1(7)(e) states that disease, pest and vermin control; pruning; transplanting and replanting of trees and shrubs in accordance with stocking standards at 405 KAR 16:200 section 6 may be conducted without restarting the liability period. The Federal rules at 30 CFR 816.116(c)(4) specifically allow for disease, pest and vermin control; and any pruning, reseeding, and transplanting necessitated by such actions provided these practices are normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. Also, under 30 CFR 816.116(b)(ii) not all trees and shrubs counted toward meeting stocking standards, need be in-place five full years. Since these practices were approved at part of Kentucky's original program, the Director will not require to redemonstrate that these practices are normal husbandry practices. The Director therefore finds that proposed 405 KAR 16:200 section 1(7)(e) is no less effective than the corresponding Federal rules.

Proposed 405 KAR 16:200 section 1(8) specifies that for pastureland and for cropland, except prime farmland subject to 405 KAR 20:040, ground cover and productivity success standards shall be met during the growing seasons of any two years of the liability period except the first year; and areas approved for other uses shall equal or exceed the applicable success standards during the growing season of the last year of the liability period. This provision is substantively identical to language found at 30 CFR 816.116(c)(2). The Director therefore finds that the proposed language is no less effective than the Federal rules.

2. Use of Introduced Species 405 KAR 16:200 Section 2

Proposed 405 KAR 16:200 section 2 establishes conditions under which introduced species may be substituted for native species. These conditions include the permittees obligation to satisfy the general revegetation requirements and to either demonstrate through field trials or published literature that proposed, unproven, introduced species are desirable and are necessary for achieving the postmining land use, or the species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion, and measures to establish permanent vegetation are included in approved plans. The Federal rules at 30 CFR 816.116(a)(2) require that an introduced species be desirable and necessary to achieve the postmining land use in addition to meeting the general requirements at 30 CFR 816.116(b)(2) and (b)(3). Kentucky's proposal incorporates the general requirements pertaining to species selection and the specific requirement that the introduced species be desirable and necessary for achieving the postmining land use. The Director, therefore, finds that proposed 405 KAR 16:200 section 2(1) and (2)(a) is no less effective than its Federal counterpart. Kentucky is also deleting language that is either not required or is moved to other portions of 16:200. Therefore, the deletions do not render the Kentucky program less effective.

3. Timing 405 KAR 16:200 Section 3

Kentucky's proposed change at 405 KAR 16:200 section 3 clarifies that seeding and planting shall be with permanent species during the first normal period for favorable planting. The Federal rule at 30 CFR 816.113 requires that disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The preamble to 30 CFR 816.113, makes it clear that the rule only applies to permanent revegetation. See 48 FR 40140, 40146 (September 3, 1983). The Kentucky rule adds a reference to section 4 of 405 KAR 16:200 and 405 KAR 16:020 and that in accordance with these referenced rules, the disturbed area shall be seeded and mulched as contemporaneously as practicable with the completion of backfilling and grading. The Federal regulation at 30 CFR 816.100 requires reclamation efforts to occur as contemporaneously as practicable. The Director finds, therefore, that Kentucky's amendment is no less effective than the Federal regulations because mulching will be done as contemporaneously as practicable and the planting of permanent species will occur during the first favorable period for planting.

4. Soil Amendments and Stabilization 405 KAR 16:200 Section 4

Kentucky proposed to revise 405 KAR 16:200 section 4(1) by cross-referencing 405 KAR 16:050 section 5, which pertains to nutrients and soil amendments. While there is no Federal counterpart to this provision, the Director finds that it is not inconsistent with SMCRA and the Federal rules.

Kentucky proposes to revise 405 KAR 16:200 section 4(2) by requiring temporary cover as well as mulch and other soil stabilizing practices on all regraded and topsoiled areas. The Cabinet may waive the requirement for mulch if it finds, based on seasonal, soil and slope factors, that temporary cover will achieve proper erosion control until a permanent cover is established with the exception that no waiver shall be granted for any area having a slope greater than 10 percent. The Federal rule at 30 CFR 816.114 does not contain a slope limitation nor does it discuss the planting of temporary cover. It does permit regulatory authorities to waive the requirement for mulching and other soil stabilizing practices where these practices are not necessary to control erosion and to promptly establish an effective vegetative cover. In Kentucky's proposal, any area with a slope of greater than 10 percent is not eligible for a waiver of the requirement to mulch. The Director agrees with the Kentucky proposal to require a temporary cover and mulch on all slopes greater than 10 percent because such slopes are most susceptible to soil erosion. Temporary cover on lesser slopes is usually sufficient to control erosion until permanent cover is established. Therefore, the Director finds that 405 KAR 16:200 section 4(2) is no less effective than 30 CFR 816.114.

Kentucky proposes to revise 405 KAR 16:200 section 4(3) by adding the requirement that for areas within the permit boundary to be used as cropland, the area shall be seeded or planted in order to maintain a vegetative cover effective in controlling erosion until the permittee chooses to grow crops. While there is no Federal counterpart to this provision, the Director finds it to be not inconsistent with the requirements of SMCRA and the Federal rules.

Kentucky proposes to delete existing 405 KAR 16:200 section 4 (2), (3), and (4). These provisions concern the mechanical and chemical anchoring of mulch, the use of annual grasses and grains as an in situ mulch, and the use of chemical soil stabilizers. There are no Federal counterparts to these provisions. The Director, therefore, finds that the deletion is not inconsistent with SMCRA and the Federal rules.

5. Success Standards for Ground Cover and Productivity 405 KAR 16:200 Section 5

Kentucky proposes to delete existing 405 KAR 16:200 section 5, which allows the permittee to demonstrate successful revegetation by using reclaimed land for livestock grazing at a capacity approved by the Cabinet approximately equal to that for similar non-mined lands. While there is no Federal counterpart to this provision, the Director finds that its deletion is not inconsistent with SMCRA and the Federal rules and that there are other program provisions which establish performance standards for pastureland.

In his review of proposed 405 KAR 16:200 section 5 and 405 KAR 18:200 section 5, the Director notes that the paragraph numbering is not consistent with the regulatory language. Subsections (2)(c), (2)(d), and (2)(e) should be renumbered as subsections (3), (4), and (5) respectively.

Kentucky proposes to revise 405 KAR 16:200 section 5(1) to require that the success of ground cover and productivity be judged on the basis of reference areas located on unmined lands in the vicinity of the operation or by the application of specific standards. The Federal rules at 30 CFR 816.116(b) allow for either the use of reference areas or such other success standards approved by the regulatory authority provided they are representative of unmined lands in the area being reclaimed. The Director finds proposed 405 KAR 16:200 section 5(1) to be no less effective than 30 CFR 816.116(b).

For pastureland or cropland used for the production of hay, Kentucky proposes at subsection (2)(a) to require ground cover and productivity to be at least equal to 90 percent of an approved reference area with 90 percent statistical confidence. As an alternative to the use of reference areas, operators may demonstrate success, by showing ground cover equal to at least 90 percent and productivity at least equal to 90 percent of the average yield for hay or row crops in the county in the three years prior to the year of measurement, as determined by "Kentucky Agricultural Statistics 1989–1990" and "Kentucky Agricultural Statistics 1990–1991." These two publications of the KASS, Kentucky Department of Agriculture are proposed for incorporation by reference into Kentucky's Administrative Regulations. The Kentucky Agricultural Statistics report, by District and County, the acres planted, acres harvested, yield harvested per acre and total production for corn, tobacco, small grains, soybeans, sorghum, hay and fruit. Also provided are climatological data, grain storage capacity, livestock inventories, milk production, and census data for a number of farms, land in farms, and harvested cropland.

Kentucky's proposed rules at section 5(2)(a) and the Federal rules are consistent in that each allows for the use of reference areas, each considers success to be achieved when 90 percent of the appropriate standard is met, and each allows for the use of a 90 percent statistical confidence interval. The Director considered the possibility that average county yields might include yield data from previously mined lands and that this would affect the standard used to judge success. In an evaluation performed in a neighboring State, the Director found no statistical difference between the means of the yield data that included previously mined land and yield data that excluded previously mined land. He, therefore, finds that the proposed success standards at 405 KAR 16:200 section 5(2)(a) with regard to hay, pasture, and cropland are no less effective than the Federal rules at 30 CFR 816.116(b)(1).

Proposed 405 KAR 16:200 section 5(2)(a)2 which pertains to surface mining operations differs from proposed 405 KAR 18:200 section 5(2)(a)2 which pertains to the surface effects of underground mining operations. 405 KAR 18:200 section 5(2)(a)2 requires the average yield for hay to be determined from yield data available from the Kentucky Department of Agriculture whereas 405 KAR 16:200 section 5(2)(a)2 requires the average yield for hay to be determined from Kentucky Agricultural Statistics 1989–1990; 1990–1991 which are published by the Kentucky Department of Agriculture. Furthermore, there is no underground mining counterpart to 405 KAR 16:200 section 5(2)(a)3 which identifies the specific publication used to determine vegetative success. The Director in his September 25, 1992, letter to Kentucky requested clarification of this difference in proposed regulatory language (Administrative Record No. KY–1181). Kentucky has not responded. Because this provision is unclear, the Director is finding 405 KAR 18:200 section 5(2)(a)2 not as effective as 30 CFR 817.116. 405 KAR 18:200 section 5(2)(a)2 is not approved.

Proposed 405 KAR 16:200 section 5(2)(b) requires for areas within the permit boundary where row crops will be planted, except for prime farmland, that ground cover on any area not planted in row crops shall be at least 90 percent with a statistical confidence of 90 percent; and crop production shall be at least 90 percent of that of an approved reference area or at least 90 percent of the average yield for the crop in the county in the three years prior to the year of measurement, as determined from yield data available from the Kentucky Department of Agriculture, with a statistical confidence of 90 percent. There is no direct Federal counterpart to 405 KAR 16:200 section 5(2)(b)1. However, the proposed language does meet the general requirements of 30 CFR 816.116(a). The Director, therefore, finds that subsection (b)1 is not inconsistent with SMCRA and the Federal rules. In subsection (b)2, Kentucky has not specified which yield data from the Kentucky Department of Agriculture will be used as a standard for crop production. The Director cannot completely evaluate this provision because of the lack of specificity and, therefore, must find it not as effective as the Federal rules at 30 CFR 816.116(b)(2). 405 KAR 16:200 section 5(2)(b)2 is not approved.

For areas where the postmining land use is forest land or where woody plants are stocked, Kentucky is proposing in KAR 16:200 section 5(2)(c) to require at least 80 percent ground cover with a statistical confidence of 90 percent, with no sign of significant erosion which is defined at 405 KAR 16:190 section 6 as rills and gullies deeper than nine inches or rills and gullies of a lesser depth which are disruptive to the postmining land use or may cause or contribute to the violation of a water quality standard. The Federal rules at 30 CFR 816.116(b)(3)(iii) require that ground cover in areas developed for forestry, wildlife and recreation shall not be less than needed to achieve the approved postmining land use. The Director believes that 80 percent ground cover is acceptable given the difficulties of establishing trees and shrubs in herbaceous cover and given that when it occurs crown and root closure of the trees and shrubs will provide permanent site protection. He, therefore, finds 405 KAR 16:200 section 5(2)(c) to be no less effective than the Federal rules.

For other land uses, Kentucky is proposing a ground cover success standard of 80 percent with no sign of significant erosion. The Federal standard at 30 CFR 816.116(b)(4) requires that ground cover shall not be less than that required to control erosion. The Director finds that Kentucky's proposal at 405 KAR 16:200 section 5(2)(d) is no less effective than 30 CFR 816.116(b)(4) and the general revegetation requirement at 30 CFR 816.111(a)(4).

Kentucky has proposed an additional environmental safeguard involving ground cover and erosion. Under proposed 405 KAR 16:200 section 5(2)(e), no discrete bare area or sparsely covered area (less than 50 percent ground cover) greater than 0.25 acre in size shall be present at the time of Phase III bond release. This limitation would enhance the statistical evaluation of revegetation success by ensuring that no bare areas larger than specified would exist on the reclaimed sites. While there is no direct Federal counterpart to this proposal, the Director finds it to be not inconsistent with the requirements of SMCRA and the Federal regulations.

For previously mined areas that were not reclaimed to current reclamation standards, Kentucky is proposing at subsection (3) to require that ground cover shall not be less than the ground cover existing before the redisturbance and shall be at least 80 percent with no significant sign of erosion. This proposal at 405 KAR 16:200 section 5(3) is consistent with 30 CFR 816.116(b)(5) which requires a vegetative ground cover not less than existed before redisturbance and adequate to control erosion. The Director, therefore, finds that it is no less effective than its Federal counterpart.

Kentucky proposes to delete existing 405 KAR section 5 which concerns ground cover, productivity and tree and shrub stocking standards, planting reporting, maintenance, and measurement requirements, special performance standards for permit areas 40 acres or less in size and definitions for ground cover and herbaceous species. The language deleted is either not required or is moved to other

portions of 405 KAR 16:200. Therefore, the deletions do not render the Kentucky program less effective than the Federal rules.

6. Tree and Shrub Stocking 405 KAR 16:200 Section 6

Kentucky proposes to delete existing 405 KAR 16:200 section 7 (Tree and Shrub Stocking) and replace it with proposed 405 KAR 16:200 section 6. The deleted paragraphs set forth standards for revegetation of areas for which the approved postmining land use requires wood plants as the primary vegetation to ensure that a cover of commercial tree species, non-commercial tree species, shrubs, or half-shrubs sufficient for adequate use of the available growing space is established. They also set forth requirements related to the use of reference areas. Kentucky's proposed deletion of 405 KAR 16:200 section 7 would render the Kentucky program less efficient than the Federal rules because as discussed below, the language proposed to replace it (405 KAR 16:200 section 6) cannot be approved. The Director is not approving the deletion because to do so would leave the State without standards for tree and shrub stocking.

Kentucky proposes to revise 405 KAR 16:200 section 6 (1)–(2) by establishing tree and shrub stocking standards where the approved postmining land use is forest land and for other postmining land uses by adopting a minimum stocking rate of 450 woody plants per acre unless a lesser density is approved by the Cabinet based on site-specific considerations. The Federal rules at 30 CFR 816.116(b)(3)(i) do not specify a minimum stocking standard. They require each state regulatory authority to establish standards on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs. Kentucky has not submitted evidence to OSM that it has consulted with and obtained approval of the respective State agencies responsible for the administration of forestry and wildlife programs. Accordingly, the Director finds that proposed 405 KAR 16:200 section 6 (1)–(2) cannot be approved.

The proposed rules at 405 KAR 16:200 section 6(3) set criteria for determining tree or shrub stocking success for areas within the permit boundary to be stocked with woody plants. At Phase III bond release, each tree or shrub counted must be alive and healthy and must be in place for not less than one growing season. At Phase II bond release, each tree or shrub counted, must be alive and healthy and must be in place for at least two growing seasons. Up to a cumulative 20 percent of the woody plants needed to meet the stocking standard may be replanted during the liability period without restarting the period. At Phase III bond release, at least 80 percent of the trees and shrubs used to determine success shall have been in place for three years or more. The Federal rules at 30 CFR 816.116(b)(3)(ii) require trees and shrubs that are counted in determining the success be alive and healthy and in place for not less than two growing seasons. Also, at least 80 percent of the trees and shrubs counted to determine success must have been in place for 60 percent of the applicable minimum period of liability which is five years in Kentucky. The Director, therefore, finds proposed 405 KAR 16:200 section 6(3) no less effective than 30 CFR 816.116(b)(3)(ii).

7. Use of Reference Areas 405 KAR 16:200 Section 7

The proposed rules at 405 KAR 16:200 section 7 govern the location, access, mapping, selection and management of reference areas used in determining revegetation success. The Federal rules at 30 CFR 816.116(b) permit the use of reference areas for this purpose. The term reference area is defined at 30 CFR 701.5 to mean a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the regulatory authority. Reference areas are required to be representative of geology, soil, slope, and vegetation in the permit area. The Director finds that Kentucky's proposed rules are no less effective than the Federal rules because they require reference areas to be representative of conditions within the permit area, to be maintained under appropriate management and to be identified in the permit application. There is also assurance that both OSM and the State will have the right of entry for the purpose of observing and measuring vegetation.

8. Planting Report 405 KAR 16:200 Section 8

Kentucky proposes at 405 KAR 16:200 section 8(2) to add the requirement that permittees file with the Cabinet a certified planting report if any augmented reseeding or replanting or other augmentative work is performed within the permit area. The Federal rules are silent on the reporting of augmentative practices by permittees. The Director believes that such reporting requirements will assist Kentucky achieve an effective regulatory program. While there is no Federal counterpart to this proposal, the Director finds it to be not inconsistent with SMCRA and the Federal regulations.

9. Measurement of Vegetation Success 405 KAR 16:200 Section 9

Kentucky is proposing at 405 KAR 16:200 section 9(1) to incorporate into its rules by reference TRM 19—Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands—as its methods and procedures for measuring vegetation success. This document contains detailed instructions on vegetation and crop sampling, and procedures for testing whether reclaimed lands have satisfied success standards required for performance bond release. Prior to its submission to OSM, it was reviewed and tested over a three-year period both by the Cabinet and consultants in the coal industry.

In TRM 19, Kentucky proposes to require the measurement of ground cover and tree and shrub stocking using either the parallel transect method or the angular transect method for locating observation points. At these points, ground cover will be measured using either a scoping devise or a 2.5 foot square sampling frame. A .0288 acre circular plot is proposed for taking tree and shrub counts at a minimum of ten observation points.

The Federal rules at 30 CFR 816.116(a) require that each state program include standards for success and statistically valid sampling techniques for measuring success. Such standards must include criteria to evaluate ground cover, production or stocking. Kentucky has satisfied these basic requirements by proposing 405 KAR 16:200 section 9(1) and by proposing to incorporate by reference TRM 19. The Director finds that 405 KAR 16:200 section 9(1) and TRM 19 are no less effective than the Federal rules at 30 CFR 816.116.

Kentucky proposes in 405 KAR 16:200 section 9(2) that ground cover and tree and shrub stocking shall be measured using the techniques outlines in TRM 19. In section 9(3), Kentucky proposes that productivity for pastureland and cropland shall be measured by either techniques established in TRM 19 or by harvesting the entire crop or forage to determine total yield from the entire permit area or the entire portion designated as cropland or pastureland. Representative

samples must be taken to determine moisture content. Procedures for determining total yields must be approved in advance by the Cabinet. The Director has previously found TRM 19 to be no less effective than the Federal rules. He finds harvesting the entire crop or forage an acceptable method of determining success because there is no sample error since it is a 100-percent sampling of the area and is no less effective than 816.116(a)(2).

As an alternative to harvesting the entire permit area, the permittee under proposed 405 KAR 16:200 section 9(3)(c) may harvest forage from a single productivity test area that is an approved representative subarea of the permit area. This alternative is limited to cropland where hay is grown that is not prime farmland and for pastureland. Proposed 405 KAR 16:200 section 9(6) requires the productivity test area to be one contiguous subarea of the larger area to be represented. It must comprise 10 percent or more of the larger area but not less than one acre and must be representative of the soil types, slopes, and aspect of the larger area, and at the time of harvesting, must be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area. The Federal regulations at 30 CFR 816.116 (a)(1) and (a)(2) require that all sampling techniques be statistically valid and that these sampling techniques for measuring success shall use a 90-percent statistical confidence interval. Kentucky's proposal allows the permittee, with concurrence of the State Regulatory Authority, to visually determine which single subarea is representative of the entire area designated as pastureland or cropland. In the measurement of forage production, the use of a single subarea's representation of the entire area is not statistically valid because this visual judgment will be highly dependent on the training, experience and objectivity of the permittee and the State regulatory representative. Also, given the widely varying slopes, slope aspects and sometimes, soil types found within a single permit area in most regions of Kentucky, it is highly unlikely that one contiguous test plot can be truly representative of all the growing environments found within the permit area. It is unlikely that this method would be repeatable within a 90-percent statistical confidence interval. Therefore, the Director finds 405 KAR 16:200 section 9(3)(c) and 9(6) to be less effective than 30 CFR 816.116 (a)(1) and (a)(2) and is not approving them.

Kentucky proposes to allow permittees to use alternative sampling and measurement techniques for productivity determinations that are in addition to those established in TRM 19. Under proposed 405 KAR 16:200 section 9(4), alternatives may be approved if a description and justification is submitted to the Cabinet, the methodology offers substantial benefit in terms of cost efficiency or accuracy, the methodology is statistically valid, and the methodology is approved by OSM and, in the case of prime farmland, the Soil Conservation Service. 30 CFR 816.116(a)(1) requires that vegetative sampling be statistically valid and included in the State's approved program. Kentucky, by requiring alternatives to be statistically valid and approved by OSM satisfies the Federal requirement. Therefore, the Director finds 405 KAR 16:200 section 9(4) to be no less effective than 816.116(a)(1).

Kentucky proposes in 405 KAR 16:200 section 9(5) to allow measurement of ground cover, tree and shrub stocking and productivity for Phase II and Phase III bond release to be made only by the Cabinet, except that the permittee may measure productivity. The Federal rules are silent on whether the permittee or the State regulatory authority should make measurements used in determining success. Under the proposal, Kentucky shall retain responsibility for the bond release decision and have an opportunity to observe and verify the permittee's measurements. The Director, therefore, finds 405 KAR 16:200 section 9(5) to be no less effective than the Federal rules.

Kentucky proposes in 405 KAR 16:200 section 9(7) to require all crop and forage yields to be adjusted to standard moisture content. While there is no Federal counterpart to this requirement, the Director finds the proposal to be not inconsistent with the requirements of SMCRA and the Federal regulations.

Kentucky proposes in 405 KAR 16:200 section 9(8) to require the measurement of vegetation success prior to the submittal of an application for a Phase II or Phase III bond release. While there is no Federal counterpart to this requirement, the Director finds the proposal to be no less effective than the Federal rules.

10. Surface Operations and Facilities of Underground Mining, 405 KAR 16:200.

In various sections throughout 405 KAR 16:200 reference is made to "* * * areas within the permit boundary * * *" while the corresponding language in 405 KAR 18:200 is "* * * areas within the area affected by surface operations and facilities * * *." This difference in language between Kentucky's proposed surface coal mining regulations and proposed underground coal mining regulations results in the exclusion of the "shadow area" which is the area above the underground workings not affected by surface coal mining. The Director finds this language as effective as 30 CFR 816.111 and 30 CFR 817.111 because all disturbed areas are subject to the revegetation performance standards.

IV. Summary and Disposition of Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Kentucky program. The U.S. Department of Agriculture, Soil Conservation Service; the U.S. Department of Agriculture, Forest Service; the U.S. Department of Labor, Mine Safety and Health Administration; the U.S. Department of Interior, Bureau of Mines; the U.S. Department of Interior, Bureau of Land Management; and the Tennessee Valley Authority responded but did not have any substantive comments on the proposed rules.

OSM solicited comments from the public and received responses from the Kentucky Heritage Council and the Kentucky Resources Council (KRC). The Kentucky Heritage Council had no comments or concerns; however, the KRC had several concerns that were expressed in letters dated May 11, 1992, and August 22, 1991 (Administrative Record No. KY–1148 and KY–1074). These concerns can be classified under four topics: augmentative and other practices, productivity test areas, average county yields, and operator productivity measurements.

1. Augmentative and Other Practices

KRC objected to the proposed reclamation practices found at 405 KAR 16:200 section 1(7)(a) that have been identified by Kentucky as not restarting the period of liability. KRC stated that to be consistent with the Secretary's regulations and with the Secretary's representations before the U.S. District Court for the District of Columbia, Kentucky must provide justification for why each practice is a husbandry practice normal to the State and region of the State. KRC argued that Kentucky had provided no such justification and, therefore, proposed 405 KAR 16:200 section 1(7)(a) and (b) should not be approved. The Director agrees with the KRC that Kentucky must demonstrate

that these are normal husbandry practices and for that reason the Director is not approving subsection (7)(a). The Director is deferring action on (7)(b) due to an unresolved national issue. KRC also commented on several of the five exemptions of 405 KAR 16:200 section 1(7)(a). Since OSM is not approving these exemptions based on a lack of support in the administrative record, the Director does not need to address these concerns.

KRC commented that the proposed rules should require the permittee to report augmentative practices or to maintain a record of such practices. Such a provision exists under proposed 405 KAR 16:200 section 8(2) which requires that a planting report be submitted to the Cabinet if any augmentative reseeding or replanting or, other augmentative work is performed within the permit area. The KRC also commented that section 1(7)(b) is contrary to section 509 of SMCRA. However, as discussed in the Director's findings, the Director is deferring his decision pending a reopening of the comment period on the issue.

2. Productivity Test Areas

KRC commented that the proposal to allow the use of one reference plot for demonstrating productivity for pastureland in 405 KAR 16:200 section 9(6) fails to satisfy the requirements of 30 CFR 816.116(a)(2) because of the inherent variability of soil properties within any given permit area and because a single plot fails to provide for reliable measurement of productivity. The Director agrees and is not approving 405 KAR 16:200 section 9(6).

3. Average County Yields

KRC commented that Kentucky's proposed use of average county yields as a standard instead of SCS yield values for managed lands violates SMCRA and the Secretary's rules in two ways. First, Kentucky reportedly refused to disclose how average county yields would be determined until the final rule was adopted, denying the public an opportunity to review and comment. KRC considered this contrary to the Secretary's statement on September 2, 1983 (48 FR 40150), that these sampling techniques are subject to review and public comment.

The Secretary's statement to which KRC refers applies to rulemakings at the Federal level. The public was provided an opportunity to review and comment on the proposed rules, including the use of average county yields as standards of reclamation success during the July 22, 1991, and January 22, 1992, public comment periods. KRC was the only commenter who commented on average county yields as standards of reclamation success.

KRC stated a second reason based on technical considerations for rejecting Kentucky's proposal to use average county yields. KRC believed that the average county yields published in Kentucky Agricultural Statistics were neither scientifically acceptable or valid because of the manner in which they were derived. The KRC indicated that the Kentucky Agricultural Statistics Service (KASS) derived yield values through a random survey of farmers across the State using mailed questionnaires to determine crop production on a statewide basis. According to KRC, the survey is not designed to generate county estimates, although data is published by county with input from county extension agents. KRC gave several specific reasons why it believed the yield data was not accurate, especially for the "all other hay" category. KRC emphasized its belief that without differentiating yield values by soil type and management intensity, a comparison of surface mine yields to county yields results in a scientifically invalid comparison of yield values.

OSM held discussions with the USDA SCS and the KASS concerning this issue (Administrative Record No. KY–1203). Average county yields reported in the annual publication Kentucky Agricultural Statistics are derived from a random mail survey of Kentucky farmers for the primary purpose of making statewide and nationwide yield estimates. These statewide estimates are analyzed and county estimates are developed with the help of county extension agents. Yield is not differentiated by soil type or by management intensity. The Director acknowledges that soil type and management intensity classifications would increase the accuracy of estimates; however, this information is not available.

OSM considered the use of USDA SCS yield values as suggested by KRC as an alternative to average county yields published by the KASS. SCS yield values are published in county soil surveys by soil type for high levels of management. They represent potential yields rather than actual yields. They are based on the professional judgment of the SCS soil scientists, the SCS district conservationists and county agricultural extension agents. The SCS has mapped and published soil surveys for 88 of the 120 counties in Kentucky. Soil surveys for the remaining 32 counties are either unpublished or have not been completed (Administrative Record No. KY–1203). To compare yields by soil types, the regulatory authority must have information on the soil types within the permit area prior to mining. The Kentucky State regulatory authority and OSM cannot require operators to submit premining soil surveys of proposed permit areas for lands not qualifying as prime farmland because to do so would violate the U.S. District Court for the District of Columbia ruling, In re: Permanent Surface Mining Regulation Litigation, 14 Env't. Rep. Cas. 1083, 1098 (1980). The proposed rules only apply to lands not qualifying as prime farmland. Without a premining soil survey of the permit area, it is not possible to compare postmining yields by soil type as suggested by KRC. Furthermore, there is no adjustment in SCS potential yield values for variation in weather conditions.

4. Operator Measurements of Productivity

KRC also commented on Kentucky's proposal at 405 KAR 200: section 9(6) which allows the permittee to measure productivity by harvesting a portion of the reclaimed area. KRC believed this proposed provision was too open to abuse. The KRC wanted the permittee to cut the entire area or require the State to approve the permittee's choice for the sampling. As discussed earlier, the Director is not approving this section.

V. Director's Decision

Based on the findings discussed above, the Director is approving, with exceptions, the proposed amendment submitted to OSM by Kentucky on June 28, 1991, and revised on January 22, 1992. The Director has determined that the amendment, with the exception of proposed 405 KAR 16:200 section 1(4), 1(5)(b), 1(7)(a), 1(7)(d), 5(2)(b)2, 6(1)–(2), 9(3)(c), 9(6) and proposed 405 KAR 18:200 section 1(4), 1(5)(b), 1(7)(a), 1(7)(d), 5(2)(a)2, 5(2)(b)2, 6(1)–(2), 9(3)(c), 9(6) and TRM No. 20 is no less stringent than SMCRA and consistent with regulations issued by the Secretary of Interior. The Director is not approving the deletion of existing 405 KAR 16:200 section 7 and existing 405 KAR 18:200 section 7 and is deferring his decision on 405 KAR 16:200 1(7)(b) and 405 KAR 18:200 1(7)(b). The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision.

EPA Concurrence

Under 30 CFR 732.17(h) (11)(ii), the Director is required to obtain the written concurrence of the Administrator of the

Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relates to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Kentucky program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of such provisions.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (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, to the extent allowed by law, 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 the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, and 732.13 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 Stated 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 the Office of Management and Budget 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 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. Hence, 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 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15, is amended by adding a new paragraph (pp) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(pp) The following amendments to the Kentucky Administrative Regulations (KAR) as submitted to OSM on June 28, 1991, and revised on January 22, 1992, are approved, with exceptions, effective June 8, 1993. The approved amendments pertain to revegatation and consist of revisions to 405 KAR 16:200 and 405 KAR 18:200 and Technical Reclamation Memorandum (TRM) No. 19 (Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands) and the use of average county yield data found in Kentucky Agricultural Statistics, a report published annually by the Kentucky Agricultural Statistics Service. The exceptions which are not approved are 405 KAR 16:200 section 1(4), section 1(5)(b) and section 1(7)(a), section 1(7)(d), section 5(2)(b)2, section 6(1)-(2), section 9(3)(c), section 9(6) and 405 KAR 18:200 section 1(4), section 1(5)(b), section 1(7)(a), section 1(7)(d), section (5)(2)(a)2, section 5(2)(b)2, section 6(1)-(2), section 9(3)(c), section 9(6) TRM No. 20 (Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations) the deletion of existing 405 KAR 16:200 section 7 and 405 KAR 18:200 section 7. The decision on 405 KAR 16:200 section 1(7)(b) and 405 KAR 18:200 section 1(7)(b) is deferred.

* * * * *

3. Section 917.16 is amended by adding a new paragraph (i) to read as follows:

§ 917.16 Required program amendments.

(i) By August 9, 1993, Kentucky shall submit to the Director either a proposed written amendment or a description of an amendment to be proposed which revises 405 KAR 16:200 and 405 KAR 18:200 in accordance with the Director's findings on June 9, 1993 and a timetable for enactment which is consistent with established administrative and legislative procedures in the State.

[FR Doc. 93-13538 Filed 6-8-93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD7 93-41]

Special Local Regulations: City of Augusta, GA

AGENCY: Coast Guard DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the River Race Augusta sponsored by the Augusta Port Authority. This event will be held from 7 a.m. EDT (Eastern Daylight Time) to 5 p.m. EDT each day on June 11, 12, and 13, 1993, on the Savannah River in Augusta, Georgia. If any day of the event is postponed due to weather, there will be a rain date of June 14, 1993, with these same times. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective each day from 7 a.m. EDT to 5 p.m. EDT on June 11, 12, and 13, 1993. In the event of inclement weather, an alternate date of June 14, 1993 is established, with these same times.

FOR FURTHER INFORMATION CONTACT: CDR A. A. Sarra, USCG Group Charleston, at (803) 724-7619.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received until May 3, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG J. M. Sicard, Assistant Operations Officer, Coast Guard Group Charleston, project officer, and LT J. M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The Augusta Port Authority is sponsoring the Ninth Annual River Race Augusta. Sixty (60) participants will be racing 16 to 18 foot outboard powerboats on that portion of the Savannah River at Augusta, Georgia between U.S. Highway 1 (Fifth Street) Bridge at statute mile marker 199.5 and statute mile marker 197. The boats will be competing at high speeds, creating an extra hazard in the navigable waters. These regulations are required to provide for the safety of life on the navigable waters.

Federalism

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

Environmental Assessement

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the Georgia Department of Natural Resources, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

List of Subjects in 33 CFR Part 100

Marine safety Navigation (water).

Regulations

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

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 § 100.35T0741 is added to read as follows:

§ 100.35T0741 City of Augusta, Georgia.

(a) *Regulated area.* A regulated area is established on that portion of the Savannah River at Augusta, Georgia between U.S. Highway 1 (Fifth Street) Bridge at statute mile marker 199.5 and statute mile marker 197, including the entire width of the Savannah River. Floating buoys will be placed in the river to delineate the race course.

(b) *Special local regulations.* Entry into the regulated area by other than event participants is prohibited. After termination of the River Race Augusta on June 13, 1993, or June 14, 1993, if it becomes necessary to utilize the rain date, all vessels may resume normal operation.

(c) *Effective dates.* These regulations become effective each day from 7 a.m. EDT to 5 p.m. EDT on June 11, 12, and 13, 1993. In the event of inclement weather, an alternate date is established for June 14, 1993, with these same times.

Dated: May 21, 1993.

William P. Leahy,

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

[FR Doc. 93-13560 Filed 6-8-93; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-92-91]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway; FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Town of Lantana, the Coast Guard is changing the regulations of the Ocean Avenue drawbridge, mile 1031.0, at Lantana, Palm Beach County, Florida, by permitting the number of openings to be limited during certain periods. This change is being made because of complaints of delays to highway traffic caused by back-to-back openings. This action will accommodate the needs of highway traffic while still meeting the reasonable needs of navigation.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Walter Paskowsky, Project Manager, Bridge Section, at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Walter Paskowsky, Project Manager, and Lieutenant J. M. Losego, Project Counsel.

Regulatory History

On November 12, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the Federal Register (57 FR 53673). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal, except that from December 1 to April 30, on Saturdays, Sundays, and federal holidays from 10 a.m. to 6 p.m., the bridge opens on the hour, quarter hour, half hour and three quarter-hour for the passage of vessels. The Town of Lantana requested that the existing schedule be changed to a 20 minute interval. The owner of the bridge, Palm Beach County, favored the extension of the existing schedule to weekdays

during the winter tourist season. Both proposals would reduce the impact on vehicular traffic caused by closely spaced bridge openings. Holding areas near the bridge are considered adequate to accommodate the accumulation of vessels awaiting the scheduled 15 minute openings. A Coast Guard analysis of highway traffic levels, bridge openings and navigational conditions at the bridge site, indicated the bridge averaged two openings per hour during the winter tourist season. The existing weekend regulations which have been in effect since 1983 have not caused any problems or generated any complaints from boaters. The Coast Guard concurred with the bridgeowner's recommendation to extend the existing schedule to the weekdays. This would eliminate back to back openings which impact vehicular traffic and would not adversely affect vessel traffic through the area. The rule also corrects the name of the bridge from Lantana Avenue to Ocean Avenue.

Discussion of Comments and Changes

Two letters were received from local governments expressing support for the proposal. The Town of Lantana which had requested 20 minute openings also supported the 15 minute proposal as an acceptable compromise. One commenter preferred three openings per hour instead of four, but offered no additional information. The final rule is unchanged from the proposed rule published on November 12, 1992.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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 proposed rule exempts tugs with tows, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (x) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

* * * * *

(x) *Ocean Avenue bridge, mile 1031.0 at Lantana.* The draw shall open on signal; except that, from December 1 to April 30, from 7 a.m. to 6 p.m. Monday through Friday, and from 10 a.m. to 6 p.m. Saturdays, Sundays and federal holidays, the bridge need open only on the hour, quarter-hour, half-hour, and three-quarter-hour.

* * * * *

Dated 20 May 1993.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 93–13562 Filed 6–8–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis Regulation 93–17]

Safety Zone Regulations; Upper Mississippi River Between Mile 281.6–282.6

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 281.6 and 282.6. This safety zone is necessary to protect commercial traffic from any potential hazards to barges and towboats due to the high water and strong currents in the regulated area.

EFFECTIVE DATES: This regulation is effective from May 12, 1993 until June 12, 1993, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Commander Scott P. Cooper, Captain of the Port, St. Louis, Missouri at 314–539–3823.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after publication in the **Federal Register.** Publishing an NPRM and delaying the effective date would be contrary to the public interest since immediate action is necessary to protect commercial traffic from any potential hazards to barges and towboats due to the high water and strong currents in the regulated area.

Drafting Information

The drafter of this regulation is MK2 Curtiss Diehl, project officer for the Captain of the Port.

Discussion of Regulation

This regulation is required to protect commercial traffic from any potential hazards to barges and towboats due to high river levels and strong currents at the Louisiana railroad bridge at Mile 282.1 of the Upper Mississippi River. All down bound tows greater than 500 feet in length excluding towboat are required to use a helper boat for assistance. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of 33 CFR part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5

2. A new section § 165.T0230 is added to read as follows:

§ 165.T0230 Safety Zone: Upper Mississippi River.

(a) *Location.* The following area is a safety zone: Upper Mississippi River between mile 281.6–282.6.

(b) *Effective Date.* This regulation is effective from May 12, 1993 until June 12, 1993, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* All down bound tows greater than 600 feet excluding towboat are required to use a helper boat for assistance.

Dated: May 12, 1993.

Scott P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 93–13563 Filed 6–8–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis Regulation 93–19]

Safety Zone Regulations: Upper Mississippi River Between Mile 179.0 and 184.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 179.0 and 184.0, requiring minimum horsepower and restricting the length of south bound tows during night transit. The safety zone is necessary to protect structures and commercial vessels from hazards associated with higher water conditions.

EFFECTIVE DATES: This regulation is effective on May 1, 1993 and will remain in effect until June 10, 1993 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Commander Scott P. Cooper, Captain of the Port, St. Louis, Missouri at 314–539–3823.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the regulated area.

Drafting Information

The drafter of this regulation is Chief Michael G. Bryan, Port Environmental Safety Officer, under the Captain of the Port.

Discussion of Regulation

The circumstance requiring this regulation is the rapid rise in the Upper Mississippi River water level. This regulation will be in effect from May 1, 1993 and remain in effect until the river water recedes to a safe level, or until June 10, 1993, whichever is sooner. This regulation is required to protect structures and commercial vessels from dangers associated with high water levels on the Upper Mississippi River. Entry into this zone is prohibited for towing vessels unless they have at least 250 horsepower for each 1500 tons of cargo. Southbound tows greater than 600 feet in length (excluding the tow boat) may transit the safety zone during daylight hours only. Questions can be directed to Coast Guard Group Upper Mississippi River on VHF channel 16. This regulation continues the safety zone established by COTP St. Louis docket No. 93–10, 33 CFR 165.T0222, since high water conditions continue to exist. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of 33 CFR part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary § 165.T0232 is added to read as follows:

§ 165.T0232 Safety zone: Upper Mississippi River.

(a) *Location.* The following area is a safety zone: Upper Mississippi River between mile 179.0 through 184.0.

(b) *Effective Date.* This regulation becomes effective on May 1, 1993 and will remain in effect until June 10, 1993 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* Entry into this zone by towing vessels is prohibited unless towing vessels have a minimum of 250 horsepower for each 1500 tons of cargo.

Dated: April 30, 1993.

Scott P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 93–13564 Filed 6–8–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore, MD Regulation 93–05–10]

Safety Zone Regulation: Patapsco River, East Channel, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the National Flag Day fireworks display. Fireworks will be launched from a barge anchored approximately 200 yards east of Fort McHenry Range Front Light, Patapsco River, East Channel, Baltimore, Maryland. This safety zone is necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of navigable waters during the event.

EFFECTIVE DATES: This regulation will be effective from 6 p.m. until 11 p.m. on June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Mark Williams, U.S. Coast Guard Marine Safety Office Baltimore, U.S. Customs House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–5104.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible due to the time of receipt of the notice of intent to conduct a fireworks display. Specifically, the sponsor's application to hold this event was not received until April 13, 1993, leaving insufficient time to publish a

notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Mark Williams, project officer for the Captain of the Port, Baltimore, Maryland, and Lieutenant Commander Keith B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The fireworks will be launched from a barge anchored approximately 200 yards east of the Fort McHenry Front Range Light, Patapsco River, Baltimore, Maryland. This Safety Zone will consist of a circle, with a radius of 600 feet, drawn from the center of the barge anchorage site located at Latitude 39°, 15.9′ north; Longitude 076°, 34.6′ west. This regulation is necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of the Patapsco River during the fireworks event. Since the main shipping channel will not be closed, the impact of routine navigation will be minimal.

List of Subjects in 33 CFR 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Temporary Regulations

In consideration of the foregoing, part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 C.F.R. 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 C.F.R. 1.46.

2. A temporary § 165.T0526 is added to read as follows:

§ 165.T0526 Safety Zone: Patapsco River, East Channel, Baltimore, Maryland.

(a) *Location.* The following area is a safety zone: The waters of the Patapsco River, East Channel bounded by the arc of a circle with a radius of 600 feet and with its center located at Latitude 39°, 15.9′ north; Longitude 076°, 34.6′ west.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office Baltimore, Maryland.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being 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.

(d) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland may be contacted at telephone number (410) 962–5105. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone may be contacted on VHF–FM channels 16 and 81.

(e) *Effective date.* This regulation will be effective from 6 p.m. until 11 p.m. on June 14, 1993, unless sooner terminated by the Captain of the Port Baltimore, Maryland.

Dated: May 25, 1993.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 93–13566 Filed 6–8–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300277A; FRL–4576–7]

RIN No. 2070–AB78

FD & C Red No. 40; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an exemption from the requirement of a tolerance for residues of FD & C Red No. 40 (CAS Reg. No. 25956-17-6) when used as an inert ingredient (dye, coloring agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This regulation was requested by the UNOCAL Corp.

EFFECTIVE DATE: This regulation becomes effective on June 9, 1993.

ADDRESSES: Written objections, identified by the document control number [OPP-300277A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708M, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rosalind Gross, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: WS 28, CS #1, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8354.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 1993 (58 FR 12200), EPA issued a proposed rule announcing that UNOCAL Corp., 1201 5th St., Los Angeles, CA 09934, had submitted pesticide petition (PP) 2E04132 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of FD & C Red No. 40 (CAS Reg. No. 2596-17-6), principally disodium salt of 6-hydroxy-5-[(2-methoxy-5-methyl-4-sulfophenyl)azo]-2-naphthalenesulfonic acid) when used as an inert ingredient (dye, coloring agent) not to exceed 0.002 percent by weight in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

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

One comment was received in response to the proposed rule. The comment addressed the use and the amount of dyes in pesticide formulations used to treat seeds. According to the commenter, if the FD & C Red No. 40 were to be used in

coloration of seed treated with pesticides, the dye would have to be 2 percent by weight of the pesticide formulation to distinguish treated seed from untreated seed. This comment will be addressed in a separate Federal Register notice.

The proposed regulation as requested by the UNOCAL Corporation was for FD & C Red No. 40 to be exempt from the requirement of a tolerance when used as an inert ingredient (dye, coloring agent) at a level not to exceed 0.002 percent by weight in the pesticide formulation. Based on the information cited in the proposed rule, EPA finds when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA is establishing the exemption from the requirement of a tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the Federal Register, file written objections and/or a request for a hearing 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. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: May 27, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

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

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * *		
FD & C Red No. 40 (CAS Reg. No. 25956-17-6) conforming to 21 CFR 74.340.	Not to exceed 0.002% by weight of pesticide formulation.	Dye, coloring agent.
* * * * * *		

* * * * *

[FR Doc. 93-13574 Filed 6-8-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300254A; FRL-4188-4]

RIN 2070-AC18

Endrin; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.131 for residues of the insecticide endrin (hexachloroepoxyoctahydro-endo,endo-dimethanonaphthalene) in or on various raw agricultural commodities. EPA is initiating this action because all registered uses of endrin on food/feed commodities have been canceled.

EFFECTIVE DATE: This regulation becomes effective June 9, 1993.

ADDRESSES: Written objections, identified by document control number, [OPP-300254A], may be submitted to: Hearing Clerk (A110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718H, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5179.

SUPPLEMENTARY INFORMATION: This document announces the revocation of all tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide endrin in or on various raw agricultural commodities. These tolerances are listed in 40 CFR 180.131.

EPA issued proposed rule, published in the Federal Register of August 12, 1992 (57 FR 36047), which proposed the revocation of tolerances for residues of endrin in or on all the raw agricultural commodities listed in 40 CFR 180.131, as follows: Sugar beets; sugar beet tops; broccoli; brussels sprouts; cabbage; cauliflower; cotton seed; cucumbers; eggplant; peppers; potatoes; summer squash; and tomatoes.

EPA's decision to revoke all endrin tolerances listed in 40 CFR 180.131 was based on the fact that endrin is no longer domestically registered under FIFRA for use on any food crops, and a tolerance is generally not necessary for a pesticide chemical that is not registered for a particular food use.

EPA has reviewed recent endrin residue monitoring data concerning possible persistence of endrin in the environment, and, based on these data, EPA will not recommend any action levels for endrin.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

Therefore, based on information considered by EPA and discussed in detail in the August 12, 1992 proposal and in this final rule, EPA is hereby revoking all tolerances listed in 40 CFR 180.131 for residues of endrin.

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing 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 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).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published August 12, 1992, the EPA has determined, pursuant to the requirements of Executive Order 12291, that removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat 1164; 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the August 12, 1992 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.131 [Removed]

2. By removing § 180.131 *Endrin; tolerances for residues.*

[FR Doc. 93–13575 Filed 6–8–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300250A; FRL–4188–2]

RIN No. 2070–AB78

EPN; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.119 for residues of the insecticide EPN (*O*-ethyl-*O*-*p*-nitrophenyl benzene thiophosphonate) in or on various raw agricultural commodities. EPA is initiating this action because all registered uses of EPN on food commodities have been canceled.

EFFECTIVE DATE: This regulation becomes effective June 9, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP–300250A], 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: Jim Downing, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718H, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5179.

SUPPLEMENTARY INFORMATION: This document announces the revocation of all tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide EPN in or on various agricultural commodities. These tolerances are listed in 40 CFR 180.119.

EPA issued a proposed rule, published in the **Federal Register** of August 12, 1992 (57 FR 36043), which proposed the revocation of tolerances for residues of EPN in or on all the raw agricultural commodities listed in 40 CFR 180.119, as follows: Almonds, apples, apricots, beans, beets (with or without tops) or beet greens alone, blackberries, boysenberries, cherries, citrus fruits, corn, cottonseed, dewberries, grapes, lettuce, loganberries, nectarines, olives, peaches, pears, pecans, pineapples, plums (fresh prunes), quinces, raspberries, rutabagas (with or without tops) or rutabaga tops, soybeans, spinach, strawberries, sugar beets (but not sugar beet tops), tomatoes, turnips (with or without tops) or turnip greens, walnuts, and youngberries.

The Agency's decision to revoke all EPN tolerances was based on the fact that all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of technical EPN and formulated products containing EPN had been canceled in mid-1987 and all use of EPN was disallowed after August 31, 1988.

Since all use of EPN was prohibited after August 31, 1988, EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. EPN is not a persistent chemical; thus, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking. Therefore, based on the information considered by the Agency and discussed in detail in the August 12, 1992 proposal and in this final rule, the Agency is hereby revoking

all tolerances listed in 40 CFR 180.119 for residues of EPN.

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing 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 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).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published August 12, 1992, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the August 12, 1992 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.119 [Removed]

2. By removing § 180.119 *EPN; tolerances for residues.*

[FR Doc. 93-13576 Filed 6-8-93; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300255A; FRL 4160-1]

RIN No. 2070-AB78

Profluralin; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.348 for residues of the herbicide profluralin [*N*-(cyclopropylmethyl)-*α,α,α*-trifluoro-2,6-dinitro-*N*-propyl-*p*-toluidine] in or on various raw agricultural commodities. EPA initiated this action because all registered uses of profluralin on food crops have been canceled.

EFFECTIVE DATE: This regulation becomes effective on June 9, 1993.

ADDRESSES: Written objections, identified by the document control number [OPP-300255A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718-I, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule in the **Federal Register** of July 29, 1992 (57 FR 29054). This rule proposed the revocation of the tolerances for residues of profluralin in or on the raw agricultural commodities alfalfa (fresh); alfalfa hay; cottonseed; safflower seed; seed and pod vegetables (dry or succulent); seed and pod vegetable fodder and forage; soybean hay; and sunflower seed; eggs; milk; and meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep. Their tolerances were established under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, and listed in 40 CFR 180.348.

EPA's decision to revoke the tolerances for profluralin was based on the fact that in April 1984, all registrations under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) of pesticide products containing the herbicide profluralin were canceled. Since profluralin is not a persistent chemical and since its registrations were canceled 8 years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

No public comments or requests for referral to an advisory committee were received in response to the notice of the proposed rulemaking.

Therefore, based on the information considered by EPA and discussed in detail in the July 29, 1992 proposal and in this final rule, EPA is hereby revoking the tolerances listed in 40 CFR 180.348 for residues of profluralin in or on the various raw agricultural commodities identified above.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing 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).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published June 29, 1992, EPA has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the June 29, 1992 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.348 [Removed]

2. By removing § 180.348 *Profluralin; tolerances for residues.*

[FR Doc. 93–13577 Filed 6–8–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300229A; FRL–4078–1]

RIN 2070–AB78

Perfluidone; Revocation of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.165 for residues of the herbicide perfluidone (1,1,1-trifluoro-*N*-[2-methyl-4-(phenylsulfonyl)phenyl]-methanesulfonamide) in or on the raw agricultural commodity cottonseed. EPA is initiating this action because all uses of perfluidone on growing cotton have been canceled and the related tolerance for cottonseed is no longer necessary.

EFFECTIVE DATE: This regulation becomes effective June 9, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300229A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule in the **Federal Register** of June 30, 1992 (57 FR 29053). It proposed the revocation of tolerances for residues of perfluidone in or on cottonseed established under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) listed in 40 CFR 180.165.

The Agency's decision to revoke the tolerance for cottonseed was based on the fact that perfluidone was never marketed for use on cotton and is no longer registered for this use. There is no anticipation of a residue problem due to environmental contamination. Consequently, no action level is being recommended to replace the cottonseed tolerance.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in detail in the June 30, 1992 proposal and in this final rule, the Agency is hereby revoking the tolerance listed in 40 CFR 180.165 for residues of perfluidone in or on cottonseed.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing 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).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published June 30, 1992, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of the tolerance will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the June 30, 1992 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.165 [Removed]

2. By removing § 180.165 *Perfluidone; tolerances for residues.*

[FR Doc. 93–13578 Filed 6–8–93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 5F03272 and 6F03381/R1196; FRL–4585–3]

RIN 2070–AB78

Pesticide Tolerance for 4-(Dichloroacetyl)-1-Oxa-4-Azaspiro[4.5]Decane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance 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. This 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 expires on January 31, 1998.

EFFECTIVE DATE: This regulation becomes effective June 9, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 5F02372 and 6F03381/R1196], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry Leifer, Registration Support Branch, Registration Division (H7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: No. 13, 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8323.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 14, 1993 (58 FR 19387), EPA issued a proposed rule that gave notice that the Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, had 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 herbicide 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 had previously issued 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 postemergence treatments and subsequently 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 acetochlor (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, 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.

One comment was received in response to the proposed rule. The commenter stated that there were three errors in the preamble to the proposed rule. The commenter referenced the second paragraph of Unit II, "Provisions of the Proposed Rule," noting that the first appearance of "alachlor" should read "acetochlor." The commenter pointed to a second and a third error, in items one and nine of the same Unit II, asserting that item one should read "...LD_{50} of 2600 milligrams (mg)/kilogram (kg)" rather than "...LD_{50} of 600 milligrams (mg)/kilogram (kg)" and item nine should read "... and developmental toxicity of 30 mg/kg/day" rather than "... and developmental toxicity of 10 mg/kg/day."

The Agency agrees with the commenter and has considered the above corrections to the preamble of the proposed rule for this final rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the 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 fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or 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: May 27, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In subpart C, by adding new § 180.465, to read as follows:

§ 180.465 4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane; tolerances for residues.

Tolerances, to expire on 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. 93–13581 Filed 6–8–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300278A; FRL–4581–1]

RIN 2070–AB78

Fumaric Acid-Isophthalic Acid Styrene-Ethylene/Propylene Glycol Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of fumaric acid-isophthalic acid styrene-ethylene/propylene glycol copolymer when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only. This regulation was requested by Sandoz Agro, Inc.

EFFECTIVE DATE: This regulation becomes effective June 9, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP–300278A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1993 (58 FR 13238), EPA issued a proposed rule giving notice that Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018, had requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only.

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

As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

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

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

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or 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: May 20, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(d) table is amended by adding and alphabetically

inserting the following inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer (minimum average molecular weight 1 X 10^{18}).		Encapsulating agent
* * * * * * *		

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[FR Doc. 93–13582 Filed 6–8–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300247A; FRL–4160–2]

RIN No. 2070 AB–78

Crufomate; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.295 for residues of the insecticide crufomate (2-chloro-4-(1,1-dimethylethyl)phenylmethyl methylphosphoramidate) and its metabolite 2-chloro-4-(1,1-dimenthylethyl)phenol in or on fat, meat, and meat byproducts of cattle, goats, and sheep. EPA initiated this action because all registered uses of crufomate on these livestock animals have been canceled.

EFFECTIVE DATE: This regulation becomes effective June 9, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300247A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718-I, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule in the **Federal Register** of July 29, 1992 (57 FR 33477). This rule proposed the revocation of the tolerances for residues of crufomate in or on fat, meat, and meat byproducts of cattle, goats, and sheep established under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, and listed in 40 CFR 180.295.

EPA's decision to revoke the tolerances for crufomate was based on the fact that on October 1, 1988, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing the insecticide crufomate were canceled. Since crufomate is not a persistent chemical and its registrations for use were canceled more than 3 years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

No public comments or requests for referral to an advisory committee were received in response to the notice of the proposed rulemaking.

Therefore, based on the information considered by EPA and discussed in detail in the July 29, 1992 proposal and in this final rule, EPA is hereby revoking the tolerances listed in 40 CFR 180.295 for residues of crufomate in or on fat, meat, and meat byproducts of cattle, goats, and sheep.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing 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 issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published in the **Federal Register** of July 29, 1992, EPA has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the July 29, 1992 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

180.295 [Removed]

2. By removing § 180.295 *Crufomate; tolerances for residues.*

[FR Doc. 93–13583 Filed 6–8–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300251A; FRL–4186–7]

Bufencarb; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.255 for residues of the insecticide bufencarb (a mixture consisting of 25 percent 3-(1-ethylpropyl) phenyl methylcarbamate and 75 percent 3-(1-methylbutyl) phenyl methylcarbamate) in or on the following raw agricultural commodities: corn fodder, corn forage, fresh corn (including sweet corn kernels plus cob with husk removed (K+CWHR)), corn grain, rice grain, and rice straw. EPA is taking this action because all registered uses of bufencarb on these commodities have been canceled.

EFFECTIVE DATE: This regulation becomes effective on June 9, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300251A], 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: Jim Downing, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718H, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5179.

SUPPLEMENTARY INFORMATION: This document announces the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide bufencarb in or on corn fodder, corn forage, fresh corn (including sweet corn kernels plus cob with husk removed (K+CWHR)), corn grain, rice grain, and rice straw.

EPA issued a proposed rule, published in the **Federal Register** of August 12, 1992 (57 FR 36042), which proposed the revocation of tolerances for residues of bufencarb in or on all the raw agricultural commodities identified above and listed in 40 CFR 180.255. The Agency's decision to revoke these tolerances was based on the ract that all registered uses of bufencarb on corn and rice had been canceled.

Since the registrations for bufencarb products were canceled more than 6 years ago, existing stocks of those products should have been depleted several years ago. Thus, EPA believes there has been adequate time for legally treated agricultural commodities to have gone through channels of trade. Further, since bufencarb is not a persistent chemical, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person adversely affected by this regulation revoking the tolerance may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing 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). 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).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published August 12, 1992, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub.L. 96-354, 94 Stat 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the August 12, 1992 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 1993.

Susan H. Wayland,
Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.255 [Removed]

2. By removing § 180.255 *Bufencarb; tolerances for residues.*

[FR Doc. 93–13585 Filed 6–8–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300228A; FRL–4078–2]

RIN 2070–AB78

Nitrapyrin; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.350 for the combined residues of the soil microbicide nitrapyrin (2-chloro-6-(trichloromethyl)pyridine) in or on the raw agricultural commodities rice grain and rice straw. EPA is inititating this action because all registered uses of nitrapyrin on rice have been canceled.

EFFECTIVE DATE: This regulation becomes effective June 9, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300228A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718-I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: This document announces the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for residues of the soil microbicide nitrapyrin in or on the raw agricultural commodities rice grain and rice straw.

EPA issued a proposed rule, published in the **Federal Register** of June 30, 1992 (57 FR 29054), which proposed the revocation of tolerances for residues of nitrapyrin in or on rice grain and rice straw. The Agency's decision to revoke these tolerances was based on the fact that all registered uses of nitrapyrin on rice had been canceled.

Since it is unlikely that nitrapyrin would persist in soil more than 5 years and since the registrations for nitrapyrin for use in rice production as a soil microbicide were canceled more than 5 years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels are being recommended to replace the tolerances upon their revocation.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in detail in the June 30, 1992 proposal and in this final rule, the Agency is hereby revoking the tolerances listed in 40 CFR 180.350 for residues of nitrapyrin in or on the raw agricultural commodities rice grain and rice straw.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing 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).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published June 30, 1992, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the June 30, 1992 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.350 [Amended]

2. Section 180.350 *Nitrapyrin; tolerances for residues* is amended in paragraph (a) table by removing the entries "Rice, grain" and "Rice, straw".

[FR Doc. 93-13579 Filed 6-8-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 372

[OPPTS-400002B; FRL-4587-3]

Toxic Chemical Release Reporting; Community Right-to-Know; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: This document corrects three errors in the list of toxic chemicals published in the **Federal Register** of February 16, 1988, in which EPA promulgated the final regulations for section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. Two of these errors are typographical errors for the Chemical Abstracts Service (CAS) registry numbers for freon-113 and di (2-ethylhexyl)phthalate. The third correction is to replace the listing for methylenebis(phenylisocyanate) (MBI) to methylenebis(phenylisocyanate) (MDI). This document corrects these errors.

EFFECTIVE DATE: This document is effective June 9, 1993.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, Toll free TDD: 800-553-7672.

SUPPLEMENTARY INFORMATION:

I. CAS Number Corrections

In the **Federal Register** of February 16, 1988 (53 FR 4530), EPA issued the final rule on the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 including the list of toxic chemicals. The Chemical Abstract Service (CAS) number for freon-113 was incorrectly published as "77-13-1" in the CAS order list in the regulations on page 4534. The correct CAS number is 76-13-1. In addition, in the same **Federal Register**, the CAS number for di (2-ethylhexyl)phthalate was incorrectly published as "177-81-7" in the alphabetical list in the regulations on page 4531. The correct CAS number is 117-81-7.

II. Chemical Listing Correction

Also in the **Federal Register** of February 16, 1988 (53 FR 4530), the chemical listing associated with CAS number 101-68-8 was incorrectly published as methylenebis(phenylisocyanate) (MBI) in the regulations on pages 4532 and

4535. The correct listing for CAS number 101–68–8 should be methylenebis(phenylisocyanate) (MDI). MBI is not commonly recognized as an identifier for the listed toxic chemical and may cause confusion for those attempting to comply with the EPCRA section 313 reporting requirements. In addition, MBI has been identified with a CAS number other than 101–68–8. The acronym MDI is more often associated with the chemical methylenebis(phenylisocyanate) and is commonly used as a synonym for this chemical throughout industry and on other regulatory listings (e.g., Clean Air Act Amendments section 112(b) list; 29 CFR 1910.1000 Table Z-1-A; and the Toxic Substances Control Act section 8). The Agency believes that MDI is the more appropriate listing for this chemical.

List of Subjects in 40 CFR Part 372

Air pollution control, Chemicals, Community right-to-know, Hazardous substances, Hazardous waste, Imports, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 20, 1993.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.65 by revising the entries for Di (2-ethylhexyl)phthalate and Methylenebis(phenylisocyanate) (MBI) in paragraph (a), and in paragraph (b), revising the entry 101–68–8, removing the entry 77–13–1, and adding the entry 76–13–1 to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

(a) * * *

Chemical name	CAS No.	Effective date
* * * * * * *		
Di (2-ethylhexyl)phthalate	117–81–7	1/1/87
* * * * * * *		
Methylenebis(phenylisocyanate) (MDI)	101–68–8	1/1/87
* * * * * * *		

(b) * * *

CAS No.	Chemical name	Effective date
* * * * * * *		
76–13–1	Freon-113	1/1/87
* * * * * * *		
101–68–8	Methylenebis(phenylisocyanate) (MDI)	1/1/87
* * * * * * *		

[FR Doc. 93–13060 Filed 6–8–93; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–318; RM–7853, RM–7889, RM–7890]

Radio Broadcasting Services; Three Lakes, Newbold, Nekoosa and Port Edwards, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 229C2 to Three Lakes, Wisconsin, as that community's first local service in response to a petition filed by Three Lakes Broadcasting. *See* 56 FR 57608, November 13, 1991. The coordinates for Channel 229C2 are 45–47–48 and 89–10–06. Canadian concurrence has been obtained for this allotment. The counterproposal filed by Pacer Radio of Oneida (RM–7889) to add Channel 229C2 at Newbold, Wisconsin, has been dismissed. The counterproposal filed by Berry Radio Company (RM–7890) to substitute Channel 229C3 for Channel 229A at Nekoosa, Wisconsin, and change the community of license from Nekoosa to Port Edwards, Wisconsin, has also been dismissed. With this action, this proceeding is terminated.

DATES: Effective July 19, 1993. The window period for filing applications for Channel 229C2 at Three Lakes will open on July 20, 1993, and close on August 19, 1993.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–318, adopted May 6, 1993, and released June 3, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's

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 contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Three Lakes, Channel 229C2.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13479 Filed 6–8–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–248; RM–7778]

Radio Broadcasting Services; Huntingdon, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Milan Broadcasting Company, Inc., licensee of Station WVHR–FM, Channel 265A, Huntingdon, Tennessee, substitutes Channel 265C3 for Channel 265A at Huntingdon and modifies Station WVHR–FM's license to specify operation on the higher powered channel. See 56 FR 41811, August 23, 1991. Channel 265C3 can be allotted to Huntingdon in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northeast. The coordinates for Channel 265C3 are 36–03–00 and 88–20–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 22, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–248, adopted May 6, 1993, and released June 4, 1993. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC's 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, ITS, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 FM Table of Allotments under Tennessee, is amended by removing Channel 265A and adding Channel 265C3 at Huntingdon.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13601 Filed 6–8–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 905, 915, 933, 942, 952, and 970

Acquisition Regulation; Miscellaneous Amendments (Number 3)

AGENCY: Department of Energy (DOE).

ACTION: Final rule; technical amendments.

SUMMARY: The Department is amending the Department of Energy Acquisition Regulation (DEAR) to perform "housekeeping" duties such as updating references, correcting editorial errors, and clarifying language. This rule falls under the exceptions stated in the Administrative Procedure Act to the proposed rulemaking and public procedure requirements. These corrections and changes are all technical and administrative in nature, and none of them raises substantive issues. All of these changes are summarized in the "Section-by-Section Analysis" appearing later in this document.

EFFECTIVE DATE: This rule will be effective July 9, 1993.

FOR FURTHER INFORMATION CONTACT:

Kevin M. Smith, Office of Procurement, Assistance and Program Management (PR–121), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8189.

Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1900.

SUPPLEMENTARY INFORMATION:

I. Section-by-Section Analysis

A detailed list of changes follows:

1. The authority citation for Parts 905, 915, 933, 942, and 952 is restated

2. Section 905.403 and subsection 905.403–70 are amended to reflect an organizational name change by changing "Office of Congressional Affairs" to "Office of Congressional and Intergovernmental Affairs" wherever it appears.

3. Section 915.504 is amended for clarity at paragraph (b)(6)(i) by adding the word "with" after the word "accordance" and by adding the word "announcement" after the word "development."

4. Section 933.170 is amended to correct a citation at paragraph (a) by changing "970.4406" to "970.7107."

5. Section 942.1004 is amended to reflect a change in the office responsible for advance agreements by deleting "Oak Ridge Operations Office" and substituting "Office of Policy, Office of Procurement, Assistance and Program Management" and by deleting "Oak Ridge Operations Office, Chief, System and Cost Analysis Branch, P.O. Box E, Oak Ridge, TN 37831" and substituting "Office of Policy, Office of Procurement, Assistance and Program Management."

6. Subsection 952.250–70 is amended to correct the date of the clause by changing "(Nov 1991)" to "(Jan 1992)."

7. The authority citation for part 970 is restated.

8. Subsection 970.1509–7 is amended to correct referenced citations in paragraphs (a) and (c) by changing "915.971–5(f)" to "915.971–5(h)."

9. Subpart 970.31 is amended to correct the heading by changing the word "Costs" to "Cost."

10. Subsection 970.5204–15 is amended, at paragraph (b), second sentence, in (2), by changing the word "with" to "which," and at paragraph (c), second sentence, by changing the word "made" to "make."

11. Subsection 970.5204–55 is amended, at paragraph (c), fifth sentence, by changing the word "subcontractor" to "contractor."

12. Section 970.7103 is amended to correct a referenced citation at paragraph (c)(3) by changing "970.7103(b)(4)" to "970.7103(c)(4)."

13. Subsection 970.7104–12 is amended to correct a referenced citation at paragraph (f) by changing "970.7103(b)(5)" to "970.7103(c)(5)."

14. Subsection 970.7104–39 is amended to correct a misspelled word by changing "Mangement" to "Management."

II. Procedural Requirements

A. Regulatory Review

Pursuant to the January 22, 1993, Memorandum for the Heads and Acting Heads of Agencies Described in section 1(d) of Executive Order 12291, from the Director of the Office of Management and Budget (OMB), DOE submitted this Notice to the Director for appropriate review. The Director has completed his review. Separately, the Department has determined that there is no need for a regulatory impact analysis as the rule is not a major rule as that term is defined in section 1(b) of Executive order 12291.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements areimposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will apply to states that contract with DOE; however, none of the revisions is substantive in nature.

E. National Environmental Policy Act

DOE has concluded that this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

List of Subjects in 48 CFR Parts 905, 915, 933, 942, 952, and 970

Government procurement.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on June 4, 1993.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

Chapter 9 of title 48, Code of Federal Regulations, is amended by making the following technical amendments:

1. The authority citation for parts 905, 915, 933, 942, and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 905—PUBLICIZING CONTRACT ACTIONS

2. Section 905.403 (third sentence) and subsection 905.403–70 (introductory text) are amended by removing the name "Office of Congressional Affairs" and adding in its place the name "Office of Congressional and Intergovernmental Affairs" in all four occurrences.

PART 915—CONTRACTING BY NEGOTIATION

Section 915.504 [Amended]

3. Section 915.504 is amended in paragraph (b)(6)(i) by adding the word "with" after the word "accordance" and by adding the word "announcement" after the word "development".

PART 933—PROTESTS, DISPUTES, AND APPEALS

Section 933.170 [Amended]

4. Section 933.170 is amended in paragraph (a) by changing the citation "970.4406" to "970.7107".

PART 942—CONTRACT ADMINISTRATION

Section 942.1004 [Amended]

5. Section 942.1004 is amended in the first sentence by removing "Oak Ridge Operations Office" and adding in its place "Office of Policy, Office of Procurement, Assistance and Program Management" and in the third sentence by removing "Oak Ridge Operations Office, Chief, System and Cost Analysis Branch, P.O. Box E, Oak Ridge, TN 37831." and adding in its place "Office of Policy, Office of Procurement, Assistance and Program Management."

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Section 952.250–70 [Amended]

6. Subsection 952.250–70 (introductory text) is amended by removing "(Nov 1991)" and adding in its place "(Jan 1992)".

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

7. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the

Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

Section 970.1509–7 [Amended]

8. Subsection 970.1509–7 is amended by removing "915.971–5(f)" in paragraphs (a) and (c) and adding in its place "915.971–5(h)".

Section 970.31 [Amended]

9. The heading of subpart 970.31 is amended by removing "Costs" and adding in its place "Cost".

Section 970.5204–15 [Amended]

10. Subsection 970.5204–15 is amended at paragraph (b), second sentence, in (2), by removing "with" and adding in its place "which"; and at paragraph (c), second sentence by removing "made" and adding in its place "make".

Section 970.5204–55 [Amended]

11. Subsection 970.5204–55 is amended at paragraph (c), fifth sentence, by removing "subcontractor" and adding in its place "contractor".

Section 970.7103 [Amended]

12. Section 970.7103 is amended at paragraph (c)(3) by removing "970.7103(b)(4)" and adding in its place "970.7103(c)(4)".

Section 970.7104–12 [Amended]

13. Subsection 970.7104–12 is amended at paragraph (f) by removing "970.7103(b)(5)" and adding in its place "970.7103(c)(5)".

Section 970.7104–39 [Amended]

14. Subsection 970.7104–39 is amended by removing "Mangement" and adding in its place "Management".

[FR Doc. 93–13572 Filed 6–8–93; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Four Endemic Puerto Rican Ferns

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Adiantum vivesii* (no common name), *Elaphoglossum serpens* (no common name), *Polystichum calderonense* (no common name), and *Tectaria estremerana* (no common name) to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Adiantum vivesii* and *Tectaria estremerana* have each been reported from only one locality in the limestone hills of northern Puerto Rico. *Elphoglossum serpens* is found at a single site in the montane dwarf forest of the summit of Cerro Punta in the central mountains, *Polystichum calderonense* is known from only two localities, Monte Guilarte Commonwealth Forest and Cerrote Pēnuelas.

Threats to these ferns, depending on the species, include the potential for habitat destruction and modification, impacts from forest management, hurricane damage, and possible collection. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana.*

EFFECTIVE DATE: July 9, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622, and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, NW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3583).

SUPPLEMENTARY INFORMATION:

Background

Adiantum vivesii was described by Dr. George R. Proctor in 1985 from specimens collected by Mr. Miguel Vives and Mr. William Estremera at Barrio San Antonio in the municipality of Quebradillas (Proctor 1989). At present, the species is only known from this locality. A single colony of an estimated 1000 plants, or growing apices, has been reported from the locality (Proctor 1991). This species occurs in a deeply shaded hollow at the base of north-facing limestone cliffs at a lower to middle elevation of approximately 250 meters.

Adiantum vivesii is a gregarious colonial fern with creeping, nodose, and 2.5–3.0 mm thick rhizomes. The fronds are distichous and erect-spreading, approximately 0.5 cm apart and 45–71 cm long. The stipes or stalks are lustrous purple-black, 25–46 cm long, irregularly branched and have hairlike scales. The frond's blades are broad and irregular, 20–28 cm long, and 23–35 cm broad. The rachis and costae are more densely covered with hairlike scales than the stip. The blades have 2 or 3 alternative or sometimes subopposite pinnae, with a larger terminal one. These are lance-oblong, 13–20 cm long, and 3.5–5 cm broad. The terminal pinna may be up to 7 cm broad, stalked, and is often somewhat inequilateral. Each pinna has 10–13 pairs of alternate, narrowly oblong-falcate pinnule, which are unequally cuneate at the base. The outer sterile margins of the pinna are irregularly serrulate and the tissue is dull green on both sides. Five elliptic to linear sori are borne along the basal half of acroscopic margin and they are close or contiguous but distinct. The indusioid is gray-brown, turgid, with an erose margin (Proctor 1989).

A. vivesii occurs on privately owned land, and is known from only a single locality (Proctor 1991). Clearing or development of this area would result in elimination of the only known population. Also, this species could be an attractive item for collectors.

Elaphglossum serpens was described by Maxon in 1947 from specimens on tree trunks at Monte Jayuya (Liogier and Martorell 1982), but the fern is now extirpated from this site due to construction of a communication facility. It was later found by Roy O. Woodburry and others on the summit of Cerro Punta (Proctor 1991). Most of the plants at the latter site have been destroyed by the construction of telecommunications towers (Proctor 1991). At present, 22 plants are known from the summit area, all occurring on the mossy trunks of only 6 trees (Proctor 1991). These trees are found in a patch of a montane dwarf forest at an elevation of about 1300 meters. This patch of forest is all that has survived the encroachment of telecommunication towers, and was badly damaged in 1989 by Hurricane Hugo (Proctor 1991).

Elaphoglossum serpens is an epiphytic fern with a wide-creeping, 1.5–2 mm thick rhizome. The apex and nodes bear lustrous reddish-brown scales with ciliate margins which are lanceolate to attenuate and 3–4 mm long. This species has only a few, distant, and erect fronds. Sterile fronds are 7–19 cm long and the stipes, from 3.5–11 cm in length, are usually as long or longer than the blades. The blades are ovate, 3.5–8 cm long and 2–3.5 cm broad, obtuse at the apex, cuneate at the base. The veins are free, reaching the

margins of the blades. The coriaceous tissue is opaque with only scattered scales on the abaxial side. The fertile fronds are 8.5–18 cm long, and in contrast to the sterile fronds the stipes are about three times longer than the blades. The blades are lanceolate to elliptic-oblong with rounded or blunt apex, 2.5–4.5 cm long and 1–1.5 cm broad.

Polystichum calderonense was described by Dr. George Proctor in 1985 from specimens collected from the summit of La Silla de Calderón, Monte Guilarte Commonwealth Forest, in the municipality of Adjuntas (Proctor 1989). A second population was found in 1987 on Cerrote de Peñuelas, in the municipality of Peñuelas, by Dr. Proctor with Dr. Haneke (Proctor 1991). At present this species is known to occur only at these two localities. The plants grow on moist, shaded, non-calcareous ledges on mountain tops at elevations of 1000–1150 meters. Fifty-seven individual plants are known from the two localities: 45 (including juveniles) on La Silla de Calderón and 12 on Cerrote Peñuelas (Proctor 1991).

Both sites were identified by Proctor (1991) as vulnerable to indiscriminate cutting or fires. In Peñuelas, the plants are on private land which may be affected by industrial or residential development.

Polystichum calderonense is an evergreen terrestrial fern. It has a curved-ascending, 7 mm thick rhizome which is clothed at the apex with lanceolate to oblong, curved, shining black, marginate scales up to 10 mm long. Its fronds are erect to spreading and may reach 60 cm in length. The twice-pinnate blades are lanceolate, 25–40 cm long, 6–14 cm broad, and narrowed and truncate at the apex. Blades terminate in a scaly proliferous bud which is somewhat narrowed toward the base. This species has 30–36 pairs of oblique, short-stalked pinnae. It has a characteristic 4–7 cm long and 0.9–1.3 cm broad middle pinnae, with 8–10 pairs of free pinnules. The tissue is dark green, rigid, and opaque. From 1 to 5 sori are found dorsally on the veins of each pinnule, but are not clearly arranged in rows. The sori are covered by a light brown, deciduous, thin indusium.

Tectaria estremerana was described by Proctor and Evans in 1984 from specimens collected by William Estremera at Barrio Esperanza, Arecibo, in the vicinity of the Arecibo Radio Telescope (Proctor 1988). This species is found in moist shaded humus on and among limestone boulders on a wooded rocky hillside at an elevation of 250–300 meters (Proctor 1989). This fern is known only from this site, where a total of 23 individual plants were found. The site is about 200 meters south of the Arecibo Radio Telescope, and any expansion or development of the facilities may adversely affect the habitat of this endemic fern (Proctor 1991).

Tectaria estremerana has a woody, erect, 10–15 mm thick rhizome. The rhizome's apex bears a dense tuft of erect, brown, glabrous, narrowly deltate-attenuate scales about 15 mm long and 0.5–0.8 mm wide at the base. This fern has several loosely fasciculate, 65–80 cm long fronds. The light orange-brown stipes are shorter or nearly as long as the blades and are covered with pale jointed hairs. Scales up to 12 mm long clothe the base. The blades are oblong-ovate, 35–41 cm long, 20–25 cm broad below the middle, and acuminate at the pinnatifid apex. The rachis, the costae, and the costules are softly puberulous with articulate hairs on both sides. This fern has 3–4 pairs of free pinnae, and has several distal divisions which are more or less adnate. The basal pair of pinnae is deltate-oblong, strongly inequilateral, 12–13 cm long, coarsely lobate or subpinnatifid. The lobes are from 9 to 13 mm broad except for the larger basal basiocopic ones. Its tissue is firmly herbaceous and glabrous, but the margins are ciliate. The sori are located nearer to the midvein than the margin of the pinna-lobes.

Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense, and *Tectaria estremerana* were recommended for Federal listing in an interagency workshop held to discuss candidate plants in September 1988. The species were subsequently included as Category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the February 21, 1990 (55 FR 6184) notice review. A proposed rule to list these four species was published July 14, 1992 (57 FR 31167).

Summary of Comments and Recommendations

In the July 14, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were requested to comment. A newspaper notice inviting general public comment was published in the San Juan Start on August 1, 1992. Two letters of comment were received and are discussed below. A public hearing was neither requested nor held.

The Puerto Rico Department of Natural Resources, Natural Heritage Division, supported the listing of *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* as endangered species. The Department mentioned that these four plant species are currently considered critical in their Natural Diversity Inventory.

The U.S. Forest Service provided comments, but did not indicate either support or objection to listing the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Adiantum vivesii* Proctor, *Elaphoglossum serpens* Maxon & Maxon ex Maxon, *Polystichum calderonense* Proctor, and *Tectaria estremerana* Proctor & Evans, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Destruction and modification of habitat may be the most significant factors affecting the numbers and distribution of these four endemic ferns. Three of the species (*Adiantum vivesii, Elaphoglossum serpens,* and *Tectaria estremerana*) are each known from only one site, all of which are privately owned lands. The construction of communications facilities at Monte Jayuya destroyed the only other known population of *Elaphoglossum serpens,* and similar facilities encroach upon the population at Cerro Punta. It appears that this species is in extreme danger of extinction.

Although *Polystichum calderonense* occurs within the Guilarte Commonwealth Forest, this population may be affected by forest management practices. These four fern species are rare, extremely restricted in distribution, and very vulnerable to habitat destruction or modification. The

extreme rarity of these species makes the loss of any one individual even more critical.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these fern species. However, these four species may be very attractive for collectors.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana,* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Probably the most important factor affecting *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana,* is their limited distribution. The patch of forest where *Elaphoglossum serpens* is found was badly damaged in 1989 by Hurricane Hugo.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* as endangered. Only one population each of *Adiantum vivesii, Elaphoglossum serpens,* and *Tectaria estremerana* is known. Only two populations of *Polystichum calderonense* are known to occur. Collecting may severely impact these populations. Habitat modification, including indirect effects that alter microclimatic conditions, may dramatically affect these four endemic fern species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. The number of populations of *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* are sufficiently small that vandalism and collection could seriously affect the survival of these species. Taking is an activity that is difficult to control, and it is only regulated by the Act with respect to endangered plants in cases of (1) removal and reduction to possession of these plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the **Federal Register** would only increase the likelihood of such activities and would not provide offsetting benefits. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these four fern species, as discussed above. Federal involvement is not anticipated where the species are known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these four species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and

Wildlife Service, 4401 Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Liogier, H.A., and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Proctor, G.R. 1988. Status of Puerto Rican Endemic Ferns. List presented in the Interagency Workshop on candidate plant species. Caribbean Islands National Wildlife Refuge, Boquerón, Puerto Rico.

Proctor, G.R. 1989. Ferns of Puerto Rico and the Virgin Islands. The New York Botanical Garden, Bronx, New York. 389 pp.

Proctor, G.R. 1991. Puerto Rican Plant Species of Special Concern; Status and Recommendations. Publicación Científica Miscelánea No. 2, Departmento de Recursos Naturales, San Juan, Puerto Rico. 196 pp.

Author

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625. 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the three new families, "Dryopteridaceae—Wood fern family", "Lomariopsidaceae—Vine fern family", and "Adiantaceae—Maidenhair family", in alphabetical order, and by adding the following entries, in alphabetical order under the three new families as indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	*	*	*	*	*	
Adiantaceae—Maidenhair family:						
Adiantum vivesii	None	U.S.A. (PR)	E	504	NA	NA
* *	*	*	*	*	*	
Dryopteridaceae—Wood fern family:						
Polystichum calderonense.	None	U.S.A. (PR)	E	504	NA	NA
Tectaria estremerana	None	U.S.A. (PR)	E	504	NA	NA
* *	*	*	*	*	*	
Lomariopsidaceae—Vine fern family:						
Elaphoglossum serpens.	None	U.S.A. (PR)	E	504	NA	NA
* *	*	*	*	*	*	

Dated: May 7, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–13517 Filed 6–8–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640–1140; I.D. 060393B]

Atlantic Swordfish Fishery

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

ACTION: Closure of the Atlantic swordfish drift gillnet fishery.

SUMMARY: NMFS closes the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. NMFS has determined that the first semi-annual quota for swordfish that may be harvested by drift gillnet will be reached on or before June 14, 1993. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding the quota.

EFFECTIVE DATE: Closure is effective 0001 hours, local time, June 15, 1993, through 2359 hours, local time, June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed

under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*).

The implementing regulations at 50 CFR 630.24(b)(1)(i)(A) establish a quota of 47,583 pounds (21,584 kg) of swordfish that may be harvested by drift gillnet during the period January 1 through June 30, each year. Under 50 CFR 630.25(a), NMFS is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a notice with the Office of the Federal Register at least 8 days before the closure is to become effective.

Based on the current level of swordfish catch by drift gillnets and historic data on catch per set for June, NMFS has determined that the drift gillnet quota for the January 1 through June 30 period will be reached on or before June 14, 1993. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 0001 hours, local time, June 15, 1993, through 2359 hours, local time, June 30, 1993, when a new semi-annual quota becomes available. NMFS may adjust the July 1 through December 31, 1993, drift gillnet quota to reflect actual catches made in the January 1 through June 30, 1993, semi-annual period as specified in 50 CFR 630.24.

During this closure of the drift gillnet fishery: (1) A person aboard a vessel using or having aboard a drift gillnet may not fish for swordfish from the North Atlantic swordfish stock; (2) no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat.; and (3) no more than two swordfish per trip may be landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is required by 50 CFR 630.25(a) and complies with E.O. 12291.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: June 4, 1993.

David S. Crestin,

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

[FR Doc. 93–13616 Filed 6–4–93; 3:53 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 109
Wednesday, June 9, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-AWP-4]

Proposed Alteration of Jet Route J-86; NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would extend Jet Route J-86 from the Boulder City, NV, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Beatty, NV, VORTAC. Extending J-86 would enable air traffic controllers to provide pilots with a direct route from the Boulder City VORTAC to the Beatty VORTAC during the times Restricted Area R-4808S is not in use. This action would enhance the traffic flow and reduce the controller's workload.

DATES: Comments must be received on or before July 29, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 93-AWP-4, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AWP-4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend J-86 from the Boulder City VORTAC to the Beatty VORTAC. Extending J-86 would enable air traffic controllers to provide pilots a direct route from the Boulder City VORTAC to the Beatty VORTAC during the times R-4808S is not in use. This action would enhance the traffic flow and reduce the controllers' workload. Jet routes are published in Section 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.607 Jet Routes

* * * * *

J–86 [Revised]

From Beatty, NV; Boulder City, NV; Peach Springs, AZ; Winslow, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; Austin, TX; Humble, TX; Leeville, LA; INT Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT Sarasota 103° and La Belle, FL, 313° radials; La Belle; to Miami, FL.

* * * * *

Issued in Washington DC, on June 2, 1993.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–13525 Filed 6–8–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing certain technical amendments to Regulation 4.5, which excludes, under conditions specified in § 4.5(c)–(f), certain otherwise regulated persons from the definition of the term "commodity pool operator" ("CPO"). Currently, § 4.5(a)(4)(i)–(iii) provides that the definition of the term "commodity pool" (as set forth in § 4.10(d)) shall not be construed to include certain pension plans subject to the Employee Retirement Income and Security Act of 1974 ("ERISA") and pension plans defined as government plans in ERISA. Therefore, these pension plans do not have to meet the conditions specified in § 4.5(c)–(f). The amendments proposed herein would extend this "pool exclusion" provision to certain ERISA and government employee welfare benefit plans for the same reasons that similarly situated pension plans have bee afforded this exclusion. In addition, the amendments would permit a person who is a "designated" fiduciary of a pension plan or an employee welfare benefit plan subject to ERISA to be excluded from the definition of the term CPO with respect to such person's operation of such plans and subject to compliance with the provisions of § 4.5. Only *named* fiduciaries of these ERISA plans currently are so excluded, and the Commission believes that this limitation is unnecessarily restrictive. Finally, the Commission is clarifying herein an issue which is related to the calculation of the five percent margin/premium operating constraint specified in § 4.5(c)(2)(i).

DATES: Comments must be received by July 9, 1993.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, attention: Office of the Secretariat. Reference should be made to "Regulation of Commodity Pool Operators, § 4.5."

FOR FURTHER INFORMATION CONTACT:

Ronald Hobson, Supervisory Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–6990.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4m(1) of the Commodity Exchange Act ("Act") makes it unlawful for any person to engage in business as a CPO without being registered as such.[1] Part 4 of the Commission's regulations governs the operations and activities of CPOs through certain operational, disclosure, reporting and recordkeeping requirements set forth in Subpart B thereof.[2]

Regulation 4.5 (50 FR 15868–84, April 23, 1985), which became effective on April 23, 1985, and was amended effective March 1, 1993 (58 FR 6371–74, January 28, 1993), provides for the exclusion from the CPO definition, under specified conditions, of certain otherwise regulated persons—registered investment companies, state or federally regulated financial depository institutions, state regulated insurance companies, and trustees and named fiduciaries of pension and employee welfare benefit plans covered by ERISA—in connection with their operation of "qualifying entities"

In addition, the rule provides that the definition of the term "commodity pool" (as set forth in § 4.10(d)) shall not be construed to include certain pension plans so that such plans do not have to meet these specified conditions. Specifically, § 4.5(a)(4)(i)–(iii) excludes from the commodity pool definition (1) noncontributory pension plans covered under Title I of ERISA, (2) contributory defined benefit plans covered by Title IV of ERISA (which commit no voluntary employee contributions to margin or premium for futures or option contracts), and (3) plans defined as government plans in Section 3(32) of Title I of ERISA.

Concerning this provision, when the Commission issued § 4.5 in 1985, it stated that noncontributory plans can *never* be commodity pools because no funds are solicited from participants and only the employer bears the funding responsibility of the plan if there are losses. It also stated that defined benefit plans are not likely to be commodity pools even if contributions are permitted because such plans normally require the employer to cover losses and permit the employer to retain any excess earnings not needed to fund the benefit.[3] Finally, the Commission stated that governmental pension plans are not appropriate subjects for regulation and, therefore, that they need not qualify for any exclusion from such regulation.[4]

When the Commission amended § 4.5 earlier this year, it made the operators of employee welfare benefit plans covered by ERISA eligible for exclusion from the CPO definition under the

[1] The term commodity pool operator is defined in Section 1a(4) of the Commodity Exchange Act, as amended, to mean:

[A]ny person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

[2] Sections 4.20–4.23. Commission rules referred to herein are found at 17 CFR Ch. I (1993).

[3] In this regard, the Commission made it clear that it was aware that certain contributory defined benefit plans permit voluntary employee contributions, the benefits from which depend on the performance of the investments into which such contributions are placed. Because this feature has "pool" attributes, the availability of the express exclusion in § 4.5 for a contributory defined plan is subject to the provision that no such voluntary employee contributions are committed to futures or options margins or premiums. *See also* CFTC Interpretative Letter No. 93–4, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,549, in which Commission staff took the position that certain defined benefit plans that did have a voluntary employee contribution feature would not be "pools" where, among other things, benefits derived from employees' contributions were also defined benefits and the plans did not segregate the voluntary contributions.

[4] In support of this position, the Commission relied upon the sovereignty of state and local governments and the fact that Federal retirement plans are regulated by other Federal statutes.

conditions of the rule but did not exclude any such plans from the definition of a commodity pool. However, each of the arguments made previously for the current pension plan pool exclusions can be articulated for specific types of employee welfare benefit plans—noncontributory welfare plans, contributory welfare plans the benefits for which are not tied to the performance of plan investments, and government welfare plans. The Commission believes that parallel treatment therefore should be afforded to such employee welfare benefit plans.

On a related matter, for eligible ERISA plans, § 4.5(a)(4) restricts the availability of the CPO exclusion to a "trustee of, a named fiduciary of, or an employer maintaining" such a plan. When the Commission issued § 4.5 in 1985, it stated that it was not persuaded that the standards applicable to ERISA fiduciaries in general made such persons "otherwise regulated" to the same extent as trustees and named fiduciaries of ERISA plans. However, while fiduciaries do not have the same administrative responsibilities as named fiduciaries under ERISA, they are subject to identical fiduciary responsibilities under the statute. Furthermore, the participants in any ERISA plan for which a person serves as a fiduciary receive all of the other protections afforded by ERISA (*e.g.*, disclosure) regardless of who is administratively responsible for providing them. For these reasons, and because a fiduciary's exclusion from the CPO definition is by construction of § 4.5(a)–(b) provided solely to the extent of his/her role as such under an ERISA plan, the Commission has subsequently become convinced that the current limitation of the CPO exclusion to "named" fiduciaries is unnecessarily restrictive and that the exclusion should be afforded as well to certain other plan fiduciaries who otherwise would be deemed to be acting as CPOs.[5]

II. The Proposed Regulation

In view of the above considerations, the Commission proposes to amend § 4.5(a)(4) by expanding the exclusion from the commodity pool definition to include noncontributory employee welfare benefit plans covered under ERISA, governmental employee welfare benefit plans as defined in section 3(32) of title I of ERISA, and contributory employee welfare benefit plans covered under ERISA the benefits for which are independent of the plan's investment performance.

In addition, the Commission proposes to amend this section of the rule to permit CPO exclusion of additional fiduciaries (besides named fiduciaries) of pension or employee benefit plans covered under ERISA. The definition of a fiduciary in § 3(21)(A) of ERISA is a functional definition that may include persons who are not designated as plan fiduciaries by a named fiduciary of an employee benefit plan. Therefore, to avoid uncertainty with respect to the status of a person filing a notice of eligibility under § 4.5, the Commission proposes to add to the rule's list of persons eligible for the exclusion any ERISA plan fiduciary who, pursuant to a written agreement, is acting or has been designated as such by the plan's named fiduciary. Furthermore, the Commission proposes to permit such a non-named fiduciary to claim the CPO exclusion through the notice of eligibility filed by the named fiduciary.

The Commission believes that the addition of these proposed amendments to § 4.5 expanding the availability of the rule's CPO and commodity pool exclusions is consistent with the original intent of the rule. It nevertheless invites interested parties to comment on the proposed requirement that ERISA plan fiduciaries be designated or authorized as such in writing by named fiduciaries to be eligible for CPO exclusion under the rule.

In addition to these proposed amendments to § 4.5(a)(4), the Commission wishes to clarify herein a specific aspect of the operating criteria of the rule contained in § 4.5(c)(2)(i), *viz.*, the five percent initial margin/premium constraint on the assumption of non-hedge positions. It is the Commission's intent that unrealized profits and losses on a qualifying entity's existing futures and option positions are to be accounted for in the calculation of the liquidation value of the entity's portfolio only when additional futures and option positions would be assumed. This will prevent funds from assuming additional positions when substantial amounts of money have previously been committed to existing positions but not require funds to liquidate positions as a result of market forces beyond the control of the fund. The Commission notes that its staff has received several informal inquiries on this aspect of the rule since the rule was amended earlier this year and believes that the clarification made herein is responsive to such questions. Nevertheless, formal comment is invited concerning whether the clarification is sufficient.

III. Other Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. While this proposed rule has no burden, the group of rules of which this is a part has the following burden:

Average Burden Hours Per Response—138.10
Number of Respondents—11,497
Frequency of Response—Monthly, Quarterly, Semi-Annually, Annually, On Occasion

Persons wishing to comment on the information which would be required by this proposed/amended rule should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K St., NW., Washington, DC 20581, (202) 254–9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in § 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that such persons and entities would be small entities for purposes of the RFA, the Commission believes that the proposed amendments to § 4.5 would not have a significant economic impact on them because it would not require the refiling of a notice with the Commission. Moreover, the Commission

[5] See footnote 1 above which sets forth the definition of the term "commodity pool operator." Thus, while the provision of investment advice to a § 4.5 employee benefit plan may render a person a "fiduciary" for the purposes of ERISA, it would not, without more activities, bring that person within the CPO definition. *But see* CFTC § 4.14(a)(8), which makes available an exemption from registration as a commodity trading advisor ("CTA") to a person who, *inter. alia.*, is registered as an investment adviser under the Investment Advisers Act of 1940, and who provides commodity interest trading advice to § 4.5 qualifying entities or excluded entities.

notes that the proposal potentially would relieve a greater number of those persons (and entities) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Acting Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed rules will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invites comment from any firm which believes that these rules, as proposed, would have a significant economic impact on its operation.

List of Subjects in 17 CFR Part 4

Commodity futures, Commodity options, Commodity pool operators, Commodity trading advisors.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a, 4k, 4l, 4m, 4n, 4o, 8a and 14 thereof, 7 U.S.C. 2, 6k, 6l, 6m, 6n, 6o, and 12a and 18, the Commission is proposing to amend part 4 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: Sections 1a, 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a, and 19 of the Act, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. Section 4.5 is proposed to be amended by revising paragraph (a)(4) and paragraph (c) introductory text to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

(a) * * *

(4) A trustee of, a named fiduciary of (or a person designated or acting as a fiduciary pursuant to a written delegation from or other written agreement with the named fiduciary) or an employer maintaining a pension plan that is subject to Title I of the Employee Retirement Income and Security Act of 1974 or any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income and Security Act of 1974; *Provided, however,* That for purposes of this § 4.5 the following pension and employee welfare benefit plans shall not be construed to be pools:

* * * * *

(c) Any person who desires to claim the exclusion provided by this section shall file with the Commission a notice of eligibility; *Provided, however,* That a non-named fiduciary described in paragraph (a)(4) of this section may claim the exclusion through the notice filed by the named fiduciary.

* * * * *

Issued in Washington, DC on June 3, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–13534 Filed 6–8–93; 8:45 am]

BILLING CODE 6351–01–M

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–02]

RIN 2502–AF91

Manufactured Home Construction and Safety Standards on Wind Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of additional comment period.

SUMMARY: The Department is announcing additional time for submitting comments on its proposed rule published at 58 FR 19536 (April 14, 1993). The original comment period expired on May 14, 1993, but the Department has received, and has continued to accept, a number of comments after that original deadline date. Many commenters requested that the original shortened comment period provided in the proposed rule be extended. Therefore, the Department is acceding to an additional comment period, to allow development and proper consideration of all comments. All comments submitted before or by the deadline specified in this announcement will be deemed timely submissions and will be considered at the time a final rule is developed.

DATES: Comments must be received by July 9, 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) 755–7430; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice is being issued to allow additional time for the submission of comments on the proposed rule concerning wind standards for manufactured housing, published at 58 FR 19536, April 14, 1993. The proposed rule would amend the Federal Manufactured Home Construction and Safety Standards to raise the level of wind resistance standards, especially in areas subject to hurricanes or other high winds. Commenters will now have until July 9, 1993 to submit any comments on this proposed rule.

All comments that have already been received by the Department as of the date of publication of this notice will continue to be part of the docket for this proposed rule. Those comments, and any new comments received before the expiration of the additional comment period, will be considered by the Department in developing a final rule.

The original comment period for this proposed rule expired on May 14, 1993. The Department has received numerous comments on the proposed rule, including many that requested an extension of the 30-day comment period originally provided in the rule. Therefore, the Department is allowing additional time for interested persons to submit comments on the proposed rule. The Department remains committed to completing the review of alternatives to the existing standards as quickly as possible after the additional comment period has closed.

Authority: 42 U.S.C. 5403 and 5424; 42 U.S.C. 3535(d).

Dated: June 2, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–13515 Filed 6–8–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–43–93]

RIN 1545–AR66

Credit for Qualified Electric Vehicles and Deduction for Clean-Fuel Vehicles and Certain Refueling Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice invites written comments from the public on issues that the Internal Revenue Service may address in proposed regulations under sections 30 and 179A of the Internal Revenue Code (Code) relating to the credit for qualified electric vehicles and deduction for clean-fuel vehicles and certain refueling property. All materials submitted will be available for public inspection and copying.

DATES: Written comments concerning the regulations must be submitted by July 9, 1993.

ADDRESSES: Written comments should be sent to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 5228, Attn: CC:DOM:CORP:T:R (PS–43–93), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joanne E. Johnson (202) 622-3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 1913 of the Energy Policy Act of 1992 added sections 30 and 179A to the Internal Revenue Code (Code). Section 30 of the Code provides a credit for qualified electric vehicles. Section 179A provides a deduction for qualified clean-fuel vehicle property and refueling property. The Service is developing proposed regulations to assist taxpayers in computing the section 30 credit and section 179A deduction.

The Service invites comments from the public on any issue that should be addressed in proposed regulations under sections 30 and 179A of the Code. The Service is particularly interested in receiving comments on the following matters:

(1) A description of the property and components that should qualify as clean-fuel vehicle property under section 179A(c)(1) of the Code.

(2) A description of the property used for the storage or dispensing of clean-burning fuel, or the recharging of motor vehicles that should qualify as clean-fuel vehicle refueling property under section 179A(d)(3) of the Code.

(3) The data that should be used to determine (or be required to substantiate) the cost basis of property produced by an original equipment manufacturer that should qualify as clean-fuel vehicle property under section 179A(c)(1)(B) of the Code. For example, should automobile manufacturers or dealers provide individual price lists or a uniform price reference sheet on the cost basis eligible for the section 179A deduction?

(4) The data that should be used to determine the incremental cost of permitting the use of clean-burning fuel for a vehicle that may be propelled by a clean-burning fuel and any other fuel for purposes of section 179A(a)(2) of the Code.

(5) The data that should be used to determine compliance with the environmental standards under section 179A(c)(2) of the Code.

Stuart Brown,

Associate Chief Counsel (Domestic).

[FR Doc. 93–13483 Filed 6–8–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 93–039]

Safety Zone: Mount Misery Fireworks Display, Port Jefferson, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in Long Island Sound North of White Beach, Port Jefferson, NY from 8:45 p.m. to 10 p.m. on September 11, 1993. This safety zone will be needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Long Island Sound.

DATES: Comments must be received on or before July 26, 1993.

ADDRESSES: Comments may be mailed to the Captain of the Port, 120 Woodward Avenue, New Haven, CT 06512 or may be delivered to the Port Operations office at the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (203) 468–4464.

The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the Port Operations office at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.D. Skewes, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Request for Comments: The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 93–039) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information: The principal persons involved in drafting this document are LCDR D.D. Skewes, Project Manager, Captain of the Port, Long Island Sound, and LCDR D. Stieb, Project Counsel, First Coast Guard District, Legal Office.

Background and Purpose: On April 21, 1993 the sponsor, Campo Enterprises, Setauket, NY, requested that a fireworks display be permitted in the vicinity of White Beach, Port Jefferson, NY from 9 p.m. to 10 p.m. on September 11, 1993.

Discussion of Proposed Amendments: The Coast Guard proposes to establish a safety zone within a 600-foot radius of the Barges FBG 1 and FBG 2, which will be located ¼ mile north of White Beach, Port Jefferson, NY. This zone is required to protect the maritime community from the dangers associated with this fireworks display. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port or his on scene representative.

Regulatory Evaluation: This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44

FR 11040; February 26, 1979). Due to the limited duration of the fireworks display, the small size of the safety zone and low level or non existent commercial vessel traffic expected in the area during the effective time of the zone, and the broadcast of marine safety advisories the day of the event, the Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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).

For the reasons addressed in the regulatory evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information: This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism: The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment: The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.C. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For the reasons set out in the Preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; CFR 1.46.

2. A temporary section 165.T01039 is added to read as follows:

§ 165.T01039 Mount Misery Fireworks Display, Port Jefferson, NY.

(a) *Location.* The following area is a safety zone: All waters of the Long Island Sound within a 600 foot radius of the barges FBG 1 and FBG 2, the fireworks launching platforms, which will be located approximately ¼ mile North of White Beach, Port Jefferson, NY in approximate position 40°58'5"N, 073°03'5"W.

(b) *Effective date.* This section becomes effective at 8:45 p.m. September 11, 1993. It terminates at 10 p.m., September 11, 1993 unless terminated sooner by the Captain of the Port. The rain date for this project is September 12, 1993 at the same times.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port or his on scene representative.

Dated: May 21, 1993.

H. Bruce Dickey,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 93–13561 Filed 6–8–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

Office of Air and Radiation

40 CFR Part 75

[FRL–4665–1]

Acid Rain Program: Announcement of Open Meeting on Continuous Emission Monitoring (CEM) Data Acquisition and Handling Systems (DAHS) Certification, and Electronic and Magnetic Data Reporting for the CEM Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended November 15, 1990, requires the Environmental Protection Agency (EPA or Agency) to establish an Acid Rain Program to reduce the adverse effects of acidic deposition. To implement this statutory mandate, the Acid Rain Program relies on three basic components: the acid rain permit, the market-based allowance system, and continuous emissions monitoring (CEM). The CEM component is critical to provide accurate emissions measurements which ensure source compliance with the reductions mandated under the Act. The CEM regulations, promulgated in the **Federal Register** on January 11, 1993, require electric utilities to submit certification applications which include results for the verification of the calculations performed by their data acquisition and handling system (DAHS). The Environmental Protection Agency will hold a meeting to discuss the procedures for DAHS certification and auditing, and electronic data reporting and data processing procedures being developed pursuant to implementation of the reporting provisions contained in the CEM Rule (40 CFR part 75). DAHS vendors, data processing staff from affected utilities, CEM manufacturers, and other interested parties are encouraged to attend. There is no fee for attendance, however, pre-registration by telephone facsimile is required. A letter stating the attenders' names, addresses, telephone numbers, and affiliation should be sent by telephone facsimile by Friday, July 9, 1993 to Sharon Saile, Continuous Emission Monitoring Section, USEPA/OAR/ARD/SAB at 202–233–9584/9585/9586.

DATES: The meeting will be held on Wednesday, July 14, 1993, from 9 a.m. until 4:30 p.m., and if necessary will be repeated on Friday, July 16, 1993 from 9 a.m. until 4:30 p.m.

ADDRESSES: The meeting will be held in the auditorium located at the Environmental Protection Agency, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sharon Saile, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 233–9180.

SUPPLEMENTARY INFORMATION: Attendees must pre-register by telephone facsimile by Friday, July 9, 1993. If pre-registration exceeds the available conference room space for 140 attendees, a second day (to repeat the first day) will be held on Friday, July 16, 1993 from 9 a.m. until 4:30 p.m. Because seating may be limited, pre-registration for Friday will be limited to persons who were not able to attend the meeting on Wednesday; seats will be provided for repeat participants (or for those who have not pre-registered) on a first-come, first-served basis.

Dated: June 1, 1993.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–13587 Filed 6–8–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300267; FRL–4168–1]

Ethylene Dibromide; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revoke pesticides tolerances for ethylene dibromide (EDB) resulting from its use as a soil and post-harvest fumigant. EPA is taking this action because uses have been canceled.

DATES: Written comments, identified by the document control number [OPP-300267], must be received on or before August 9, 1993.

ADDRESSES: By mail, submit comments to: Public Response 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, 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 Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718-I, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 11, 1983 (48 FR 46234), EPA issued a notice of intent to cancel registrations of EDB for use as a soil fumigant, as well as other major uses of EDB. Except as specifically provided (48 FR 46240), all registrations for pesticide products containing EDB were canceled, effective 30 days after publication on October 11, 1983.

The tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) for residues of EDB *per se* or for residues of inorganic bromides resulting from use of EDB in or on the raw agricultural commodities were obtained in conjunction with the FIFRA registrations. EPA has no information to suggest that EDB is used on any food commodity which is exported to the U.S.

Because EDB is no longer registered in the U.S. for use on any food or animal feed crops, and a tolerance is generally not necessary for a pesticide chemical that is not registered for the particular food use, EPA now proposes to revoke all tolerances for residues of the pesticide EDB per se or for residues of inorganic bromides (calculated as Br) resulting from use of EDB, as follows:

1. Tolerances listed in 40 CFR 180.126 for residues of inorganic bromides (calculated as Br) in or on the following raw agricultural commodities grown in soil treated with the nematicide EDB: Asparagus, broccoli, carrots, cauliflower, sweet corn, sweet corn forage, cottonseed, cucumbers, eggplant, lettuce, lima beans, melons, okra, parsnips, peanuts, peppers, pineapple, potatoes, soybeans, strawberries, summer squash, sweet potatoes, and tomatoes.

2. The tolerance listed in 40 CFR 180.397(a) for residues of EDB per se in or on soybeans (grown in soil treated with the nematicide EDB).

3. The tolerances listed in 40 CFR 180.397(b) for residues of EDB per se in or on the following grains as a result of the use of EDB as a post-harvest fumigant prior to February 3, 1984: Barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat.

A tolerance for residues of EDB per se in or on mangoes at 0.03 part per million (ppm) (40 CFR 180.397(c)) was established January 17, 1985, and expired September 30, 1987. Because this tolerance has expired, it is being removed from 40 CFR 180.397.

This document also proposes the revision of 40 CFR 180.126a which sets forth a statement of policy regarding inorganic bromide residues in peanut hay and peanut hulls. Section 180.126a(b) currently references EDB and 1,2-dibromo-3-chloropropane (DBCP) as being possible sources of residues of inorganic bromides in peanut hay and hulls, resulting from use of those chemicals as nematicides on peanuts. However, neither EDB nor DBCP has been registered in the U.S. for use on peanuts for many years; all DBCP tolerances, including a tolerance for peanuts, were revoked January 15, 1986 (51 FR 1791; 51 FR 1785).

The only bromide pesticide which is still registered for use on peanuts is methyl bromide, whose tolerances are listed in 40 CFR 180.123. Therefore, to be a meaningful statement of policy, the text in § 180.126a needs to be revised to reflect that residues might result from the use of methyl bromide, rather than EDB or DBCP. We also are proposing to renumber this section as 180.123a to follow closely the related regulation for inorganic bromide residues in peanuts and other commodities resulting from the use of methyl bromide.

This document also proposes to amend 40 CFR l80.3(c)(1) and (2) by removing references to EDB, which is no longer registered, and adding a discussion of methyl bromide which is registered.

Since the registrations for EDB products for use as a soil fumigant were canceled more than 8 years ago, there is no anticipation of residues in crops due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains EDB 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 FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300267]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1132, at the Virginia address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all domestic registrations for use of EDB in the production of food commodities were canceled more than 8 years ago, it is anticipated that little or no economic impact would occur at any level of business enterprises if the related tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

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 § 180.3, by revising paragraph (c), to read as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(c)(1) Where tolerances for inorganic bromide in or on the same raw agricultural commodity are set in two or more sections in this part (example: §§ 180.123 and 180.199), the overall quantity of inorganic bromide to be tolerated from use of the same pesticide in different modes of application or from two or more pesticide chemicals for which tolerances are established is the highest of the separate applicable tolerances. For example, where the bromide tolerance on asparagus from methyl bromide commodity fumigation is 100 parts per million (40 CFR 180.123) and on asparagus from methyl bromide soil treatment is 300 parts per million (40 CFR 180.199), the overall inorganic bromide tolerance for asparagus grown on methyl bromide-treated soil and also fumigated with methyl bromide after harvest is 300 parts per million.

(2) Where tolerances are established in terms of inorganic bromide residues only from use of organic bromide fumigants on raw agricutural commodities, such tolerances are sufficient to protect the public health, and no additional concurrent tolerances for the organic pesticide chemicals from such use are necessary. This conclusion is based on evidence of the dissipation of the organic pesticide or its conversion to inorganic bromide residues in the food when ready to eat.

* * * * *

3. By revising newly redesignated § 180.123a to read as follows:

§ 180.123a Inorganic bromide residues in peanut hay and peanut hulls; statement of policy.

(a) Investigations by the Food and Drug Administration show that peanut hay and peanut shells have been used as feed for meat and dairy animals. While many growers now harvest peanuts with combines and leave the hay on the ground to be incorporated into the soil, some growers follow the practice of curing peanuts on the vines in a stack and save the hay for animal feed. Peanut shells or hulls have been used to a minor extent as roughage for cattle feed. It has been established that the feeding to cattle of peanut hay and peanut hulls containing residues of inorganic bromides will contribute considerable residues of inorganic bromides to the meat and milk.

(b) There are no tolerances for inorganic bromides in meat and milk to cover residues from use of such peanut hulls as animal feed. Peanut hulls containing residues of inorganic bromides from the use of methyl bromide are unsuitable as an ingredient in the feed of meat and dairy animals and should not be represented, sold, or used for that purpose.

§ 180.126 [Removed]

4. By removing § 180.126 *Inorganic bromides resulting from soil treatment with ethylene dibromid; tolerances for residues.*

§ 180.126a [Redesignated]

5. By redesignating § 180.126a *Inorganic bromide residues in peanut hay and peanut hulls; statement of policy* as § 180.123a.

§ 180.397 [Removed]

6. Section 180.397 *Ethylene dibromide; tolerances for residues.*

[FR Doc. 93–13580 Filed 6–8–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Parts 180 and 185

[OPP–300273; FRL–4183–6]

Pesticides; Proposed Revocation of Tolerances and Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances and food additive regulations for residues of the pesticides ethyl 4,4'-dichlorobenzilate (chlorobenzilate), captafol, and dimethyl phosphate of 3-hydroxy-*N*-methyl-cis-crotonamide (monocrotophos) in or on raw agricultural commodities and in processed foods. EPA is initiating this action because all registered uses of these three chemicals in or on raw agricultural commodities have been canceled.

DATES: Written comments, identified by the document control number [OPP-300273], must be received on or before August 9, 1993.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind L. Gross, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-5971).

SUPPLEMENTARY INFORMATION: This document proposes the revocation of all tolerances and food additive regulations ("tolerances") established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a and 348) for residues of the insecticide ethyl 4,4'-dichlorobenzilate (chlorobenzilate), the fungicide captafol, and the insecticide dimethyl phosphate of 3-hydroxy-*N*-methyl-*cis*-crotonamide (monocrotophos) in or on raw agricultural commodities and processed foods. EPA is initiating this action because all registered uses of these chemicals in or on raw agricultural commodities have been canceled.

I. Discussion of Chemicals

A. Ethyl 4,4'-dichlorobenzilate

A notice of Rebuttable Presumption Against Registration and continued registration (RPAR) was published in the **Federal Register** of May 26, 1976 (41 FR 21517) for ethyl 4,4'dichlorobenzilate (chlorobenzilate). A Notice of Intent To Cancel Registrations and Deny Applications for Registration of Pesticide Products Containing Chlorobenzilate pursuant to sections 6(b)(1) and 3(d) of Federal Insecticide, Fungicide, and Rodenticide Act was published in the **Federal Register** of February 13, 1979 (44 FR 9548), resulting in the unconditional cancellation of all noncitrus use registrations. The revocation of the tolerances associated with these registrations was published in the **Federal Register** of March 12, 1986 (51 FR 8497). The remaining uses of chlorobenzilate were citrus uses only in the States of Florida, Texas, California, and Arizona.

These allowable citrus uses for chlorobenzilate have since been canceled, and the last registrations were voluntarily canceled on December 23, 1988. Since a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA proposes to revoke the tolerances for residues of the insecticide chlorobenzilate as listed in 40 CFR 180.109 in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.5
Cattle, mbyp	0.5
Cattle, meat	0.5
Citrus fruits	5.0
Sheep, fat	0.5
Sheep, mbyp	0.5
Sheep, meat	0.5

EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. No action levels will be recommended to replace the chlorobenzilate tolerances upon their revocation.

B. Captafol

In the **Federal Register** of January 9, 1985 (50 FR 1103), EPA issued a notice initiating Special Review for captafol, which resulted in the voluntary cancellation of all captafol registrations, effective April 30, 1987. The sale of existing stocks of captafol by registrants was permitted until December 31, 1987. Other persons were allowed to continue to distribute, sell, and use existing stocks until exhausted.

Since a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA proposes to revoke the tolerances for residues of the fungicide captafol (*cis-N*-[(1,1,2,2-tetrachloroethyl)thio]-4-cyclohexene-1,2-dicarboximide) as listed in 40 CFR 180.267 in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	0.25
Apricots	30
Blueberries	35
Cherries, sour	50
Cherries, sweet	2
Citrus fruits	0.5
Corn, fresh (inc. sweet K + CWHR)	0.1 (negligible residues)
Cranberries	8
Cucumbers	2
Macadamia nuts	0.1 (negligible residues)
Melons	5
Nectarines	2
Peanuts, hulls	2
Peanuts, meats (hulls removed)	0.05
Onions	0.1 (negligible residues)
Peaches	30
Pineapples	0.1 (negligible residues)
Plums (fresh prunes)	2
Potatoes	0.5
Taro (corn)	0.02
Tomatoes	15

Since April 30, 1987, there have been no captafol registrations in the United States with the exception of one intrastate registration (until March 1, 1991). While the sale of existing stocks of captafol already in the channels of trade was permitted, EPA believes there has been adequate time for existing stocks already in the hands of dealers or users to be exhausted and for legally treated agricultural commodities to have gone through the channels of trade. No action levels will be recommended to replace the captafol tolerances upon their revocation.

C. Dimethyl phosphate of 3-hydroxy-N-methyl-cis-crotonamide.

On June 13, 1988, the major producer of dimethyl phosphate of 3-hydroxy-*N*-methyl-*cis*-crotonamide (monocrotophos) requested voluntary cancellation of all registrations with a recall of all products in the channels of trade that would not be used by September 30, 1989. The last registered uses for monocrotophos were canceled on January 22, 1991 for nonpayment of the March 1, 1990 maintenance fees.

Since a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA proposes to revoke the tolerances and food additive regulations for residues of the insecticide monocrotophos as listed in 40 CFR 180.296 and 185.2250.

1. *Section 180.296.* Revoke the tolerances for residues of the insecticide monocrotophos in or on raw agricultural commodities as follows: 0.5 part per million (ppm) in or on peanut hulls and tomatoes; 0.1 ppm in or on cottonseed, potatoes, and sugarcane; 0.05 ppm in or on peanuts.

2. *Section 185.2250.* Revoke a tolerance of 2 ppm for residues of the insecticide monocrotophos in concentrated tomato products when present therein as a result of application of the insecticide to growing tomatoes.

Under the terms of the January 22, 1991 cancellation, the sale and distribution of existing stocks was allowed until March 1, 1991. EPA believes there has been adequate time for existing stocks in the hands of dealers or users to be exhausted and for legally treated agricultural commodities to have gone through the channels of trade. No action levels will be recommended to replace the monocrotophos tolerances upon their revocation.

II. Solicitation of Comments

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of these three chemicals 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. Further, EPA is soliciting comments from anyone adversely affected by revocation of these tolerances and food additive regulations. EPA requests anyone adversely affected by these revocations submit information pertaining to why and provide specific information.

1. Are there any existing stocks of the chemical?
2. How much?
3. When should they be depleted?
4. How long would the commodities treated with these chemicals be in the channels of trade?
5. Are any of these three chemicals used in foreign countries?
6. Would residues of any of these three chemicals be present in or on commodities grown in these countries and imported into the United States.

Comments must bear a notation indicating the document control number, [OPP-300273]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

III. Other Regulatory Requirements

The Agency has conducted an analysis in order to satisfy requirements as specified by Executive Order 12291 and the Regulatory Flexibility Act. This analysis is available for public inspection in Rm. 1128 at the Virginia address given above.

A. Executive Order 12291

Section 3(b) of Executive Order 12291 requires the Agency to initially determine whether a proposed regulatory action being proposed or issued is a "major" rule as defined by section 1(b) of the Executive Order and therefore subject to the comprehensive procedures for conducting a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action. It will not have an annual effect on the economy of at least $100 million, nor cause a major increase in costs and prices, and it will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all domestic registrations for use of chlorobenzilate, captafol, and monocrotophos on food commodities have been canceled it is anticipated that little or no economic impact would occur at any level of business enterprise if these tolerances are revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Parts 180 and 185

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

Dated: May 28, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR parts 180 and 185 be amended as follows:

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.

§ 180.109 [Removed]

b. By removing § 180.109 *Ethyl 4,4'Dichlorobenzilate; tolerances for residues.*

§ 180.267 [Removed]

c. By removing § 180.267 *Captafol; tolerances for residues.*

§ 180.296 [Removed]

d. By removing § 180.296 *Dimethyl phosphate of 3-hydroxy-N-methyl-cis-crotonamide; tolerances for residues.*

2. In part 185:

PART 185—[AMENDED]

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

Authority: 21 U.S.C. 348.

§ 185.2250 [Removed]

b. By removing § 185.2250 *Dimethyl phosphate of 3-hydroxy-N-methyl-Cis-crotonamide.*

[FR Doc. 93–13584 Filed 6–8–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 228

[FRL–4659–3]

RIN 2040–AB63

Ocean Dumping Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency proposes to revise the regulations containing the list of EPA designated ocean dumping sites. The proposal would reorganize the way in which the sites are printed in the Code of Federal Regulations, eliminate listings of expired or terminated sites, eliminate listings of sites which lie landward of the baseline of the territorial sea, and correct technical errors in the list of ocean dumping sites. These changes are not substantive in nature, and are needed to improve the

clarity and accuracy of the list of ocean dumping sites. In addition to these clarifying changes, the proposal would de-designate the Cellar Dirt Site in the New York Bight and the Newburyport, MA, dredged material site. These sites are no longer being used and there is no demonstrable need for their use in the future.

DATES: Written comments on this proposed rule will be accepted until July 26, 1993.

ADDRESSES: Send written comments to Susan Hitch, Office of Wetlands, Oceans, and Watersheds (WH–556F), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Supporting information for this proposed rule is available for inspection and copying at the Environmental Protection Agency Public Information Reference Unit, 401 M Street SW., room 2402, Washington, DC 20460. The Environmental Protection Agency's public information regulations (40 CFR part 2) provide that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Susan Hitch at (202) 260–9178, Office of Wetlands, Oceans, and Watersheds (WH–556F), 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

Title I of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.*, (hereinafter referred to as "the Act" or "the MPRSA") regulates the ocean dumping and transportation of material for purposes of ocean dumping. Environmental Protection Agency (EPA) regulations implementing the Act are set forth at 40 CFR parts 220 through 229.

With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit issued under the MPRSA. The Act divides permitting responsibility between EPA and the US Army Corps of Engineers (COE). Under section 102 of the Act, EPA is assigned permitting authority for non-dredged material. For dredged material, section 103 of the Act assigns permitting responsibility to the COE, subject to an EPA review and approval role.

The Act also provides that EPA may designate recommended times and sites for ocean dumping (MPRSA § 102(c)), and § 103 of the Act further provides that the COE is to use such EPA designated sites to the extent feasible. Where use of an EPA designated site is not feasible, the COE may select a disposal site as part of an MPRSA permitting action.

EPA site designations specify the latitude and longitude of the site and also typically include limitations on the duration of use and type of materials which may be disposed of at the site. If a site is designated by EPA, disposal at the site may not take place unless a permit authorizing the dumping is obtained in accordance with the MPRSA and EPA's ocean dumping permitting criteria. Permits are to contain terms and conditions to ensure that the limitations established by the site designation are met. See, 40 CFR 228.8.

EPA's ocean dumping regulations (40 CFR 228.4(b)) provide that the designation of an ocean dumping site is accomplished by promulgation in part 228 specifying the site. The list of EPA designated ocean dumping sites and the terms and conditions associated with each designated site appear at 40 CFR 228.12.

Under the regulations there are two categories of EPA site designations: (1) Interim sites (40 CFR 228.12(a)), and (2) approved sites (40 CFR 228.12(b)). Interim sites were designated prior to completion of environmental studies on the basis of historical usage. The interim site designation category was created after enactment of the MPRSA in 1972. It was intended to facilitate a smooth transition to regulation under the MPRSA by placing historically used sites into the interim category so as to allow for time to complete the necessary environmental reviews. Once the necessary environmental studies are performed, interim sites are redesignated as approved sites if they are found to meet the regulations' environmental criteria. *See*, 40 CFR 228.12(a). The approved site category thus contains those sites for which environmental studies are completed and which are found to meet the environmental criteria.

Description of Proposal

1. Overview.

Today's proposal makes a number of changes with regard to the organization and contents of the list of ocean dumping sites as compared to the list published in the most recent (1990) Code of Federal Regulations (CFR). The organizational changes, which will be described later in this preamble, are intended to improve the clarity of the regulations and are not intended to make any substantive changes.

In addition to the overall organizational changes, today's proposal also makes a number of changes with regard to individual ocean dumping sites. The vast bulk of these changes involve deletions of CFR entries for ocean dumping sites which have been terminated, expired, or have been re-classified from the interim to the approved category. These changes reflect the results of previous rulemaking by the Agency, and in essence are technical corrections or updates to the CFR to assure that it correctly reflects the results of such previous rulemaking.

In a limited number of cases, today's proposal also would make more substantive changes. These changes consist of deletions of certain ocean dumping site entries to remove sites which are not being used or which are subject to the Clean Water Act section 404 program rather than the MPRSA. Unlike the types of changes previously discussed, these deletions do not reflect the results of previous rulemaking and are being proposed in today's rule for the first time.

Because of the extensive organizational changes and the large number of sites included in today's proposal, the Agency has prepared a site-by-site table comparing the list of sites as printed in the 1992 CFR with today's proposal. That table appears as Table 1 in today's preamble. The table organizes the sites according to the category of change made, and within each category lists the individual sites affected by the order in which they are printed in the 1992 CFR. The table sets forth the citation to each site as printed in the 1992 CFR, the new proposed section number, and summarizes the changes made to a particular site. Readers interested in a particular site or sites should refer to that table for specific information. In addition, a later section of today's preamble discusses the proposed changes to individual sites according to the type of change proposed, with appropriate cross-references to the entries in Table 1.

TABLE 1.—SUMMARY OF PROPOSED RULE

Item number and current (CFR) cite/description	Proposed action/ new CFR cite	Remarks/changes
1. §228.12(b)(8) Ocean Dumping Sites Cellar Dirt Site	De-designation	Site proposed for de-designation by today's proposal.
2. §228.12(a)(3) Interim Dredged Material Site List, Newburyport, MA.	De-designation	Site proposed to de-designation by today's proposal. Site used for one project in 1981, and is no longer being used and will not be needed in future.
3. §228.12(a)(3) Interim Dredged Material Site List, Boston, MA.	Deletion of entry	Site proposed for deletion. Site is landward of territorial sea baseline, and thus is subject to CWA §404 rather than MPRSA.
4. §228.12(a)(3) Interim Dredged Material Site List, Moss Landing, 100 Fathoms.	Deletion of entry	Site proposed for deletion. Site is landward of territorial sea baseline, and thus is subject to CWA §404 rather than MPRSA.
5. §228.12(a)(3) Interim Dredged Material Site List, Moss Landing (50 yards seaward of pier).	Deletion of entry	Site proposed for deletion. Site is landward of territorial sea baseline, and thus is subject to CWA §404 rather than MPRSA.
6. §228.12(a)(3) Interim Dredged Material Site List, Depoe Bay—44°48'33" N.	Deletion of entry	Site proposed for deletion. Site is landward of territorial sea baseline, and thus is subject to CWA §404 rather than MPRSA.
7. §228.12(a)(3) Interim Dredged Material Site List, Depoe Bay—44°48'09" N.	Deletion of entry	Site proposed for deletion. Site is landward of territorial sea baseline, and thus is subject to CWA §404 rather than MPRSA.
8. §228.12(a)(3) Interim Dredged Material Site List, Anchorage Harbor.	Deletion of entry	Site proposed for deletion. Site is landward of territorial sea baseline, and thus is subject to CWA §404 rather than MPRSA.
9. §228.12(a)(3) Interim Dredged Material Site List, Post Mansfield Channel, Disposal Area No. 1–A.	Deletion of entry	CFR entry proposed for deletion. Site terminated by previous rulemaking. See 45 FR 81042 (12/9/80); 40 CFR 228.12(a)(2)(vi).
10. §228.12(a)(3) Interim Dredged Material Site List, Humboldt Bay Harbor.	Deletion of entry	CFR entry proposed for deletion. Site designation has expired. See 40 CFR 228.12(a)(1)(i)(D). Agency anticipates rulemaking to designate a replacement site.
11. §228.12(a)(3) Interim Dredged Material Site List, Farallon Islands.	Deletion of entry	CFR entry proposed for deletion. Site designation has expired. See 48 FR 5558, Column 2 (2/7/83).
12. §228.12(a)(3) Interim Dredged Material Site List, San Diego-Point Loma, CA (LA4).	Deletion of entry	CFR entry proposed for deletion. Site designation has expired. See 40 CFR 228.12(a)(1)(i)(F).
13. §228.12(a)(3) Interim Dredged Material Site List, Mouth of Columbia River, 46°12'05" N.	Deletion of entry	CFR entry proposed for deletion. Site designation allowed to lapse by previous rulemaking. See 51 FR 29927 (8/2/86); column 1 (discussion of Site "G").
14. §228.12(b)(11) Ocean Dumping Sites, 106 Mile Site (Sewage sludge).	Deletion of entry	CFR entry proposed for deletion. Site designation has expired. Site was designated for only a 5 year period from the date the first sewage sludge dumper used the site, see 49 FR 19012 (5/4/84). See 40 CFR 228.12(b)(11).
15. §228.12(b)(9) Ocean Dumping Sites, Tampa Harbor, Site 4.	Deletion of entry	CFR entry proposed for deletion. Site designation has expired. Site was designated for only a 3 year period in 1983. See 48 FR 50318 (11/1/83).
16. §228.12(a)(3) Interim Dredged Material Site List, Mud Dump.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 49 FR 19012 (5/4/84). See §228.15(d)(6) of today's proposal for final site.
17. §228.12(a)(3) Interim Dredged Material Site List, Yabucoa Harbor, PR.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 53 FR 36455 (9/20/88). See §228.15(d)(14) of today's proposal for final site.
18. §228.12(a)(3) Interim Dredged Material Site List, Jacksonville Harbor.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 49 FR 23148 (6/4/84). See §228.15(h)(9) of today's proposal for final site.
19. §228.12(a)(3) Interim Dredged Material Site List, Galveston Harbor and Channel, Texas, Disposal Area No. 1.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 49 FR 23148 (8/31/84). See §228.15(j)(12) of today's proposal for final site.
20. §228.12(a)(3) Interim Dredged Material Site List, Los Angeles, CA (LA2).	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 56 FR 6569 (2/19/91). See §228.15(l)(1) of today's proposal for final site.
21. §228.12(a)(3) Interim Dredged Material Site List, San Diego, CA, 100 Fathoms (LA5).	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 56 FR 1112 (1/11/91). See §228.15(l)(2) of today's proposal for final site.
22. §228.12(a)(3) Interim Dredged Material Site List, San Francisco Channel Bar.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 50 FR 38524 (9/23/85). See §228.15(l)(3) of today's proposal for final site.
23. §228.12(a)(3) Interim Dredged Material Site List, Honolulu Harbor, HI.	Deletion of interim listing.	CFR interim listing proposed for deletion. This site was replaced by the South Oahu site which was designated on a final basis by previous rulemaking. 46 FR 31412 (6/16/81). See §228.15(l)(6) of today's proposal for final site.
24. §228.12(a)(3) Interim Dredged Material Site List, Kauai-Nawiliwili.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site under name of Nawiliwili. 48 FR 31412 (6/16/81). See §228.15(l)(7) of today's proposal for final site.

TABLE 1.—SUMMARY OF PROPOSED RULE—Continued

Item number and current (CFR) cite/description	Proposed action/ new CFR cite	Remarks/changes
25. § 228.12(a)(3) Interim Dredged Material Site List, Kauai-Hanapepe.	Deletion of interim listing.	CFR interim listing proposed for deletion. Site was replaced by the Port Allen Site which was designated on a final basis by previous rulemaking. 46 FR 31412 (6/1/81). See § 228.15(l)(8) of today's proposal for final site.
26. § 228.12(a)(3) Interim Dredged Material Site List, Mouth of Columbia River, 46° 13'03" N.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 51 FR 29923 (8/21/86). See § 228.15(n)(5) of today's proposal for final site.
27. § 228.12(a)(3) Interim Dredged Material Site List, Mouth of Columbia River, 46° 14'37" N.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 51 FR 29923 (8/21/86). See § 228.15(n)(6) of today's proposal for final site.
28. § 228.12(a)(3) Interim Dredged Material Site List, Mouth of Columbia River, 46° 15'43" N.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 51 FR 29923 (8/21/86). See § 228.15(n)(7) of today's proposal for final site.
29. § 228.12(a)(3) Interim Dredged Material Site List, Mouth of Columbia River, 46° 12'12" N.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 51 FR 29923 (8/21/86). See § 228.15(n)(8) of today's proposal for final site.
30. § 228.12(a)(3) Interim Dredged Material Site List, Coos Bay Entrance, 43° 21'59" N.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 51 FR 29927 (8/21/86). See § 228.15(n)(1) of today's proposal for final site.
31. § 228.12(a)(3) Interim Dredged Material Site List, Coos Bay Entrance, 43° 22'44" N.	Deletion of interim listing.	CFR interim listing proposed for deletion. Previous rulemaking designated as a final site. 51 FR 29927 (8/21/86). See § 228.15(n)(2) of today's proposal for final site.
32. § 228.12(a)(3) Interim Dredged Material Site List, Marblehead, MA.	§ 228.14(b)(2)	Today's proposal changes name to Massachusetts Bay Dredged Material Site. No other changes.
33. § 228.12(a)(3) Interim Dredged Material Site List, Port Royal Harbor, 32° 10'11" N.	§ 228.14(h)(1)	Today's proposal changes name by adding "North". No other changes.
34. § 228.12(a)(3) Interim Dredged Material Site List, Port Royal Harbor, 32° 05'46" N.	§ 228.14(h)(2)	Today's proposal changes name by adding "South". No other changes.
35. § 228.12(a)(3) Interim Dredged Material Site List, Palm Beach Harbor, 26° 46'10" N.	§ 228.14(h)(4)	Today's proposal changes name by adding "West". No other changes.
36. § 228.12(a)(3) Interim Dredged Material Site List, Palm Beach Harbor, 26° 46'00" N.	§ 228.14(h)(5)	Today's proposal changes name by adding "East". No other changes.
37. § 228.12(a)(3) Interim Dredged Material Site List, Port St. Joe, FL, 29° 50.9" N.	§ 228.14(h)(9)	Today's proposal changes name by adding "South". No other changes.
38. § 228.12(a)(3) Interim Dredged Material Site List, Port St. Joe, FL, 29° 53.9" N.	§ 228.12(h)(10)	Today's proposal changes name by adding "North". No other changes.
39. § 228.12(b)(10) Interim Dredged Material Site List, New York Dredged Material Disposal Site.	§ 228.15(d)(6)	Today's proposed changes name by adding ("Mud Dump"). No other changes.
40. § 228.12(b)(40) Ocean Dumping Sites, Pensacola, FL Dredged Material Disposal Site.	§ 228.15(h)(11)	Today's proposal changes names by adding "Nevershore." No other changes.
41. § 228.12(b)(3) Ocean Dumping Sites, South Oahu Site, HI.	§ 228.15(l)(6)	Today's proposal changes name by removing "Site." No other changes.
42. § 228.12(a)(a)(3) Interim Dredged Material Site List, Newport Beach.	§ 228.14(l)(1)	Today's proposal changes name by adding "(LA3)." No other changes.
43. § 228.12(a)(3) Interim Dredged Material Site List, Port Hueneme.	§ 228.14(l)(2)	Today's proposal changes name by adding "(LA1)." No other changes.
44. § 228.12(a)(3) Interim Dredged Material Site List, Crescent City.	§ 228.14(l)(3)	Today's proposal changes name by adding "(SF1)." No other changes.
45. § 228.12(a)3) Interim Dredged Material Site List, Noyo River.	§ 228.14(l)(4)	Today's proposal changes name by adding "(SF5)." No other changes.
46. § 228.12(b)(4) Ocean Dumping Sites, San Francisco Channel Bar, Dredged Material Site.	§ 228.15(l)(3)	Today's proposal changes name by adding "CA, (SF8)." and removing "Dredged Material Site." No other changes.
47. § 228.12(b)(69) Ocean Dumping Sites, San Diego (LA–5), Ocean Dredged Material Disposal Site.	§ 228.15(l)(1)	Today's proposal changes name by adding "CA" and removing "Ocean Dredged Material Disposal Site."
48. § 228.12(b)(68) Ocean Dumping Sites, Los Angeles/ Long Beach (LA–2), Ocean Dredged Material Disposal Site.	§ 228.15(l)(2)	Today's proposal changes name by adding "CA" and removing "Ocean Dredged Material Disposal Site."
49. § 228.12(a)(3) Interim Dredged Material Site List, Suislaw River Entrance.	§ 228.14(n)(5)	Today's proposal corrects spelling of name to Siuslaw River Entrance. No other changes.
50. § 228.12(b)(4) Ocean Dumping Site, Nawiliwili Site, HI ..	§ 228.15(l)(7)	Today's proposal removes "approximately" from the "Size:" statement. Today's proposal also changes name by removing "Site."
51. § 228.12(b)(5) Ocean Dumping Sites, Port Allen, HI	§ 228.15(l)(8)	Today's proposal removes "approximately" from the "Size:" statement. Today's proposal also changes name by removing "Site."
52. § 228.12(b)(6) Ocean Dumping Sites, Kahului, HI	§ 228.15(l)(5)	Today's proposal removes "approximately" from the "Size:" statement. Today's proposal changes name by removing "Site."
53. § 228.12(b)(7) Ocean Dumping Sites, Hilo Site, HI	§ 228.15(l)(4)	Today's proposal removes "approximately" from the "Size:" statement. Today's proposal changes name by removing "Site."

TABLE 1.—SUMMARY OF PROPOSED RULE—Continued

Item number and current (CFR) cite/description	Proposed action/ new CFR cite	Remarks/changes
54. §228.12(b)(68) Ocean Dumping Sites, Los Angeles/ Long Beach (LA–2), Ocean Dredged Material Disposal Site.	§228.15(l)(2)	Today's proposal would add " * * * and Corps permitting regulations." to the "Restrictions:" statement.
55. §228.12(b)(69) Ocean Dumping Sites, San Diego (LA–5), Ocean Dredged Material Disposal Site.	§228.15(l)(1)	Today's proposal removes "(North American Datun from 1927)" from the "Location" statement.
56. §228.12(b)(57) Ocean Dumping Sites, Manasquan, NJ, Dredged Material Disposal Site.	§228.15(d)(7)	Today's proposal changes "Depth" from 7 meters to 18 meters.
57. §228.12(b)(58) Ocean Dumping Sites, Absecon Inlet, NJ, Dredged Material Disposal Site.	§228.15(d)(8)	Today's proposal changes "Depth" from 18 meters to 17 meters.
58. §228.12(b)(74) Ocean Dumping Sites, American Samoa Fish Processing Waste Disposal Site.	§228.15(m)(1)	Today's proposal restores designation information and adds correct expiration date. See 55 FR 3948 (2/6/80), 55 FR 20274 (5/16/90), and 55 FR 31593 (8/3/90).
59. §228.12(b)(83) Ocean Dumping Sites, Grays Harbor Southwest Navigation Site.	§228.15(n)(10)	Today's proposal corrects last longitude listing 124° 14.96'W to 124° 14.95'W. Site designated 55 FR 27634.
60. §228.12(b)(84) Ocean Dumping Sites, Grays Harbor Eight Mile Site.	§228.15(n)(19)	Today's proposal corrects latitude listing from 56° 57'N to 46° 57'N.
61. §228.12(a)(3) Approved Interim, Dumping Sites Table, Incineration of Wood.	§228.14(e)(1)	No changes.
62. §228.12(a)(3) Interim Dredged Material Site List, Cape Arundel, ME.	§228.14(b)(1)	No changes.
63. §228.12(a)(3) Interim Dredged Material Site List, Fort Pierce Harbor.	§228.14(h)(3)	No changes.
64. §228.12(a)(3) Interim Dredged Material Site List, Miami Beach, FL.	§228.14(h)(7)	No changes.
65. §228.12(a)(3) Interim Dredged Material Site List, Port Everglades, FL.	§228.14(h)(6)	No changes.
66. §228.12(a)(3) Interim Dredged Material Site List, Charlotte Harbor.	§228.14(h)(8)	No changes.
67. §228.12(a)(3) Interim Dredged Material Site List, Panama City, FL.	§228.14(h)(11)	No changes.
68. §228.12(a)(3) Interim Dredged Material Site List, Mississippi River, Baton Rouge to the Gulf of Mexico, LA—South Pass.	§228.14(j)(1)	No changes.
69. §228.12(a)(3) Interim Dredged Material Site List, Mississippi River Outlets, Venice, LA—Tiger Pass.	§228.14(j)(2)	No changes.
70. §228.12(a)(3) Interim Dredged Material Site List, Waterway from Empire, LA, to the Gulf of Mexico—Bar Channel.	§228.14(j)(3)	No changes.
71. §228.12(a)(3) Interim Dredged Material Site List, Bayou Lafourche and Lafourche—Jump Waterway, LA—Bell Pass.	§228.14(j)(4)	No changes.
72. §228.12(a)(3) Interim Dredged Material Site List, Atchafalaya River—Morgan City to the Gulf of Mexico, LA and Atchafalaya River and Bayous Chene, Boeuf and Black, LA.	§228.14(j)(5)	No changes.
73. §228.12(a)(3) Interim Dredged Material Site List, Freshwater Bayou, LA—Bar Channel.	§228.14(j)(8)	No changes.
74. §228.12(a)(3) Interim Dredged Material Site List, Mermentau River, Area A, LA.	§228.14(j)(6)	No changes.
75. §228.12(a)(3) Interim Dredged Material Site List, Mermentau River, Area B, LA.	§228.14(j)(7)	No changes.
76. §228.12(a)(3) Interim Dredged Material Site List, Guam-Apra Harbor.	§228.14(l)(5)	No changes.
77. §228.12(a)(3) Interim Dredged Material Site List, Rogue River Entrance.	§228.14(n)(2)	No changes.
78. §228.12(a)(3) Interim Dredged Material Site List, Umpqua River Entrance.	§228.14(n)(4)	No changes.
79. §228.12(a)(3) Interim Dredged Material Site List, Tillamook Bay Entrance.	§228.14(n)(7)	No changes.
80. §228.12(a)(3) Interim Dredged Material Site List, Yaquina Bay and Harbor Entrance.	§228.14(n)(6)	No changes.
81. §228.12(a)(3) Interim Dredged Material Site List, Port Orford.	§228.14(n)(3)	No changes.
82. §228.12(a)(3) Interim Dredged Material Site List, Willapa Bay.	§228.14(n)(8)	No changes.
83. §228.12(b)(12) Ocean Dumping Sites, Jacksonville Dredged Material Site.	§228.15(h)(9)	No changes.
84. §228.12(b)(13) Ocean Dumping Sites, Galveston Dredged Material Site.	§228.15(j)(12)	No changes.
85. §228.12(b)(14) Ocean Dumping Sites, San Francisco Channel Bar Dredged Material Site.	§228.15(l)(3)	No changes.

TABLE 1.—SUMMARY OF PROPOSED RULE—Continued

Item number and current (CFR) cite/description	Proposed action/ new CFR cite	Remarks/changes
86. §228.12(b)(15) Ocean Dumping Sites, Mouth of Columbia River Dredged Material Disposal Site A.	§228.15(n)(5)	No changes.
87. §228.12(b)(16) Ocean Dumping Sites, Mouth of Columbia River Dredged Material Disposal Site B.	§228.15(n)(6)	No changes.
88. §228.12(b)(17) Ocean Dumping Sites, Mouth of Columbia River Dredged Material Disposal Site E.	§228.15(n)(7)	No changes.
89. §228.12(b)(18) Ocean Dumping Sites, Mouth of Columbia River Dredged Material Disposal Site F.	§228.15(n)(18)	No changes.
90. §228.12(b)(19) Ocean Dumping Sites, Coos Bay Dredged Material Site E.	§228.15(n)(2)	No changes.
91. §228.12(b)(20) Ocean Dumping Sites, Coos Bay Dredged Material Site F.	§228.15(n)(3)	No changes.
92. §228.12(b)(21) Ocean Dumping Sites, Coos Bay Dredged Material Site H.	§228.15(n)(4)	No changes.
93. §228.12(b)(22) Ocean Dumping Sites, Fernandina Beach, Florida, Dredged Material Disposal Site.	§228.15(h)(8)	No changes.
94. §228.12(b)(23) Ocean Dumping Sites, Morehead City, North Carolina, Dredged Material Disposal Site.	§228.15(h)(1)	No changes.
95. §228.12(b)(24) Ocean Dumping Sites, Savannah, GA, Dredged Material Disposal Site.	§228.15(h)(6)	No changes.
96. §228.12(b)(25) Ocean Dumping Sites, Charleston, SC, Dredged Material Disposal Site.	§228.15(h)(4)	No changes.
97. §228.12(b)(26) Ocean Dumping Sites, Charleston, SC, Harbor Deepening Project Dredged Material Disposal Site.	§228.15(h)(5)	No changes.
98. §228.12(b)(27) Ocean Dumping Sites, Wilmington, NC, Dredged Material Disposal Site.	§228.15(h)(2)	No changes.
99. §228.12(b)(28) Ocean Dumping Sites, Nome—West Site.	§228.15(n)(12)	No changes.
100. §228.12(b)(29) Ocean Dumping Sites, Nome—East Site.	§228.15(n)(13)	No changes.
101. §228.12(b)(30) Ocean Dumping Sites, Houma Navigation Canal, Louisiana.	§228.15(j)(4)	No changes.
102. §228.12(b)(31) Ocean Dumping Sites, Corpus Christi Ship Channel, Texas.	§228.15(j)(17)	No changes.
103. §228.12(b)(32) Ocean Dumping Sites, Georgetown Harbor, Georgetown, South Carolina, Dredged Material Disposal Site.	§228.15(h)(3)	No changes.
104. §228.12(b)(33) Ocean Dumping Sites, Brunswick Harbor, Brunswick, Georgia, Dredged Material Disposal Site.	§228.15(h)(7)	No changes.
105. §228.12(b)(34) Ocean Dumping Sites, Sabine-Neches Dredged Material Site 1.	§228.15(j)(8)	No changes.
106. §228.12(b)(35) Ocean Dumping Sites, Sabine-Neches Dredged Material Site 2.	§228.15(j)(9)	No changes.
107. §228.12(b)(36) Ocean Dumping Sites, Sabine-Neches Dredged Material Site 3.	§228.15(j)(10)	No changes.
108. §228.12(b)(37) Ocean Dumping Sites, Sabine-Neches Dredged Material Site 4.	§228.15(j)(11)	No changes.
109. §228.12(b)(39) Ocean Dumping Sites, Portland, Maine, Dredged Material Disposal Site.	§228.15(b)(1)	No changes.
110. §228.12(b)(40) Ocean Dumping Sites, Pensacola, Florida, Dredged Material Disposal Site.	§228.15(h)(11)	No changes.
111. §228.12(b)(41) Ocean Dumping Sites, Mobile, Alabama, Dredged Material Disposal Site.	§228.15(h)(13)	No changes.
112. §228.12(b)(42) Ocean Dumping Sites, Gulfport, Mississippi, Dredged Material Disposal Site—Eastern Site.	§228.15(h)(14)	No changes.
113. §228.12(b)(42) Ocean Dumping Sites, Gulfport, Mississippi, Dredged Material Disposal Site—Western Site.	§228.15(h)(15)	No changes.
114. §228.12(b)(43) Ocean Dumping Sites, Calcasieu Dredged Material Site 1.	§228.15(j)(5)	No changes.
115. §228.12(b)(44) Ocean Dumping Sites, Calcasieu Dredged Material Site 2.	§228.15(j)(6)	No changes.
116. §228.12(b)(45) Ocean Dumping Sites, Calcasieu Dredged Material Site 3.	§228.15(j)(7)	No changes.
117. §228.12(b)(46) Ocean Dumping Sites, San Juan Harbor, PR, Dredged Material Site.	§228.15(d)(10)	No changes.
118. §228.12(b)(47) Ocean Dumping Sites, Dam Neck, Virginia, Dredged Material Disposal Site.	§228.15(f)(1)	No changes.
119. §228.12(b)(48) Ocean Dumping Sites, Arecibo Harbor, PR, Dredged Material Disposal Site.	§228.15(d)(11)	No changes.
120. §228.12(b)(49) Ocean Dumping Sites, Mayaguez Harbor, PR, Dredged Material Disposal Site.	§228.15(d)(12)	No changes.

TABLE 1.—SUMMARY OF PROPOSED RULE—Continued

Item number and current (CFR) cite/description	Proposed action/ new CFR cite	Remarks/changes
121. § 228.12(b)(50) Ocean Dumping Sites, Ponce Harbor, PR, Dredged Material Disposal Site.	§ 228.15(d)(13)	No changes.
122. § 228.12(b)(51) Ocean Dumping Sites, Yabucoa Harbor, PR, Dredged Material Site.	§ 228.15(d)(14)	No changes.
123. § 228.12(b)(52) Ocean Dumping Sites, Rockaway Inlet, Long Island, New York, Dredged Material Site.	§ 228.15(d)(4)	No changes.
124. § 228.12(b)(53) Ocean Dumping Sites, East Rockaway Inlet, Long Island, New York, Dredged Material Site.	§ 228.15(d)(3)	No changes.
125. § 228.12(b)(54) Ocean Dumping Sites, Jones Inlet, Long Island, New York, Dredged Material Site.	§ 228.15(d)(2)	No changes.
126. § 228.12(b)(55) Ocean Dumping Sites, Fire Island Inlet, Long Island, New York, Dredged Material Site.	§ 228.15(d)(1)	No changes.
127. § 228.12(b)(56) Ocean Dumping Sites, Shark River, New Jersey, Dredged Material Site.	§ 228.15(d)(5)	No changes.
128. § 228.12(b)(59) Ocean Dumping Sites, Cold Spring Inlet, New Jersey, Dredged Material Site.	§ 228.15(d)(9)	No changes.
129. § 228.12(b)(62) Ocean Dumping Sites, Homeport Project Dredged Material Site.	§ 228.15(j)(16)	No changes.
130. § 228.12(b)(64) Ocean Dumping Sites, Pensacola, Florida, Ocean Dredged Material Site (Offshore).	§ 228.15(h)(12)	No changes.
131. § 228.12(b)(65) Ocean Dumping Sites, Southwest Pass—Mississippi River, Louisiana.	§ 228.15(j)(2)	No changes.
132. § 228.12(b)(67) Ocean Dumping Sites, Mississippi River Gulf Outlet, Louisiana.	§ 228.15(j)(1)	No changes.
133. § 228.12(b)(71) Ocean Dumping Sites, Coquille River Entrance.	§ 228.15(n)(5)	No changes.
134. § 228.12(b)(73) Ocean Dumping Sites, Barataria Bay Waterway, Louisiana.	§ 228.15(j)(3)	No changes.
135. § 228.12(b)(76) Ocean Dumping Sites, Freeport Harbor New Work (45-Foot Project), Texas.	§ 228.15(j)(13)	No changes.
136. § 228.12(b)(77) Ocean Dumping Sites, Freeport Harbor Maintenance (45-Foot Project), Texas.	§ 228.15(j)(14)	No changes.
137. § 228.12(b)(78) Ocean Dumping Sites, Brazos Island Harbor, Texas.	§ 228.15(j)(19)	No changes.
138. § 228.12(b)(79) Ocean Dumping Sites, Matagorda Ship Channel, Texas.	§ 228.15(j)(15)	No changes.
139. § 228.12(b)(80) Ocean Dumping Sites, Port Mansfield, Texas.	§ 228.15(j)(18)	No changes.
140. § 228.12(b)(85) Ocean Dumping Sites, Chetco River, OR.	§ 228.15(n)(1)	No changes.
141. § 228.12(b)(86) Ocean Dumping Sites, Canaveral Harbor, Canaveral, Florida, Dredged Material Site.	§ 228.15(h)(10)	No changes.
142. § 228.12(b)(87) Ocean Dumping Sites, Pascagoula, MS, Ocean Dredged Material Site.	§ 228.15(h)(14)	No changes.
143. § 228.12(b)(91) Ocean Dumping Sites, Brazos Island Harbor (42 Foot Project), TX.	§ 228.15(j)(20)	No changes.

2. Organizational Changes.

The proposed revisions would make a number of organizational changes to the list of ocean dumping sites. These changes are described below. Today's proposal would make an overall change to the organization of the list of designated sites to better reflect the two different categories of site designation. This would be done by removing and reserving existing § 228.12 and replacing it instead with two new proposed sections as follows: (1) Proposed § 228.14 would be added to the regulations and would contain those sites designated on an interim basis, and (2) proposed § 228.15 would be added to the regulations and would contain those sites designated on a non-interim basis. This proposed change would be made in order to clarify the different status of designated sites, and this reorganization in itself would not make any substantive changes to the actual designation status of the sites.

As part of this re-organization, the provisions of existing §§ 228.12(a) and (a)(3) would be combined and relocated into proposed § 228.14(a)(1), with editorial and wording changes to reflect their relocation and combination. No substantive changes are intended. Provisions addressing the duration of certain site designations as set forth in existing § 228.12(a)(1) would no longer be retained. This provision would become unnecessary since the expiration dates specified therein have already passed and, as explained further below, today's proposal would remove the CFR entries for those expired sites. Similarly, the provisions in existing § 228.12(a)(2) regarding the termination of certain sites would be deleted since CFR entries for these terminated sites would be removed from the CFR.

An editorial change would be made with regard to existing provisions dealing with site management authority. Existing § 228.12(a) and the note preceding the list of interim dredged material sites assign management authority for the sites. In addition, § 228.12(b) of the existing regulations, which sets forth the list of non-interim ocean dumping sites, identifies on a site-by-site basis the EPA regional office responsible for site management. As described later in this preamble, the list

of ocean dumping sites is being reorganized to list the sites according to the Region in which they are located, and the proposal would simplify the existing provisions regarding site management authority to reflect this re-organization. This would be done by replacing the existing provisions regarding site management authority with proposed language stating that, unless otherwise specifically provided, management authority for the site lies with the Regional office under which the site is listed. This language appears in proposed §§ 228.14(a)(2) and 228.15(a)(2), and does not reflect a change in the existing assignments of site management authority.

The proposal also would make a change in the nomenclature used to refer to the non-interim ocean dumping sites. Existing § 228.12(b) refers to the non-interim sites as being "approved ocean dumping sites for continuing use." Proposed § 228.15 instead would use the term "final" when referring to non-interim sites. This change in nomenclature would be made since in some instances non-interim sites actually have been designated with expiration dates, and thus are not truly "continuing use sites". Additionally, use of the word "final" more clearly contrasts with the term "interim" and thus better serves to describe the status of the non-interim site category. A conforming change also would be made in existing § 228.3(b) to substitute the term "final designation" for "continuing use designation."

In order to further distinguish between the interim and final site categories, wholly new language would be added to the regulations by proposed § 228.15(a)(1) to point out that the sites designated on a final basis have been subject to environmental studies and were designated following a determination that they meet the regulations' site designation criteria. This new language would be added to serve as a counterpart to proposed § 228.14(a)(1), which contains language describing the interim site category. These are editorial and clarifying changes which are intended to make the distinction between interim and final sites more readily apparent, and do not in any way alter the actual status of the sites.

In addition to the foregoing changes, the proposal would add two new notes to the regulations immediately following proposed §§ 228.14(a)(2) and 228.15(a)(2) in order to specifically identify the data base on which the site latitudes and longitudes are based. The existing regulations' basis for latitudes and longitudes typically is based upon measurements of the earth known as the North American Datum of 1927. The National Oceanic and Atmospheric Administration (NOAA) has refined its measurements of the earth, to be known as the North American Datum of 1983 (NAD83). This re-measurement affects the plotting of latitudes and longitudes, and coordinates based upon the North American Datum of 1927 ultimately will need to be re-computed in order to reflect this new datum. Because we are in a transitional period between the old and new datums, two explanatory notes would be inserted in the regulations in order to clarify the datum used to set site latitudes and longitudes. Upon completion and adoption of the North American Datum of 1983 by NOAA, the Agency anticipates that it will issue a technical correction to the latitudes and longitudes to reflect the new datum.

Within proposed §§ 228.14 and 228.15, changes would be made in the format by which sites are listed so as to improve the ability to readily locate and identify ocean dumping sites. First, each designated site would be assigned a separate CFR paragraph number within its appropriate section. The existing regulations list the interim dumping sites without individual identifying paragraph numbers. This has made it difficult to accurately and succinctly describe to **Federal Register** typesetters exactly what changes are to be made to site designations when a particular site designation is amended. By linking each site to its own paragraph number, the task of describing potential amendments will be greatly simplified, the chances of typesetting errors or mis-communications with **Federal Register** typesetters will be reduced, and readers will be able to more readily identify designated ocean dumping sites.

The listing of sites within proposed §§ 228.14 and 228.15 also would be re-ordered for presentation according to the EPA Region in which the sites are located and the type of material for which they are designated. Generally, an attempt has been made to list sites within each EPA Region in a clockwise manner along the coastline, beginning with Maine and ending with Alaska. In cases where the existing site name did not include the name of the State closest to the site, the proposal would add the appropriate State name in order to make readily apparent the general location of the site. These organizational changes have been proposed in order to facilitate the identification of sites within a particular EPA Region, their status, and the category of material for which they are designated.

3. Changes Affecting Individual Sites.

As previously noted, a number of changes also would be made with regard to individual sites. The types of changes which would be made are described below, and information specific to a particular site may be found by consulting Table 1 of today's preamble.

Table 1, items 1–8: While most of the changes with regard to individual sites are being made to reflect previous rulemaking by the Agency, in a limited number of instances, today's proposal would in itself initiate action to de-designate and delete certain site entries.

Two sites (Table 1, items 1 and 2) would be de-designated by today's proposal. The first of these is the Cellar Dirt Site located in the New York Bight. It was designated on a final basis at 48 FR 14898 (April 16, 1983). The second of these sites is the Newburyport, MA, interim dredged material disposal site, as explained below, today's proposal would de-designate these sites on the basis that they are not currently being used and there is no demonstrable need for the sites in the future.

By terms of its designation, the Cellar Dirt Site may be used only for excavation dirt and rock, broken concrete, rubble, tile and other nonfloatable debris. Between 1973 and 1980, an annual average of 372,000 cubic yards was disposed of at the site. Since 1980, disposal has occurred in only two years with the last permitted disposal being in 1988. The last permittee to use the site did not indicate a continuing need for future disposal and land-based alternatives have been utilized by the other generators of cellar dirt. There are no outstanding permits or pending permit applications for its use.

Similarly, the Newburyport, MA, dredged material site has not been used since 1981 and there is no demonstrable need for its use in the future. 40 CFR 228.11(a) provides that changed circumstances surrounding use of a site constitutes grounds for withdrawal of a site, and the lack of a demonstrable need for a site constitutes a change in circumstances warranting de-designation of the site. Given the protracted period of inactivity in use of these sites, EPA is today proposing their de-designation.

Six other interim ocean dumping dredged material sites also would be eliminated by today's proposal. These sites are identified in Table 1, items 3 through 8. These six deletions would be made since these sites lie inside the baseline of the territorial sea and, as explained below, are not subject to the MPRSA.

The MPRSA applies to "ocean waters", which the Act defines as the waters of the open sea lying seaward of the baseline from which the territorial sea is measured. MPRSA § 2(c). The baseline is the landward boundary of the territorial sea, and normally follows the mean low water mark. In addition, under certain circumstances closing lines may be drawn across the mouths of bays in lieu of following the indentation in the coastline. *See generally*, 1 Shalowitz, *Shore and Sea Boundaries* (1962). Waters lying on the landward side of the baseline are internal waters which are not subject to MPRSA jurisdiction. Discharges into such waters instead are subject to regulation under the Clean Water Act. *See generally*, 40 CFR 122.1(b)(1); 122.2; 230.2.

Since these sites lie on the landward side of the baseline, they should not be included in the list of MPRSA ocean dumping sites. They would still remain available for potential use in accordance with CWA § 404, and the use of these sites would be regulated under CWA § 404.

Table 1, items 9–15: The proposal additionally would wholly delete the CFR entries for five other interim dredged material sites (Table 1, items 9 through 13), one final dredged material site (Table 1, item 15), and one final other materials site (Table 1, item 14). The previous rulemaking establishing these sites either set an expiration date for the site which has now passed or the site was terminated by earlier rulemaking but not actually deleted as a CFR entry. Table 1 identifies the basis for the deletion of the CFR entry for these sites, including a citation to the specific earlier rulemaking which set the expiration date or terminated the site.

Since these sites already are terminated or expired, the proposal does not involve a substantive change in the status of these sites. Rather, the deletion of their CFR entries would be made to assure that sites which in fact are terminated or expired no longer continue to be printed in the CFR. The proposed deletion of these entries does not signify that these sites may not be re-designated in the future. These deletions are being made simply to assure the CFR list of sites reflects only sites which are currently designated.

Table 1, items 16–31: The proposal would further delete the *interim* CFR site listings for 16 interim dredged material sites. These sites are identified in Table 1, items 16 through 31. These sites were re-designated on a non-interim basis by previous Agency rulemaking, but at the time they were so re-designated the rulemaking notice failed to delete the old counterpart listing in the interim site category. Today's proposal would delete only the CFR interim site listing for these sites; they would continue to appear in the CFR as non-interim sites, which is their actual status.

Table 1 provides specific citations to the rulemaking which designated these sites on a non-interim basis and also contains a cross-reference to where they appear in the final site category of today's proposal. The deletion of their listing in the interim site category in no way affects their status as non-interim sites. This change is being made only to avoid listing sites in multiple categories and is intended to eliminate potential confusion as to their actual status.

Table 1, items 32–49: The proposal would make changes to the names of twenty one ocean dumping sites. These proposed changes would be made for one of two reasons. First, in some of the cases the name would be changed to reflect the common name used by members of the public or EPA Regions when referring to these sites. Second, in cases where there are two sites with the same name, clarifiers would be added to the site names to better reflect the fact that they are distinct and separate sites (e.g., "East" and "West" added to distinguish between sites with the same name). These changes are non-substantive in nature and would be made simply to enable easier reference to a particular site. The sites for which such name changes would be made are identified in Table 1, items 32 through 52 together with a summary of the proposed name change.

Table 1, items 50–60: The proposal would make changes to 11 final ocean dumping sites, modifying information in the designation. These changes reflect more accurate information concerning the site, such as depth, and removal of the word "approximately" in the identification of size of a site where the size is given as a number of meters radius. These changes are not substantive but are made for the sake of accuracy and to reflect better information about the site. In one case, Table 1, item 55, the mention of North American Datum of 1927 is removed because use of that datum is understood for these sites unless otherwise identified as North American Datum of 1983. In Table 1, item 58, the American Samoa Fish Processing Waste Disposal Site designation language had been dropped. All the information has been added back to the CFR, with minor editorial changes recommended by the Region and the correct expiration date added. For Table 1, items 59 and 60, correction is made to the latitude or longitude for the two Grays Harbor Sites. In one case, the latitude listed was 10 degrees north of the location intended and represents a typesetting error. In the other case, the correction of one hundredths of a minute longitude is being made at the request of the Regional office to bring the listing into conformance with actual usage of the site.

Table 1, items 61–143: These sites have been listed in Table 1 so that readers may see the current (1992) CFR citation and where they would be relocated to by today's proposal. The proposal would not make any other changes with regard to these sites.

Related Rulemaking

Site designations. As part of the day-to-day operations of the ocean dumping program, the Agency frequently engages in separate and ongoing rulemaking activities to designate or de-designate individual ocean dumping sites. As noted above in today's preamble, the proposal incorporates and reflects the results of such final rulemaking previously undertaken by the Agency. This has been done only in order to ensure that the list of ocean dumping sites as published in the CFR accurately reflects such previous rulemaking, and is not intended in any way to reopen the public comment period on the substance of such previous final rulemaking.

In cases where individual sites included in today's proposal also are subject to separate proposed rulemaking actions which have not yet become final, today's proposal does *not* reflect such proposed rulemaking. The results of such rulemaking will not be reflected in the regulations until such time as the Agency takes final rulemaking action.

Compliance With Other Laws and Executive Orders

1. *Executive Order 12291.* Executive Order 12291 (46 FR 13193, February 9, 1981) requires that a regulatory agency determine whether a regulation is "major", and therefore subject to the requirement for a Regulatory Impact Analysis. Under the Executive Order, a major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State and local government agencies, or geographic areas; or

(3) 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.

Today's proposal would make organizational changes in the regulations, correct technical errors, and de-designate expired or unnecessary sites. The organizational changes do not have any substantive regulatory impact. The technical changes contained in today's proposal would correct or update the Code of Federal Regulations' to reflect the results of previous Agency rulemaking. Because these changes merely incorporate the results of separate rulemaking actions already completed by the Agency, the inclusion of such changes in today's proposal does not have an economic impact.

As previously discussed in today's preamble, the proposal would also de-designate two unused and un-needed sites. These changes would not have an economic impact since the sites are not being used, and there is no demonstrable need for them. Also as previously noted, in six other instances the proposal would delete sites inside the baseline and which are thus actually Clean Water Act § 404 sites rather than MPRSA ocean dumping sites. This would not result in changes to the locations actually being used for disposal or alter the ability to use the sites, and thus does not result in economic impacts. Accordingly, today's proposal would not have any significant economic impacts, and thus does not meet the criteria established by Executive Order 12291 for classification as a major rule.

Executive Order 12291 further requires, regardless of whether a rule is "major", that it be submitted to the Office of Management and Budget for review. Today's proposal was submitted to the Office of Management and Budget for review as required by that Executive Order.

2. *Paperwork Reduction Act.* The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record keeping burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting 10 or more non-Federal respondents be approved by the Office of Management and Budget. Since today's proposal would not establish or modify any information and record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

3. *Regulatory Flexibility Act.* Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities and defines them as follows:

(1) Small governmental jurisdictions—any government of a district with a population of less than 50,000.

(2) Small business—any business which is independently owned and operated and not dominant in its field as defined by Small Business Administration regulations under 3 of the Small Business Act.

(3) Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

As discussed in the preamble language for Executive Order 12291, the changes being proposed do not impose economic burdens. In addition, the bulk of the sites subject to today's proposal are designated for dredged material, and the majority of those sites are used for disposal of material from Federal navigation projects rather than for disposal by private entities or local governments. Accordingly, EPA has determined that today's proposal would not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Analysis therefore is unnecessary.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: May 4, 1993.

Carol M. Browner, Administrator,
Environmental Protection Agency.

For the reasons set out in the preamble, part 228 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.3 [Amended]

2. Section 228.3(b) is amended in the first sentence by revising the phrase "continuing use" to read "final".

§ 228.12 [Reserved]

3. Section 228.12 is removed and reserved.

4. Part 228 is amended by adding §§228.14 and 228.15 to read as follows:

§ 228.14 Dumping sites designated on an interim basis.

(a)(1) The sites identified in this section are approved for dumping the indicated materials on an interim basis pending completion of baseline or trend assessment surveys and final designation or termination of use. Unless otherwise specifically provided in the entry for a particular site, such interim use sites are available indefinitely pending completion of the present studies and determination of the need for the continuing use of these sites, the completion of any necessary studies, and evaluation of their suitability. Designation studies for particular sites within this group will begin as soon as feasible after the completion of nearby sites presently being studied. The sizes and use specifications are based on historical usage and do not necessarily meet the criteria stated in this part.

(2) Unless otherwise specifically noted, site management authority for each site set forth in this section is delegated to the EPA Regional office under which the site entry is listed.

(3) Unless otherwise specifically noted, all ocean dumping site coordinates are based upon the North American Datum of 1927.

(b) Region I Interim Dredged Material Sites.

(1) Cape Arundel, ME.

(i) *Location:* 43°18′02″N., 70°27′9″W. (500 yds. diameter).

(ii) Reserved.

(2) Massachusetts Bay, MA.

(i) *Location:* 42°25′42″N., 70°34′00″W. (2 N. Mi. diameter).

(ii) Reserved.

(c) Region I Interim Other Waste Sites.

(1) No interim sites.

(2) Reserved.

(d) Region II Interim Dredged Material Sites.

(1) No interim sites.

(2) Reserved.

(e) Region II Interim Other Waste Sites.

(1) Incineration of Wood, NY/NJ.

(i) *Location:* 40°00′00″N. to 40°04′20″N.; 73°41′00″W. to 73°38′10″W.

(ii) Reserved.

(2) Reserved.

(f) Region III Interim Dredged Material Sites.

(1) No interim sites.

(2) Reserved.

(g) Region III Interim Other Waste Sites.

(1) No interim sites.

(2) Reserved.

(h) Region IV Interim Dredged Material Sites.

(1) Port Royal Harbor North, SC.

(i) *Location:* 32°10′11″N., 80°36′00″W.; 32°10′06″N., 80°36′35″W.; 32°08′38″N., 80°36′23″W.; 32°08′41″N., 80°35′49″W.

(ii) Reserved.

(2) Port Royal Harbor South, SC.

(i) *Location:* 32°05'46"N., 80°35'30"W.; 32°05'42"N., 80°36'27"W.; 32°04'22"N., 80°36'16"W.; 32°04'27"N., 80°35'18"W.

(ii) Reserved.

(3) Fort Pierce Harbor, FL.

(i) *Location:* 27°28'30"N., 80°12'33"W.; 27°28'30"N., 80°11'27"W.; 27°27'30"N., 80°11'27"W.; 27°27'30"N., 80°12'33"W.

(ii) Reserved.

(4) Palm Beach Harbor West, FL.

(i) *Location:* 26°46'10"N., 80°02'00"W.; 26°45'54"N., 80°02'06"W.; 26°45'54"N., 80°02'13"W.; 26°46'10"N., 80°02'07"W.

(ii) Reserved.

(5) Palm Beach Harbor East, FL.

(i) *Location:* 26°46'00"N., 79°58'55"W.; 26°46'00"N., 79°57'47"W.; 26°45'00"N., 79°57'47"W.; 26°45'00"N., 79°58'55"W.

(ii) Reserved.

(6) Port Everglades Harbor, FL.

(i) *Location:* 26°07'00"N., 80°04'30"W.; 26°07'00"N., 80°03'30"W.; 26°06'00"N., 80°03'30"W.; 26°06'00"N., 80°04'30"W.

(ii) Reserved.

(7) Miami Beach, FL.

(i) *Location:* 25°45'30"N., 80°03'54"W.; 25°45'30"N., 80°02'50"W.; 25°44'30"N., 80°02'50"W.; 25°44'30"N., 80°03'54"W.

(ii) Reserved.

(8) Charlotte Harbor, FL.

(i) *Location:* 26°37'36"N., 82°19'55"W.; 26°37'36"N., 82°18'47"W.; 26°36'36"N., 82°18'47"W.; 26°36'36"N., 82°19'55"W.

(ii) Reserved.

(9) Port St. Joe South, FL.

(i) *Location:* 29°50.9' N., 85°29.9' W.; 29°51.3' N., 85°29.5' W.; 29°49.2' N., 85°28.2' W.; 29°49.0' N., 85°28.8' W.

(ii) Reserved.

(10) Port St. Joe North, FL.

(i) *Location:* 29°53.9' N., 85°31.8' W.; 29°54.1' N., 85°31.3' W.; 29°52.2' N., 85°30.1' W.; 29°52.2' N., 85°30.8' W.

(ii) Reserved.

(11) Panama City, FL.

(i) *Location:* 30°07.1' N., 85°45.9' W.; 30°07.2' N., 85°45.5' W.; 30°06.9' N., 85°45.1' W.; 30°06.7' N., 85°45.6' W.

(ii) Reserved.

(i) Region IV Interim Other Wastes Sites.

(1) No interim sites.

(2) Reserved.

(j) Region VI Interim Dredged Material Sites.

(1) Mississippi River, Baton Rouge to the Gulf of Mexico, LA—South Pass.

(i) *Description and location:* Maintenance dredging disposal area 0.5 mile square, parallel to the channel and located on the west side. Beginning at 28°58'33" N. and 89°07'00" W., following channel centerline (azimuth 295°41') of the gulf entrance channel to 28°58'24" N. and 89°06'30" W., thence to 28°57'54" N. and 89°06'42" W., thence to 28°58'06" N. and 89°07'18" W., thence to the point of beginning.

(ii) Reserved.

(2) Mississippi River Outlets, Venice, LA—Tiger Pass.

(i) *Description and location:* Maintenance dredging disposal area 0.5 mile wide by 2.5 miles long, parallel and adjacent to the channel and located on the south side. Beginning at 29°08'24" W. and 89°25'35" N. following 270° azimuth to 29°08'24" W. and 89°28'05" N., thence to 29°07'54" W. and 89°28'05" N., thence to 29°07'54" W. and 89°25'35" N., thence to the point of beginning.

(ii) Reserved.

(3) Waterway from Empire, LA to the Gulf of Mexico—Bar channel.

(i) *Description and location:* Maintenance dredging disposal area 0.5 mile wide by 1 mile long, parallel to the channel and located on the west side. Beginning at 29°15'06" N. and 89°36'30" W., following channel centerline (azimuth 11°08') of the gulf entrance channel to 29°14'30" N. and 89°36'36" W., thence to 29°14'36" N. and 89°36'48" W., thence to 29°15'12" N. and 89°36'42" W., thence to the point of beginning.

(ii) Reserved.

(4) Bayou Lafourche and Lafourche—Jump Waterway, LA—Bell Pass.

(i) *Description and location:* Maintenance dredging disposal area 2,000 feet wide by 1.5 miles long, parallel to the channel and located on the west side. Beginning at 29°05'00" N. and 90°13'45" W., following Bell Pass centerline (azimuth 12°55') in the gulf entrance channel to 29°03'51" N. and 90°14'06" W., thence to 29°03'57" N. and 90°14'21" W., thence to 29°05'06" N. and 90°14'03" W., thence to the point of beginning.

(ii) Reserved.

(5) Atchafalaya River—Morgan City to the Gulf of Mexico, LA and Atchafalaya River and Bayous Chene, Boeuf and Black, LA—Bar channel.

(i) *Description and location:* Maintenance dredging disposal area 0.5 mile wide by 12 miles long, parallel to the bar channel and located on the east side. Beginning at 29°20'50" N. and 91°24'03" W., following channel centerline (azimuth 37°57') of the gulf entrance channel to 29°11'35" N. and 91°32'10" W., thence to 29°11'21" N. and 91°31'37" W., thence to 29°20'36" N. and 91°23'27" W., thence to the point of beginning.

(ii) Reserved.

(6) Mermentau River, LA, Disposal Area "A".

(i) *Description and location:* Maintenance dredging disposal area 0.5 mile wide and 1.5 miles long, parallel to the entrance channels in the Lower Mermentau River and in the Lower Mud Lake, both located on the west side: Beginning at 29°44'48" N. and 93°07'12" W., following channel centerline (azimuth 256°59') of the gulf entrance to 29°43'39" N. and 93°07'36" W., thence to 29°43'42" N. and 93°07'48" W., thence to 29°44'51" N. and 93°07'24" W., thence to the point of beginning.

(ii) Reserved.

(7) Mermentau River, LA, Disposal Area "B".

(i) *Description and location:* Maintenance dredging disposal area 0.5 mile wide and 1.5 miles long, parallel to the entrance channels in the Lower Mermentau River and in the Lower Mud Lake, both located on the west side: Beginning at 29°43'24"N. and 93°01'54"W., following channel centerline (azimuth 359°50') of the gulf centerline to 29°42'33"N. and 93°02'12"W., thence to 29°42'36" N. and 93°02'24" W., thence to 29°43'36"N. and 93°02'06"W., thence to the point of beginning.

(ii) Reserved.

(8) Freshwater Bayou, LA—Bar channel.

(i) *Description and location:* Maintenance dredging disposal area 2,000 feet wide by 3.5 miles long, parallel to the channel and located on the west side. Beginning at 29°32'00"N. and 92°18'48"W., following channel centerline (azimuth 09°25') of the gulf entrance to 29°28'24"N. and 92°19'30"W., thence to 29°28'25"N. and 92°19'42"W., thence to 29°32'01"N. and 92°19'00"W., thence to the point of beginning.

(ii) Reserved.

(k) Region VI Interim Other Wastes Sites.

(1) No interim sites.

(2) Reserved.

(l) Region IX Interim Dredged Material Sites.

(1) Newport Beach, CA (LA–3).

(i) *Location:* 33°31'42"N., 117°54'48"W. (1,000 yd. radius).

(ii) Reserved.

(2) Port Hueneme, CA (LA–1).

(i) *Location:* 34°05'00"N., 119°14'00"W. (1,000 yd. radius).

(ii) Reserved.

(3) Crescent City Harbor, CA (SF–1).

(i) *Location:* 41°43'15"N., 124°12'10"W. (1,000 yd. diameter).

(ii) Reserved.

(4) Noyo River, CA (SF–5).

(i) *Location:* 39°25'45"N., 123°49'42"W. (500 yd. diameter).

(ii) Reserved.
(5) Guam—Apra Harbor.
(i) *Location:* 13°29'30"N., 144°34'30"E. (1,000 yd. radius).
(ii) Reserved.
(m) Region IX Interim Other Wastes Sites.
(1) No interim sites.
(2) Reserved.
(n) Region X Interim Dredged Material Sites.
(1) Rogue River Entrance, OR.
(i) *Location:* 42°24'16"N., 124°26'48"W.; 42°24'04"N., 124°26'35"W.; 42°23'40"N., 124°27'13"W.; 42°23'52"N., 124°27'26"W.
(ii) Reserved.
(2) Port Orford, OR.
(i) *Location:* 42°44'08"N., 124°29'38"W.; 42°44'08"N., 124°29'28"W.; 42°43'52"N., 124°29'28"W.; 42°43'52"N., 124°29'38"W.
(ii) Reserved.
(3) Umpqua River Entrance, OR.
(i) *Location:* 43°40'07"N., 124°14'18"W.; 43°40'07"N., 124°13'42"W.; 43°39'53"N., 124°13'42"W.; 43°39'53"N., 124°14'18"W.
(ii) Reserved.
(4) Siuslaw River Entrance, OR.
(i) *Location:* 44°01'32"N., 124°09'37"W.; 44°01'22"N., 124°09'02"W.; 44°01'14"N., 124°09'07"W.; 44°01'24"N., 124°09'42"W.
(ii) Reserved.
(5) Yaquina Bay and Harbor Entrance, OR.
(i) *Location:* 44°36'31"N., 124°06'04"W.; 44°36'31"N., 124°05'16"W.; 44°36'17"N., 124°05'16"W.; 44°36'17"N., 124°06'04"W.
(ii) Reserved.
(6) Tillamook Bay Entrance, OR.
(i) *Location:* 45°34'09"N., 123°59'37"W.; 45°34'09"N., 123°58'45"W.; 45°33'55"N., 123°58'45"W.; 45°33'55"N., 123°59'37"W.
(ii) Reserved.
(7) Willapa Bay, WA.
(i) *Location:* 46°44'00"N., 124°10'00"W.; 46°39'00"N., 124°09'00"W.
(ii) Reserved.
(o) Region X Interim Other Wastes Sites.
(1) No interim sites.
(2) Reserved.

§ 228.15 Dumping sites designated on a final basis.

(a)(1) The sites identified in this section are approved for dumping the indicated materials. Designation of these sites was based on environmental studies conducted in accordance with the provisions of part 228, and the sites listed in this section have been found to meet the site designation criteria of §§ 228.5 and 228.6.

(2) Unless otherwise specifically noted, site management authority for each site set forth in this section is delegated to the EPA Regional office under which the site entry is listed.

(3) Unless otherwise specifically noted, all ocean dumping site coordinates are based upon the North American Datum of 1927.

(b) Region I Final Dredged Material Sites.

(1) Portland, Maine, Dredged Material Disposal Site.

(i) *Location:* 43°33'36"N., 70°02'42"W.; 43°33'36"N., 70°01'18"W.; 43°34'36"N., 70°02'42"W.; 43°34'36"N., 70°01'18"W.

(ii) *Size:* One square nautical mile.

(iii) *Depth:* 50 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material.

(2) Reserved.

(c) Region I Final Other Wastes Sites.

(1) No final sites.

(2) Reserved.

(d) Region II Final Dredged Material Sites.

(1) Fire Island Inlet, Long Island, New York Dredged Material Disposal Site.

(i) *Location:* 40°36'49"N., 73°23'50"W.; 40°37'12"N.,73°21'30"W.; 40°36'41"N., 73°21'20"W.; 40°36'10"N.,73°23'40"W.

(ii) *Size:* Approximately 1.09 square nautical miles.

(iii) *Depth:* Ranges from 7 to 10 meters.

(iv) *Primary Use:* Dredged material disposal.

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Fire Island Inlet, Long Island, New York.

(2) Jones Inlet, Long Island, New York Dredged Material Disposal Site.

(i) *Location:* 40°34'32"N., 73°39'14"W.; 40°34'32"N., 73°37'06"W.; 40°33'48"N., 73°37'06"W.; 40°33'48"N., 73°39'14"W.

(ii) *Size:* Approximately 1.19 square nautical miles.

(iii) *Depth:* Ranges from 7 to 10 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Jones Island Inlet, Long Island, New York.

(3) East Rockaway Inlet, Long Island NY Dredged Material Disposal Site.

(i) *Location:* 40°34'36"N., 73°49'00"W.; 40°35'06"N., 73°47'06"W.; 40°34'10"N., 73°48'36"W.; 40°34'12"N., 73°47'17"W.

(ii) *Size:* Approximately 0.81 square nautical miles.

(iii) *Depth:* Ranges from 6 to 9 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from East Rockaway Inlet, Long Island, New York.

(4) Rockaway Inlet, Long Island, New York Dredged Material Disposal Site.

(i) *Location:* 40°32'30"N., 73°55'00"W.; 40°32'30"N., 73°54'00"W.; 40°32'00"N., 73°54'00"W.; 40°32'00"N., 73°55'00"W.

(ii) *Size:* Approximately 0.38 square nautical miles.

(iii) *Depth:* Ranges from 8 to 11 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Rockaway Inlet, Long Island, New York.

(5) Shark River, New Jersey Dredged Material Disposal Site.

(i) *Location:* 40°12'48"N., 73°59'45"W.; 40°12'44"N., 73°59'06"W.; 40°11'36"N., 73°59'28"W.; 40°11'42"N., 74°00'12"W.

(ii) *Size:* Approximately 0.6 square nautical miles.

(iii) *Depth:* Approximately 12 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Shark River Inlet, New Jersey.

(6) New York Bight Dredged Material Disposal Site (Mud Dump).

(i) *Location:* 40°23'48"N., 73°51'28"W.; 40°21'48"N., 73°50'00"W.; 40°21'48"N., 73°51'28"W.; 40°23'48"N., 73°50'00"W.

(ii) *Size:* 2.2 square nautical miles.

(iii) *Depth:* Ranges from 16 to 29 meters.

(iv) *Use Restricted to Disposal of:* Dredged materials.

(v) *Period of Use:* Continuing use, subject to volumetric restriction as noted below.

(vi) *Restriction:* Disposal shall be limited to 100 million cubic yards of dredged materials generated in the Port of New York and New Jersey and nearby harbors. Dumping within the area described by the following coordinates shall be limited to projects determined by the Corps and EPA to demonstrate a specific need, such as research or final capping. 40°23'48"N., 73°51'28"W.; 40°23'23"N., 73°51'28"W.; 40°23'23"N.,

73°51'06"W.; 40°23'48"N., 73°51'06"W. Dumping in the southeast quadrant of the site shall not be authorized except as part of a research project on capping.

(7) Manasquan, New Jersey Dredged Material Disposal Site.

(i) *Location:* 40°06'36"N., 74°01'34" W.; 40°06'19" N., 74°01'39" W.; 40°06'18" N., 74°01'53" W.; 40°06'41" N., 74°01'51" W.

(ii) *Size:* Approximately 0.11 square nautical miles.

(iii) *Depth:* Approximately 18 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Manasquan Inlet, New Jersey.

(8) Absecon Inlet, NJ Dredged Material Disposal Site.

(i) *Location:* 39°20'39" N., 74°18'43" W.; 39°20'03" N., 74°18'25" W.; 39°20'03" N., 74°18'43" W.; 39°20'12" N., 74°19'01" W.

(ii) *Size:* Approximately 0.28 square nautical miles.

(iii) *Depth:* Approximately 17 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Absecon Inlet, New Jersey.

(9) Cold Spring Inlet, NJ Dredged Material Disposal Site.

(i) *Location:* 38°55'52" N., 74°53'04" W.; 38°55'37" N., 74°52'55" W.; 38°55'23" N., 74°53'27" W.; 38°55'36" N., 74°53'36" W.

(ii) *Size:* Approximately 0.13 square nautical miles.

(iii) *Depth:* Approximately 9 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Cold Spring Inlet, New Jersey.

(10) San Juan Harbor, PR, Dredged Material Site.

(i) *Location:* 18°30'10" N., 66°09'31" W.; 18°30'10" N., 66°08'29" W.; 18°31'10" N., 66°08'29" W.; 18°31'10" N., 66°09'31" W.

(ii) *Size:* 0.98 square nautical mile.

(iii) *Depth:* Ranges from 200 to 400 meters.

(iv) *Primary Use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material from the Port of San Juan, Puerto Rico, and coastal areas within 20 miles of said port entrance.

(11) Arecibo Harbor, PR Dredged Material Disposal Site .

(i) *Location:* 18°31'00" N., 66°43'47" W.; 18°31'00" N., 66°42'45" W.; 18°30'00" N., 66°42'45" W.; 18°30'00" N., 66°43'47" W.

(ii) *Size:* Approximately 1 square nautical mile.

(iii) *Depth:* Ranges from 101 to 417 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Arecibo Harbor, PR.

(12) Mayaguez Harbor, PR Dredged Material Disposal Site.

(i) *Location:* 18°15'30" N., 67°16'13" W.; 18°15'30" N., 67°15'11" W.; 18°14'30" N., 67°15'11" W.; 18°14'30" N., 67°16'13" W.

(ii) *Size:* Approximately 1 square nautical mile.

(iii) *Depth:* Ranges from 351 to 384 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Mayaguez Harbor, PR.

(13) Ponce Harbor, PR Dredged Material Disposal Site.

(i) *Location:* 17°54'00" N., 66°37'43" W.; 17°54'00" N., 66°36'41" W.; 17°53'00" N., 66°36'41" W.; 17°53'00" N., 66°37'43" W.

(ii) *Size:* Approximately 1 square nautical mile.

(iii) *Depth:* Ranges from 329 to 457 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Ponce Harbor, PR.

(14) Yabucoa Harbor, PR Dredged Material Disposal Site.

(i) *Location:* 18°03'42" N., 65°42'49" W.; 18°03'42" N., 65°41'47" W.; 18°02'42" N., 65°41'47" W.; 18°02'42" N., 65°42'49" W.

(ii) *Size:* Approximately 1 square nautical miles.

(iii) *Depth:* Ranges from 549 to 914 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Yabucoa Harbor, PR.

(e) Region II Final Other Wastes Sites.

(1) No final sites.

(2) Reserved.

(f) Region III Final Dredged Material Sites.

(1) Dam Neck, Virginia, Dredged Material Disposal Site.

(i) *Location:* 36°51'24.1" N., 75°54'41.4" W.; 36°51'24.1" N., 75°53'02.9" W.; 36°50'52.0" N., 75°52'49.0" W.; 36°46'27.4" N., 75°51'39.2" W.; 36°46'27.5" N., 75°54'19.0" W.; 36°50'05.0" N., 75°54'19.0" W.

(ii) *Size:* 8 square nautical miles.

(iii) *Depth:* Averages 11 meters.

(iv) *Primary Use:* Dredged Material.

(v) *Period of Use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material from the mouth of Chesapeake Bay.

(2) Reserved.

(g) Region III Final Other Wastes Sites.

(1) No final sites.

(2) Reserved.

(h) Region IV Final Dredged Material Sites.

(1) Morehead City, NC Dredged Material Disposal Site.

(i) *Location:* 34°38'30" N., 76°45'0" W.; 34°38'30" N., 76°41'42" W.; 34°38'09" N., 76°41'0" W.; 34°36'0" N., 76°41'0" W.; 34°36'0" N., 76°45'0" W.

(ii) *Size:* 8 square nautical miles.

(iii) *Depth:* Average 12.0 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material from the Morehead City Harbor, North Carolina area. All material disposed must satisfy the requirements of the ocean dumping regulations.

(2) Wilmington, NC Dredged Material Disposal Site.

(i) *Location:* 33°49'30" N., 78°03'06" W.; 33°48'18" N., 78°01'39" W.; 33°47'19" N., 78°02'48" W.; 33°48'30" N., 78°04'16" W.

(ii) *Size:* 2.3 square nautical miles.

(iii) *Depth:* Averages 13 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to the dredged material from Wilmington Harbor area.

(3) Georgetown Harbor; Georgetown, South Carolina: Ocean Dredged Material Disposal Site.

(i) *Location:* 33°11'18"N., 79°07'20"W.; 33°1'18"N., 79°05'23"W.; 33°10'38"N., 79°15'24"W.; 33°0'38"N., 79°07'21"W.

(ii) *Size:* 1 square nautical mile.

(iii) *Depth:* 6 to 11 meter range.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to suitable dredged material from the greater Georgetown, South Carolina, area.

(4) Charleston, SC Dredged Material Disposal Site.

(i) Location: 32°40'27"N., 79°47'22"W.; 32°39'04"N., 79°44'25"W.; 32°38'07"N., 79°45'03"W.; 32°39'30"N., 79°48'00"W.

(ii) *Size:* 3 square nautical miles.
(iii) *Depth:* Averages 11 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Charleston Harbor area.

(5) Charleston, SC Harbor Deepening Project Dredged Material Disposal Site.
(i) *Location:* 32°38′06″N., 79°41′57″W.; 32°40′42″N., 79°47′30″W.; 32°39′04″N., 79°49′21″W.; 32°36′28″N., 79°43′48″W.
(ii) *Size:* 11.8 square nautical miles.
(iii) *Depth:* Averages 11 meters.
(iv) *Primary use:* Dredged material from the Charleston Harbor deepening project.
(v) *Period of use:* Not to exceed seven years from the initiation of the Charleston Harbor deepening project.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Charleston Harbor area. All dredged material, except entrance channel materials, shall be limited to that part of the site east of the line between coordinates 32°39′04″N., 79°44′25″W. and 32°37′24″N., 79°45′30″W. unless the materials can be shown by sufficient resting to contain 10% or less of fine material (grain size of less than 0.074 mm) by weight and shown to be suitable for ocean disposal.

(6) Savannah, GA Dredged Material Disposal Site.
(i) *Location:* 31°55′53″N., 80°44′20″W.; 31°57′55″N., 80°46′48″W.; 31°57′55″N., 80°44′20″W.; 31°55′53″N., 80°46′48″W.
(ii) *Size:* 4.26 square nautical miles.
(iii) *Depth:* Averages 11.4 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Savannah Harbor area.

(7) Brunswick Harbor, Brunswick, Georgia Ocean Dredged Material Disposal Site.
(i) *Location:* 31°02′35″N., 81°17′40″W.; 31°02′35″N., 81°16′30″W.; 31°00′30″N., 81°16′30″W.; 31°00′30″N., 81°17′42″W.
(ii) *Size:* Approximately 2 square nautical miles.
(iii) *Depth:* Average 9 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) Restrictions: Disposal shall be limited to suitable dredged material from the greater Brunswick, Georgia, vicinity.

(8) Fernandina Beach, FL Dredged Material Disposal Site.
(i) *Location:* 30°33′00″N., 81°16′52″W.; 30°31′00″N., 81°16′52″W.; 30°31′00″N., 81°19′08″W.; 30°33′00″N., 81°19′08″W.
(ii) *Size:* Four square nautical miles.
(iii) *Depth:* Average 16 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing Use.
(vi) *Restriction:* Disposal shall be limited to dredged material which meets the criteria given in the Ocean Dumping Regulations part 227.

(9) Jacksonville, FL Dredged Material Site.
(i) *Location:* 30°21′30″N., 81°18′34″W.; 30°21′30″N., 81°17′26″W.; 30°20′30″N., 81°17′26″W.; 30°20′30″N., 81°18′34″W.
(ii) *Size:* One square nautical mile.
(iii) *Depth:* Ranges from 12 to 16 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Jacksonville, Florida, area.

(10) Canaveral Harbor, FL, Dredged Material Dumpsite .
(i) *Location:* 28°20′15″N., 80°31′11″W.; 28°18′51″N., 80°29′15″W.; 28°17′13″N., 80°30′53″W.; 28°18′36″N., 80°32′45″W. Center coordinates: 28°18′44″N., 80°31′00″W. (NAD 27)
(ii) *Size:* 4 square nautical miles.
(iii) *Depth:* Range 47 to 55 feet.
(iv) *Primary Use:* Dredged material.
(v) *Period of Use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to suitable dredged material from the greater Canaveral, Florida, vicinity.

(11) Pensacola Nearshore, FL Dredged Material Disposal Site.
(i) *Location:* 30°17′24″N., 87°18′30″W.; 30°17′00″N., 87°19′50″W.; 30°15′36″N., 87°17′48″W.; 30°15′15″N., 87°19′18″W.
(ii) *Size:* 2.48 square nautical miles.
(iii) *Depth:* Averages 11 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged materials which are shown to be predominantly sand (defined by a median grain size greater than 0.125 mm and a composition of less than 10% fines) and meet the Ocean Dumping Criteria.

(12) Pensacola, Florida Ocean Dredged Material Disposal Site, *i.e.* the Pensacola (Offshore) Ocean Dredged Material Disposal Site.
(i) *Location:* 30°08′50″N., 87°19′30″W.; 30°08′50″N., 87°16′30″W.; 30°07′05″N., 87°16′30″W.; 30°07′05″N., 87°19′30″W.
(ii) *Size:* Approximately 6 square statute miles.
(iii) *Depth:* Ranges from 65 to 80 feet.
(iv) *Primary Use:* Dredged material.
(v) *Period of Use:* Continuing use.
(vi) *Restrictions:* Disposal is restricted to predominantly fine- grained dredged material from the greater Pensacola, Florida area that meets the Ocean Dumping Criteria but is not suitable for beach nourishment or disposal at the existing EPA designated Pensacola (Nearshore) ODMDS (§ 228.15(h)(11)). The Pensacola (Nearshore) ODMDS is restricted to suitable dredged material with a median grain size of >0.125 mm and a composition of <10% fines.

(13) Mobile, Alabama Dredged Material Disposal Site.
(i) *Location:* 30°10′00″N., 88°07′42″W.; 30°10′24″N., 88°05′12″W.; 30°09′24″N., 88°04′42″W.; 30°08′30″N., 88°05′12″W.; 30°08′30″N., 88°08′12″W.
(ii) *Size:* 4.8 square nautical miles.
(iii) *Depth:* Average 14 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged materials which meet the Ocean Dumping Criteria.

(14) Pascagoula, MS, Ocean Dredged Material Dumpsite.
(i) *Location:* 30°12′06″N., 88°44″30″W.; 30°11′42″N., 88°33′24″W.; 30°08′30″N., 88°37′00″W.; and 30°08′18″N., 88°41′54″W. Center coordinates: 30°10′09″N., 88°39′12″W.
(ii) *Size:* 18.5 square nautical miles.
(iii) *Depth:* Average 48 feet, range 38–52 feet.
(iv) *Primary Use:* Dredged material.
(v) *Period of Use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to suitable material from the Mississippi Sound and vicinity.

(15) Gulfport, Mississippi Dredged Material Disposal Site—Eastern Site.
(i) *Location:* 30°11′10″N., 88°58′24″W.; 30°11′12″N., 88°57′30″W.; 30°07′36″N., 88°54′24″W.; 30°07′24″N., 88°54′48″W.
(ii) *Size:* 2.47 square nautical miles.
(iii) *Depth:* 9.1 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to materials which meet the Ocean Dumping Criteria.

(16) Gulfport, MS Dredged Material Disposal Site—Western Site
(i) *Location:* 30°12′00″N., 89°00′30″W.; 30°12′00″N., 88°59′30″W.; 30°11′00″N., 89°00′00″W.; 30°07′00″N., 88°56′30″W.; 30°06′36″N., 88°57′00″W.; 30°10′30″N., 89°00′36″W.
(ii) *Size:* 5.2 square nautical miles.
(iii) *Depth:* 8.2 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) Disposal shall be limited to dredged material which meets the Ocean Dumping Criteria.

(i) Region IV Final Other Waste Sites.
(1) No final sites.
(2) Reserved.

(j) Region VI Final Dredged Material Sites.

(1) Mississippi River Gulf Outlet, LA.
(i) *Location:* 29°32'35"N., 89°12'38"W.; 29°29'21"N., 89°08'00"W.; 29°24'32"N., 88°59'23"W.; 29°24'28"N., 88°59'39"W.; 29°28'59"N., 89°08'19"W.; 29°32'15"N., 89°12'57"W.; thence to point of beginning.
(ii) *Size:* 6.03 square nautical miles.
(iii) *Depth:* Ranges from 20 to 40 feet.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restrictions:* Disposal shall be limited to dredged material from the vicinity of Mississippi River Gulf Outlet.
(2) Southwest Pass—Mississippi River, LA.
(i) *Location:* 28°54'12"N., 89°27'15"W.; 28°54'12"N., 89°26'00"W.; 28°51'00"N., 89°27'15"W.; 28°51'00"N., 89°26'00"W.
(ii) *Size:* 3.44 square nautical miles.
(iii) *Depth:* Ranges from 2.7 to 32.2 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of Use:* Continuing use.
(vi) *Restrictions:* Disposal shall be limited to dredged material from the vicinity of the Southwest Pass Channel.
(3) Barataria Bay Waterway, LA.
(i) *Location:* 29°16'10"N., 89°56'20"W.; 29°14'19"N., 89°53'16"W.; 29°14'00"N., 89°53'36"W.; 29°16'29"N., 89°55'59"W.
(ii) *Size:* 1.4 square nautical miles.
(iii) *Depth:* Ranges from 8–20 feet.
(iv) *Primary Use:* Dredged material.
(v) *Period of Use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the vicinity of Barataria Bay Waterway.
(4) Houma Navigation Canal, Louisiana.
(i) *Location:* 29°05'22.3"N., 90°34'43"W.; thence following a line 1000 feet west of the channel centerline to 29°02'17.8"N., 90°34'28.4"W.; thence to 29°02'12.6"N., 90°35'27.8"W.; thence to 29°05'30.8"N., 90°35'27.8"W.; thence to the point of beginning.
(ii) *Size:* 2.08 square nautical miles.
(iii) *Depth:* Ranges from 6 to 30 feet.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restrictions:* Disposal shall be limited to dredged material from the vicinity of Cat Island Pass, Louisiana.
(5) Calcasieu, LA Dredged Material Site 1.
(i) *Location:* 29°45'39"N., 93°19'36"W.; 29°42'42"N., 93°19'06"W.; 29°42'36"N., 93°19'48"W.; 29°44'42"N., 93°20'12"W.; 29°44'42"N., 93°20'24"W.; 29°45'27"N., 93°20'33"W.
(ii) *Size:* 1.76 square nautical miles.
(iii) *Depth:* Ranges from 2 to 8 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the vicinity of the Calcasieu River and Pass Project.
(6) Calcasieu, LA Dredged Material Site 2.
(i) *Location:* 29°44'31"N., 93°20'43"W.; 29°39'45"N., 93°19'56"W.; 29°39'34"N., 93°20'46"W.; 29°44'25"N., 93°21'33"W.
(ii) *Size:* 3.53 square nautical miles.
(iii) *Depth:* Ranges from 2 to 11 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the vicinity of the Calcasieu River and Pass Project.
(7) Calcasieu, LA Dredged Material Site 3.
(i) *Location:* 29°37'50"N., 93°19'37"W.; 29°37'25"N., 93°19'33"W.; 29°33'55"N., 93°16'23"W.; 29°33'49"N., 93°16'25"W.; 29°30'59"N., 93°13'51"W.; 29°29'10"N., 93°13'49"W.; 29°29'05"N., 93°14'23"W.; 29°30'49"N., 93°14'25"W.; 29°37'26"N., 93°20'24"W.; 29°37'44"N., 93°20'27"W.
(ii) *Size:* 5.88 square nautical miles.
(iii) *Depth:* Ranges from 11 to 14 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the vicinity of the Calcasieu River and Pass Project.
(8) Sabine-Neches, TX Dredged Material Site 1.
(i) *Location:* 29°28'03"N., 93°41'14"W.; 29°26'11"N., 93°41'11"W.; 29°26'11"N., 93°44'11"W.
(ii) *Size:* 2.4 square nautical miles.
(iii) *Depth:* Ranges from 11–13 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Sabine-Neches area.
(9) Sabine-Neches, TX Dredged Material Site 2.
(i) *Location:* 29°30'41"N., 93°43'49"W.; 29°28'42"N., 93°41'33"W.; 29°28'42"N., 93°44'49"W.; 29°30'08"N., 93°46'27"W.
(ii) *Size:* 4.2 square nautical miles.
(iii) *Depth:* Ranges from 9–13 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Sabine-Neches area.
(10) Sabine-Neches, TX Dredged Material Site 3.
(i) *Location:* 29°34'24"N., 93°48'13"W.; 29°32'47"N., 93°46'16"W.; 29°32'06"N., 93°46'29"W.; 29°31'42"N., 93°48'16"W.; 29°32'59"N., 93°49'48"W.
(ii) *Size:* 4.7 square nautical miles.
(iii) *Depth:* 10 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Sabine-Neches area.
(11) Sabine-Neches, TX, Dredged Material Site 4.
(i) *Location:* 29°38'09"N., 93°49'23"W.; 29°35'53"N., 93°48'18"W.; 29°35'06"N., 93°50'24"W.; 29°36'37"N., 93°51'09"W.; 29°37'00"N., 93°50'06"W.; 29°37'46"N., 93°50'26"W.
(ii) *Size:* 4.2 square nautical miles.
(iii) *Depth:* Ranges from 5–9 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Sabine-Neches area.
(12) Galveston, TX Dredged Material Site.
(i) *Location:* 29°18'00"N., 94°39'30"W.; 29°15'54"N., 94°37'06"W.; 29°14'24"N., 94°38'42"W.; 29°16'54"N., 94°41'30"W.
(ii) *Size:* 6.6 square nautical miles.
(iii) *Depth:* Ranges from 10 to 15.5 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Galveston, Texas area.
(13) Freeport Harbor, TX, New Work (45 Foot Project).
(i) *Location:* 28°50'51"N., 95°13'54"W.; 28°51'44"N., 95°14'49"W.; 28°50'15"N., 95°16'40"W.; 28°49'22"N., 95°15'45"W.
(ii) *Size:* 2.64 square nautical miles.
(iii) *Depth:* 54 to 61 feet.
(iv) *Primary use:* Construction (new work) dredged material.
(v) *Period of Use:* Indefinite period of time.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Freeport Harbor Entrance and Jetty Channels, Texas.
(14) Freeport Harbor, TX, Maintenance (45 Foot Project).
(i) *Location:* 28°54'00"N., 95°15'49"W.; 28°53'28"N., 95°15'16"W.; 28°52'00"N., 95°16'59"W.; 28°52'32"N., 95°17'32"W.
(ii) *Size:* 1.53 square nautical miles.
(iii) *Depth:* 31 to 38 feet.
(vi) *Primary use:* Maintenance dredged material.
(v) *Period of use:* Indefinite period of time.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Freeport Harbor Entrance and Jetty Channels, Texas.
(15) Matagorda Ship Channel, TX.
(i) *Location:* 28°24'10"N., 96°18'23"W.; 28°23'33"N., 96°17'45"W.; 28°23'05"N., 96°18'15"W.; 28°23'43"N., 96°18'54"W.

(ii) *Size:* 0.56 square nautical miles.
(iii) *Depth:* Ranges from 25–40 feet.
(iv) *Primary Use:* Dredged Material.
(v) *Period of Use:* Indefinite period of time.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Matagorda Ship Channel, Texas.
(16) Homeport Project, Port Aransas, TX.
(i) *Location:* 27°47'42"N., 97°00'12"W.; 27°47'15"N., 96°59'25"W.; 27°46'17"N., 97°01'12"W.; 27°45'49"N., 97°00'25"W.
(ii) *Size:* 1.4 square miles.
(iii) *Depth:* Ranges from 45–55 feet.
(iv) *Primary Use:* Dredged material.
(v) *Period of Use:* 50 years.
(vi) *Restriction:* Disposal shall be limited to dredged material from the U.S. Navy Homeport Project, Corpus Christi/Ingleside, TX.
(17) Corpus Christi Ship Channel, TX.
(i) *Location:* 27°49'10"N., 97°01'09"W.; 27°48'42"N., 97°00'21"W.; 27°48'06"N., 97°00'48"W.; 27°48'33"N., 97°01'36"W.
(ii) *Size:* 0.63 square nautical miles.
(iii) *Depth:* Ranges from 35 to 50 feet.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Indefinite period of time.
(vi) *Restrictions:* Disposal shall be limited to dredged material from the Corpus Christi Ship Channel, Texas.
(18) Port Mansfield, TX.
(i) *Location:* 26°34'24"N., 97°15'15"W.; 26°34'26"N., 97°14'17"W.; 26°33'57"N., 97°14'17"W.; 26°33'55"N., 97°15'15"W.
(ii) *Size:* 0.42 Square nautical miles.
(iii) *Depth:* Ranges from 35–50 feet.
(iv) *Primary Use:* Dredged material.
(v) *Period of Use:* Indefinite period of time.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Port Mansfield Entrance Channel, Texas.
(19) Brazos Island Harbor, TX.
(i) *Location:* 26°04'32"N., 97°07'26"W.; 26°04'32"N., 97°06'30"W.; 26°04'02"N., 97°06'30"W.; 26°04'02"N., 97°07'26"W.
(ii) *Size:* 0.42 square nautical miles.
(iii) *Depth:* Ranges from 55 to 65 feet.
(iv) *Primary Use:* Dredged material.
(v) *Period of Use:* Indefinite period of time.
(vi) *Restriction:* Disposal shall be limited to dredged material from the Brazos Island Harbor Entrance Channel, Texas.
(20) Brazos Island Harbor (42-Foot Project), TX.
(i) *Location:* 26°04'47"N., 97°05'07"W.; 26°05'16"N., 97°05'04"W.; 26°05'10"N., 97°04'06"W.; 26°04'42"N., 97°04'09"W.
(ii) *Size:* 0.42 square nautical miles.
(iii) *Depth:* Ranges from 60–67 feet.
(iv) *Primary Use:* Dredged material.
(v) *Period of Use:* Indefinite period of time.
(vi) *Restrictions:* Disposal shall be limited to construction material dredged from the Brazos Island Harbor Entrance Channel, Texas.
(k) Region VI Final Other Wastes Sites.
(1) No final sites.
(2) Reserved.
(l) Region IX Final Dredged Material Sites.
(1) San Diego, CA (LA–5).
(i) *Location:* Center coordinates of the site are: 32°36.83' North Latitude and 117°20.67' West Latitude (North American Datum from 1927), with a radius of 3,000 feet (910 meters).
(ii) *Size:* 0.77 square nautical miles.
(iii) *Depth:* 460 to 660 feet (145 to 200 meters).
(iv) *Primary use:* Ocean dredged material disposal.
(v) *Period of use:* Continuing use.
(vi) *Restrictions:* Disposal shall be limited to dredged materials that comply with EPA's Ocean Dumping Regulations and Corps Permitting Regulations.
(2) Los Angeles/Long Beach, CA (LA–2).
(i) *Location:* 33°37.10' North Latitude by 118°17.40' West Longitude (North American Datum from 1983), with a radius of 3,000 feet (910 meters).
(ii) *Size:* 0.77 square nautical miles.
(iii) *Depth:* 380 to 1060 feet (110 to 320 meters).
(iv) *Primary use:* Ocean dredged material disposal.
(v) *Period of use:* Continuing use, subject to submission of a revised Consistency Determination to the California Coastal Commission after 5 years of site management and monitoring.
(vi) *Restrictions:* Disposal shall be limited to dredged sediments that comply with EPA's Ocean Dumping Regulations.
(3) Channel Bar Site, San Francisco, CA (SF–8).
(i) *Location:* 37°44'55"N., 122°37'18"W.; 37°45'45"N., 122°34'24"W.; 37°44'24"N., 122°37'06"W.; 37°45'15"N., 122°34'12"W.
(ii) *Size:* 4,572 x 914 meters.
(iii) *Depth:* Ranges from 11 to 14.3 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to material from required dredging operations at the entrance of the San Francisco main ship channel which is composed primarily of sand having grain sizes compatible with naturally occurring sediments at the disposal site and containing approximately 5 percent of particles having grain sizes finer than that normally attributed to very fine sand (.075 millimeters). Other dredged materials meeting the requirements of 40 CFR 227.13 but having smaller grain sizes may be dumped at this site only upon completion of an appropriate case-by-case evaluation of the impact of such material on the site which demonstrates that such impact will be acceptable.
(4) Hilo, HI.
(i) *Location:* (center point): Latitude—19°48'30"N.; Longitude—154°58'30"W.
(ii) *Size:* Circular with a radius of 920 meters.
(iii) *Depth:* Ranges from 330 to 340 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material.
(5) Kahului, HI.
(i) *Location:* (center point): Latitude—21°04'42"N.; Longitude—156°29'00"W.
(ii) *Size:* Circular with a radius of 920 meters.
(iii) *Depth:* Ranges from 345 to 365 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material.
(6) South Oahu, HI.
(i) *Location:* (center point): Latitude—21°15'10"N.; Longitude—157°56'50"W.
(ii) *Size:* 2 kilometers wide and 2.6 kilometers long.
(iii) *Depth:* Ranges from 400 to 475 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material.
(7) Nawiliwili, HI.
(i) *Location:* (centerpoint): Latitude—21°55'00"N. Longitude—159°17'00"W.
(ii) *Size:* Circular with a radius of 920 meters.
(iii) *Depth:* Ranges from 840 to 1,120 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material.
(8) Port Allen, HI.
(i) *Location:* (center point) Latitude—21°50'00"N. Longitude—159°35'00"W.
(ii) *Size:* Circular with a radius of 920 meters.
(iii) *Depth:* Ranges from 1,460 to 1,610 meters.
(iv) *Primary use:* Dredged material.
(v) *Period of use:* Continuing use.
(vi) *Restriction:* Disposal shall be limited to dredged material.

(m) Region IX Final Other Wastes Sites.

(1) Fish Processing Waste Disposal Site, American Samoa.

(i) *Location:* 14°24.00′ South latitude by 170°38.30′ West longitude (1.5 nautical mile radius).

(ii) *Size:* 7.07 square nautical miles.

(iii) *Depth:* 1,502 fathoms (2,746 meters or 9,012 feet).

(iv) *Primary use:* Disposal of fish processing wastes.

(v) *Period of use:* Continued use.

(vi) *Restriction:* Disposal shall be limited to dissolved air flotation (DAF) sludge, presswater, and precooker water produced as a result of fish processing operations at fish canneries generated in American Samoa.

(vii) *Effective Date:* July 31, 1990.

(2) Reserved.

(n) Region X Final Dredged Material Sites.

(1) Chetco, OR, Dredged Material Site.

(i) Location: 42°01′55″N., 124°16′37″W.; 42°01′55″N., 124°16′13″W.; 42°01′37″N., 124°16′13″W; and 42°01′37″N., 124°16′37″W.(NAD83).

(ii) *Size:* 0.09 square nautical mile.

(iii) *Depth:* 21 meters (average).

(iv) *Primary Use:* Dredged material.

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material determined to be suitable for unconfined disposal from the Chetco Estuary and River and adjacent areas.

(2) Coos Bay, OR Dredged Material Site E.

(i) *Location:* 43°21′59″N., 124°22′45″W.; 43°21′48″N., 124°21′59″W.; 43°21′35″N., 124°22′05″W.; 43°21′46″N., 124°22′51″W.

(ii) *Size:* 0.13 square nautical mile.

(iii) *Depth:* Averages 17 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material in the Coos Bay area of type 1, as defined in the site designation final EIS.

(3) Coos Bay, OR Dredged Material Site F.

(i) *Location:* 43°22′44″N., 124°22′18″W.; 43°22′29″N., 124°21′34″W.; 43°22′16″N., 124°21′42″W.; 43°22′31″N., 124°22′26″W.

(ii) *Size:* 0.13 square nautical mile.

(iii) *Depth:* Averages 24 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material in the Coos Bay area of type 1, as defined in the site designation final EIS.

(4) Coos Bay, OR Dredged Material Site H.

(i) *Location:* 43°23′53″N., 124°22′48″W.; 43°23′42″N., 124°23′01″W.; 43°24′16″N., 124°23′26″W.; 43°24′05″N., 124°23′38″W.

(ii) *Size:* 0.13 square nautical mile.

(iii) *Depth:* Averages 55 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material in the Coos Bay area of type 2 and 3, as defined in the site designation final EIS.

(5) Coquille River Entrance, OR.

(i) *Location:* 43°08′26″N., 124°26′44″W.; 43°08′03″N., 124°26′08″W.; 43°08′13″N., 124°27′00″W.; 43°07′50″N., 124°26′23″W. Centroid: 43°08′08″N., 124°26′34″W.

(ii) *Size:* 0.17 square nautical miles.

(iii) *Depth:* 18.3 meters.

(iv) *Period of use:* Continuing use.

(v) *Restrictions:* Disposal shall be limited to dredged material from the Coquille Estuary and River and adjacent areas.

(6) Mouth of Columbia River, OR/WA Dredged Material Site A.

(i) *Location:* 46°13′03″N., 124°06′17″W.; 46°12′50″N., 124°05′55″W.; 46°12′13″N., 124°06′43″W.; 46°12′26″N., 124°07′05″W.

(ii) *Size:* 0.27 square nautical mile.

(iii) *Depth:* Ranges from 14–25 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material from the Columbia River entrance channel and adjacent areas.

(7) Mouth of Columbia River, OR/WA Dredged Material Site B.

(i) *Location:* 46°14′37″N., 124°10′34″W.; 46°13′53″N., 124°10′01″W.; 46°13′43″N., 124°10′26″W.; 46°14′28″N., 124°10′59″W.

(ii) *Size:* 0.25 square nautical mile.

(iii) *Depth:* Ranges from 24–39 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material from the Columbia River entrance channel and adjacent areas.

(8) Mouth of Columbia River, OR/WA Dredged Material Site E.

(i) *Location:* 46°15′43″N., 124°05′21″W.; 46°15′36″N., 124°05′11″W.; 46°15′11″N., 124°05′53″W.; 46°15′18″N., 124°06′03″W.

(ii) *Size:* 0.08 square nautical mile.

(iii) *Depth:* Ranges from 16–21 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material from the Columbia River entrance channel and adjacent areas.

(9) Mouth of Columbia River, OR/WA Dredged Material Site F.

(i) *Location:* 46°12′12″N., 124°09′00″W.; 46°12′00″N., 124°08′42″W.; 46°11′48″N., 124°09′00″W.; 46°12′00″N., 124°09′18″W.

(ii) *Size:* 0.08 square nautical mile.

(iii) *Depth:* Ranges from 38–42 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material from the Columbia River entrance channel and adjacent areas.

(10) Grays Harbor Eight Mile Site.

(i) *Location:* Circle with a 0.40 mile radius around a central coordinate at 46°57′N., 124°20.06′W.

(ii) *Size:* 0.5 square nautical miles.

(iii) *Depth:* 42–49 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* One time use over multiple years. Designation of the site is anticipated within five years following completion of disposal and monitoring activities.

(vi) *Restrictions:* Disposal shall be limited to dredged material from initial construction of the Grays Harbor navigation project. Post-disposal monitoring will determine the need and extent of closure requirements.

(11) Grays Harbor Southwest Navigation Site.

(i) *Location:* 46°52.94′N., 124°13.81′W.; 46°52.17′N., 124°12.96′W.; 46°51.15′N., 124°14.19′W.; 46°51.92′N., 124°14.95′W.

(ii) *Size:* 1.25 square nautical miles.

(iii) *Depth:* 30–37 meters (average).

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material determined to be suitable for unconfined disposal from Grays Harbor estuary and adjacent areas. Additional discharge restrictions will be contained in the EPA/Corps management plan for the site.

(12) Nome, AK—East Site.

(i) *Location:* 64°29′54″N., 165°24′41″W.; 64°29′45″N., 165°23′27″W.: 64°28′57″N., 165°23′29″W.; 64°29′07″N., 165°24′25″W.

(ii) *Size:* 0.37 square nautical mile.

(iii) *Depth:* Ranges from 1 to 12 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging.

(13) Nome, AK—West Site.

(i) *Location:* 64°30'04"N., 165°25'52"W.; 64°29'18"N., 165°26'04"W.; 64°29'13"N., 165°25'22"W.; 64°29'54"N., 165°24'45"W.

(ii) *Size:* 0.30 nautical miles.

(iii) *Depth:* Ranges from 1 to 11 meters.

(iv) *Primary use:* Dredged material.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging. Preference will be given to placing any material in the inner third of the site to supplement littoral drift, as needed.

(o) Region X Final Other Wastes Sites.

(1) No final sites.

(2) Reserved.

[FR Doc. 93–13487 Filed 6–8–93; 8:45 am]

BILLING CODE: 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–136, RM–8161]

Radio Broadcasting Services; Key Colony Beach, Key Largo, and Marathon, Florida

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Spanish Broadcasting System of Florida, Inc., requesting the substitution of Channel 292C2 for Channel 280C2 at Key Largo, Florida, and the modification of its license to specify operation on Channel 292C2. In order to accommodate the channel change at Key Largo, petitioner also requests the substitution of Channel 280C2 for Channel 288C2 at Key Colony Beach, Florida, and the modification of Station WKKB (FM)'s construction permit to specify Channel 280C2; and the substitution of Channel 288A for Channel 292A at Marathon, Florida, and the modification of Station WAVK (FM)'s license to specify Channel 288A. The coordinates for Channel 292C2 at Key Largo are North Latitude 24–57–20 and West Longitude 80–34–50. The coordinates for Channel 280C2 at Key Colony Beach are North Latitude 24–42–25 and West Longitude 81–06–17. The coordinates for Channel 288A at Marathon are North Latitude 24–43–44 and West Longitude 81–02–05.

DATES: Comments must be filed on or before July 26, 1993, and reply comments on or before August 10, 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: James M. Weitzman, Allan G. Moskowitz, Kay, Scholer, Fierman, Hays & Handler, 901 15th Street NW., suite 1100, Washington, DC 20005 (Attorneys for Petitioner).

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. 93–136, adopted May 6, 1993, and released June 3, 1993. The full text of this Commission decision 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 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. 93–13478 Filed 6–8–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–139, RM–8211]

Radio Broadcasting Services; Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by American Radio Brokers, Inc., proposed assignee of Station KXDZ(FM), Anchorage, Alaska, seeking the substitution of FM Channel 275C1 for Channel 275C2 at Anchorage, and modification of the license for Station KXDZ(FM) accordingly. Coordinates for this proposal are 61–26–10 and 149–59–57.

Petitioner's modification proposal complies with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 275C1 at Anchorage, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before July 26, 1993, and reply comments on or before August 10, 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: David Tillotson, Esq., 3421 M Street, NW., suite 1739, Washington, DC 20007.

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. 93–139, adopted May 6, 1993, and released June 3, 1993. The full text of this Commission decision 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 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. 93–13480 Filed 6–8–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–138, RM–8225]

Radio Broadcasting Services; Lahoma, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Donald W. McCoy seeking the substitution of Channel 239C3 for Channel 239A at Lahoma, Oklahoma, and the modification of his construction permit (File No. BPH–920601MF) to specify the higher class channel. Channel 239C3 can be allotted to Lahoma in compliance with the Commissioner's minimum distance separation requirements with a site restriction of 4.8 kilometers (3 miles) northeast to accommodate petitioner's desired transmitter site, at coordinates North Latitude 36–25–00 and West Longitude 98–03–00. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Lahoma 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 July 26, 1993, and reply comments on or before August 10, 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: Donald W. McCoy, 1802 Marksdale, Colwich, Kansas 67030 (Petitioner); Larry P. Waggoner, 1712 Valleyview Court, Wichita, Kansas 67212–1245 (Consultant 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. 93–138, adopted May 6, 1993, and released June 3, 1993. The full test of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractor, International Transportation 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, Allocation Branch; Policy and Rules Division; Mass Media Bureau.

[FR Doc. 93–13481 Filed 6–8–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–137, RM–8227]

Radio Broadcasting Services; Hastings, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Allen's of Hastings Radio seeking the allotment of Channel 233C2 to Hastings, Nebraska, as the community's second local FM service. Channel 233C2 can be allotted to Hastings in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) northwest to avoid a short-spacing to Station KJCK–FM, Channel 233C1, Junction City, Kansas, at coordinates North Latitude 40–38–23 and West Longitude 98–25–25. The proposal must also conform with the technical requirements of section 73.1030(c)(1)–(5) of the Commission's Rules regarding protection to the Commission's monitoring station at Grand Island, Nebraska.

DATES: Comments must be filed on or before July 26, 1993, and reply comments on or before August 10, 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: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., suite 510, Washington, DC 20036 (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. 93–137, adopted May 6, 1993, and released June 3, 1993. The full text of this Commission decision 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 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. 93–13482 Filed 6–8–93; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC–180 (Sub-No. 2)]

Rulemaking—Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is instituting this proceeding to determine whether

off-bill discounting where it does or may result in a misrepresentation of shipping charges should be found to be an unreasonable practice or otherwise unlawful. Off-bill discounting is the practice by which a party that arranges for transportation, but is not the party paying for the transportation, nevertheless receives a rebate of a portion of the carrier's freight charges. If the Commission determines that the practice is unreasonable or otherwise unlawful because it directly or indirectly results in misrepresentation of shipping charges, a rule prohibiting tariffs from providing for such deceptive practices will be imposed. We are not proposing to proscribe off-bill discounting where the carrier discloses in the billing documents that payments may be made to persons other than the rate payers on account of the transportation provided. However, comments will be considered on this issue.

DATES: Comments are due on August 9, 1993.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. MC–180 (Sub-No. 2) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Charles E. Langyher III (202) 927–5160 or Ronald A. Hall (202) 927–5595 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The Commission has denied previously two Regular Common Carrier Conference (RCCC) petitions which requested either the prohibition of off-bill discounting or a disclosure rule requiring carriers to apprise rate payers of any payments being given to other parties to the transaction. RCCC has contended that off-bill discounting would be considered unfair or deceptive competition under the Federal Trade Commission Act (if that Act applied), and, moreover, often compromises the carrier-customer business relationship. In its two past decisions,[1] the Commission concluded that the practice is not *per se* unreasonable or unlawful because, among other things, the payments are listed in tariffs (and the payers of freight charges therefore have notice), and, in any event, payers are not harmed because they shop for the best overall price and are therefore indifferent as to how that price is apportioned out as cost of goods, as freight charges, or as rebates to the shipper.

RCCC has now forwarded to the Commission a letter from the Office of Inspector General, General Services Administration (GSA). The letter responds to an RCCC request for comment on off-bill discounting as it applies to the "shipment of goods to federal entities and those private entities authorized to make purchases pursuant to federal government contracts ('federal customers')." (GSA letter, at 1.). The letter opines that off-bill discounting in such circumstances is unlawful, stating in pertinent part as follows:

> When a carrier delivers goods to a federal customer, the invoice it presents to the shipper should reflect the actual charges the shipper is to pay for that service. If the practice of off-bill discounting results, directly or indirectly, in a misrepresentation of shipping charges to the federal customer, that practice is a violation of the False Claims Act, 31 U.S.C. 3729 (a)(1) & (a)(2) ("False Claims Act"). Those who participate in a scheme to present a false claim to a federal customer can be held liable civilly under the False Claims Act and criminally under 18 U.S.C. 286 and 287 * * * such conduct might also violate other federal statutes, e.g., 18 U.S.C. 371, the Anti-Kickback Act, 41 U.S.C. 53 *et seq.* Accordingly we would agree that your member carriers should take steps to ensure that, when they carry goods to a federal customer, the actual amount the shipper pays for that service appears on the invoice to the shipper.

The Office of Inspector General is not in a position to comment on the legality of off-bill discounting as it applies to other customers. For that you must turn to the Interstate Commerce Commission or other appropriate authorities. (GSA letter, *supra.*)

This opinion relating to the practice of off-bill discounting for federal customers, raises matters of sufficient gravity to warrant initiation of a rulemaking to determine whether off-bill discounting to the extent it results in misrepresentation of shipping charges should be proscribed. Because we have not previously requested public comment on off-bill discounting, we are instituting this proceeding. The public is requested to give us their views as to whether we should extend the protections afforded to Federal customers by the statutes cited above against off-bill discounting that results in misrepresentation of shipping charges to all users of motor carriers of property. Moreover, while the Commission is unaware of such discounting in the rail or other Commission-regulated transportation industries, comments are invited regarding its use, if any, in these industries as well. For the reasons stated in the Commission's two previous decision, we are not proposing to declare the practice of off-bill discounting unreasonable or unlawful where the carrier notifies rate payers in their billing documents, as well as their tariffs of carrier payments made to other parties to the transaction. However, comments will be considered on this issue. If the Commission concludes that off-bill discounting is unlawful or an unreasonable practice because it directly or indirectly results in misrepresentation of shipping charges, a rule will be promulgated prohibiting tariff provisions that provide for it, and tariffs that contain such provisions will be ordered canceled.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose of this proceeding is to ascertain whether off-bill discounting should be found to be lawful. If it is not, carriers will be required to cancel, modify, and/or refile affected tariffs and notify rate payers in their billing documents of carrier payments made to other parties. The economic impact of a one-time requirement to cancel, modify, and/or refile tariffs is not likely to be significant within the meaning of the Regulatory Flexibility Act (the Act), nor is it likely to be felt by a substantial number of small entities. Moreover, the loss of off-bill discounting as a competitive tool is unlikely to have a significant economic impact within the meaning of the Act, because the loss should have a neutral effect on small entities' ability to compete. Similarly, the requirement that notice be provided in billing documents, if adopted, is not likely to have a significant impact within the meaning of the Act. However, we welcome any comments regarding the small entities considerations embodied in the Act.

Environmental Statement

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

Authority: 49 U.S.C. 10761(a) and 10762.

List of Subjects in 49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines, Railroads, Tariffs.

Decided: May 11, 1993.

[1] Ex Parte No. MC–180, Petition for Rulemaking—Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges (not printed), served March 11, 1987; Ex Parte No. MC–180 (Sub-No. 1), Petition for Rulemaking—Discounting Practices (not printed), served July 22, 1991.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–13542 Filed 6–8–93; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 58, No. 109
Wednesday, June 9, 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

Office of the Secretary

State of Wisconsin (Petroleum Environmental Cleanup Fund Act); Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.
ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all State cost-share payments made to individuals by the State of Wisconsin under the Petroleum Environmental Cleanup Fund Act (PECFA) have been made primarily for the purpose of soil and water conservation, protecting or restoring the environment, and improving the quality of water in Wisconsin. This determination is made in accordance with section 126 of the Internal Revenue Code of 1954, as amended 26 U.S.C. 126. The determination permits recipients of these cost-share payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Miles M. Mickelson, Environmental Cleanup Fund Coordinator, State of Wisconsin, Bureau of Petroleum and Fire Inspection, Madison, Wisconsin 53707.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to persons under State conservation programs may be excluded from the recipient's gross income for Federal income tax purposes if, the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." The Secretary of Agriculture evaluates the conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

One of the State conservation programs is the State of Wisconsin's PECFA authorized by S. 101.143, Wis. Stat., as created by 1987 Wis. Act 399. The main objective of this program is to assist individuals in restoration of soil and ground water resources that have been contaminated by a discharge from a petroleum underground storage tank system. The program is funded by an increase in petroleum inspection fees to generate an amount not to exceed $25,000,000 in a fiscal year. The Department of Industry, Labor and Human Relations (DILHR) shall set the additional petroleum inspection fees under S. 168.12 at a level sufficient, considering funds in the PECFA, to fund actual and projected awards and administrative costs. The program is administered by the DILHR with assistance from the Wisconsin Department of Natural Resources.

Procedural Matters

The authorizing legislation, regulations, and operating procedures regarding the State of Wisconsin's Petroleum Environmental Cleanup Fund Act, have been examined using the criteria set forth in 7 CFR part 14. The Department of Agriculture has concluded that the cost-share payments made under this cost-share program are made to provide financial assistance to eligible persons primarily for protecting or restoring the environment, and improving the quality of ground water of Wisconsin.

A Record of Decision, State of Wisconsin's PECFA: Primary Purpose Determination for Federal Tax Purpose has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, or Environmental Cleanup Fund Coordinator, State of Wisconsin, Bureau of Petroleum and Fire Inspection, Madison, Wisconsin 53707.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures regarding the State of Wisconsin's PECFA. In accordance with the criteria set out in 7 CFR part 14, I have determined that all cost-share payments for implementation of conservation practices made under this program are primarily for the purpose of protecting or restoring the environment and improving the quality of ground water of Wisconsin. Subject to further determination by the Secretary of the Treasury, that payments made under these conservation programs do not substantially increase the annual income derived from the property benefitting by these payments, this determination permits payment recipients to exclude from gross income, for Federal income tax purposes, all or part of such cost-share payments made under said program.

Signed at Washington, DC, on May 21, 1993.

Mike Espy,
Secretary of Agriculture.

[FR Doc. 93–13503 Filed 6–8–93; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Forest Service

[PB3430DOI]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Conservation and Management of Habitat for the Northern Spotted Owl and Old-Growth Related Species in the Pacific Northwest and Northern California

ACTION: Notice; supplement to previous notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Forest Service and the Bureau of Land Management (BLM), with assistance from Fish and Wildlife Service, Environmental Protection Agency, National Marine Fisheries Service, and National Park Service, will prepare a Supplemental Environmental

Impact Statement (SIS) for management standards and guidelines for the conservation and management of habitat for the northern spotted owl and old-growth related species. The management direction will apply to lands administered by the Forest Service and BLM within the current range of the northern spotted owl.

The SEIS will supplement the Forest Service Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests (1992); the BLM draft environmental impact statements for Resource Management Plans for the Coos Bay, Eugene, Medford, Roseburg, and Salem Districts and for the Klamath Falls Resource Area of the Lakeview District in Oregon; and cause a plan amendment to the Resource Management Plans for the Arcata and Redding Resource Areas of the Ukiah District in California.

The SEIS will analyze and disclose the environmental effects of (1) amendments to Forest Service Regional Guides and Forest Plans for maintenance of viability of old-growth related species within the range of the northern spotted owl and (2) standards for maintenance of viability of old-growth related species within the range of the northern spotted owl for use in Bureau of Land Management Resource Management Plans.

FOR FURTHER INFORMATION CONTACT: Robert T. Jacobs, Team Leader, Interagency SEIS Team, 333 S.W. First Avenue, P.O. Box 3623, Portland, OR 97208–3623. (503) 326–7883.

SUPPLEMENTARY INFORMATION: At the Forest Conference held in Portland, Oregon, on April 2, 1993, President Clinton issued a mandate to the Federal agencies to develop a plan to break the gridlock over management of the Federal forests in the Pacific Northwest and northern California. Three working groups were formed after the Forest Conference to craft a plan to implement the President's mandate, one of which was the Ecosystem Management Assessment Working Group that was charged with identifying alternative strategies for a scientifically sound, ecologically credible, legally responsible basis for managing these federal forests. On May 12, 1993, the Secretaries of Agriculture and the Interior directed the Chief of the Forest Service and the Director of the Bureau of Land Management to prepare a Draft Supplemental Environmental Impact Statement (SEIS) on the options being developed by the Ecosystem Management Assessment Working Group. This SEIS will assess the environmental effects of the options prepared by the Ecosystem Management Assessment Working Group, and provide for additional public participation. The Draft SEIS will also form the basis for the consultation required by the Endangered Species Act.

This notice of intent amends the Notice of Intent to prepare a supplemental environmental impact statement published by the Forest Service at 57 FR 48200, October 22, 1992. This SEIS will continue the process of amending the Pacific Northwest and Pacific Southwest Regional Guides and Forest Land and Resource Management Plans.

The SEIS will analyze an ecosystem approach to forest management and discuss those issues outlined in the Statement of Mission for the Ecosystem Management Assessment Team (May 7, 1993) and disclose the environmental, economic and social consequences of the alternatives presented.

The SEIS will be prepared by an interagency interdisciplinary team comprised of professionals trained in the disciplines of wildlife biology, fisheries biology, botany, forest ecology, silviculture, forestry, land and resource planning, economics, and sociology. Additional technical and professional support will be provided by other professionals and specialists as needed.

Rapid preparation of this SEIS is a high priority for the two Departments. Preparation will be coordinated with the Ecosystem Management Assessment Working Group, and will draw upon information previously collected in order to complete the Draft SEIS as quickly as possible. The Draft SEIS should be ready to release to the public in July 1993. This schedule would allow time for the comment period to close in October, a final SEIS to be issued in November, and decision documents to be issued by December 31, 1993.

The environmental impact statements being supplemented are all recent, and previous public comment on them remains relevant. Additional comments have been received in discussion at the Forest Conference and subsequent letters from members of the public. No additional public scoping activities will be conducted before release of this Draft SEIS as provided for in 40 CFR 1502.9(c)(4).

Copies of the BLM environmental impact statements that are supplemented, along with related plans and maps, are available for review in the BLM District Offices for the affected areas, and at the State BLM Offices at 1300 NE. 44th Avenue, Portland, Oregon, 97213, and at 2800 Cottage Way, Sacramento, California, 95825. Copies of the Forest Service final environmental impact statement to be supplemented are available for review at 333 SW. First Avenue, Portland, Oregon, 97208–3623. The comment period on the Draft SEIS will close 90 days from the date the Environmental Protection Agency publishes the notice of its availability in the **Federal Register**, as provided for in 16 U.S.C. 1604(d). If public hearings or meetings are scheduled, they will be announced in a **Federal Register** notice.

The agencies believe it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agencies to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period on the Draft SEIS so that substantive comments and objections are made available to the agencies at a time when they can meaningfully consider the comments and respond to them in the Final SEIS.

To assist the agencies in identifying and considering issues and concerns on the proposed action, comments on the Draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft SEIS. Comments may also address the adequacy of the Draft SEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The responsible officials for the SEIS and decision are Secretary of Agriculture Mike Espy, and Secretary of the Interior Bruce Babbitt

Dated: June 3, 1993.

For the Department of Agriculture.

James R. Lyons,

Assistant Secretary for Natural Resources and the Environment.

Dated: June 4, 1993.

For the Department of Interior.

Michael Dombeck,

Acting Deputy Assistant Secretary for Land and Minerals Management.

[FR Doc. 93–13533 Filed 6–8–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Tilefish Industry Advisory Subcommittee will hold a public meeting on June 24, 1993, at the New York Sportfishing Federation, 401 East Shore Road, Lindenhurst, NY. The meeting will begin at 8 a.m.

The primary purpose of the meeting is to discuss management data needs.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: June 2, 1993.

David S. Crestin,

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

[FR Doc. 93–13511 Filed 6–8–93; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on June 21–25, 1993, at the Hawk's Cay Resort, Mile Marker 61, Duck Key, Marathon, FL; telephone: (305) 743–7000.

On June 21 the Council's Snapper-Grouper Committee is scheduled to review an updated assessment of the condition of the snapper-grouper stocks along with other related reports concerning the fishery. The Committee also will review an update of proposed regulations for the Florida Keys National Marine Sanctuary.

Later on June 21 from 7 p.m. until 10 p.m., the Council will hold the last of the public hearings on proposed snapper-grouper regulations contained in draft Amendment #6 to the Snapper-Grouper Fishery Management Plans. Other public hearings are being held from June 7 through June 16, 1993, along the South Atlantic coast. Please contact the Council office for a copy of the public hearing document or for more information on the hearings. (The document also will be available at the hearings.)

On June 22 the Snapper-Grouper Committee is scheduled to preliminarily review public hearing comments on draft Amendment #6 and consider changes to the proposed regulations if necessary. The Council will review the draft amendment again at the August 23–27 meeting in Charleston, SC, with the intent of approving the amendment for submission to the Secretary of Commerce for final approval.

A public scoping meeting will be held on June 22 from 3 p.m. until 6:30 p.m. to solicit public input on the harvest of "live rock" in Federal waters. "Live rock" is dead coral or calcium carbonate rock with living marine organisms attached to it, which is used in the aquarium hobby industry.

The Habitat and Environmental Protection Committee is scheduled to meet on June 23 to review issues that will be discussed during a June 2–3 Habitat Advisory Panel meeting. Some items to be discussed include the harvest of "live rock" and the status of fisheries habitat and restoration efforts in the South Atlantic.

The Controlled Access Committee is scheduled to meet on June 23 to review public comments received by the Council from a workshop held in May on establishing Individual Transferable Quotas (ITQs) for the Atlantic Spanish mackerel fishery. After reviewing comments, the Committee will discuss the feasibility, development, and schedule for ITQs for the Spanish mackerel fishery.

On June 24 the Mackerel Committee is scheduled to discuss the sub-allocation of Gulf group king mackerel in the eastern zone of the Gulf fishery and trip limits for Atlantic king mackerel and cobia. The full Council is scheduled to meet on June 24 and June 25 to receive committee reports.

There will be a joint closed session (not open to the public) of the Advisory Panel Selection Committee and the Scientific and Statistical Selection Committee on June 21 to review applicants to fill vacancies on some of its advisory panels and on the Scientific and Statistical Selection Committee.

The Finance Committee will meet on June 22 to review the fiscal year 1993 Council expense report and to develop the fiscal year 1994 Council budget.

A detailed agenda with specific meeting times is available.

For more information contact Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407; telephone: (803) 571–4366.

Dated: June 4, 1993.

David S. Crestin,

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

[FR Doc. 93–13559 Filed 6–8–93; 8:45 am]

BILLING CODE 3510–22–M

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of applications received by the Secretary of State requesting permit for foreign fishing vessels to operate in the Exclusive Economic Zone (EEZ) in 1993 under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). This notice announces that the Russian Federation has submitted an application requesting authorization for the factory ships DAURIA and RIGA and the cargo transport IVAN AIVAZOVSKIY to conduct cargo transport and bunkering operations in the Northwest Atlantic Ocean area of the EEZ. Send comments on this application to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910.

and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331.

For further information contact Robert A. Dickinson, Office of Fisheries Conservation and Management, (301) 713–2337.

Dated: June 2, 1993.

David S. Crestin,

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

[FR Doc. 93–13512 Filed 6–8–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and OMB Control Number: Indemnification of Contractors Performing Environmental Restoration.

Type of Request: Expedited Submission—Approval Date Requested: July 9, 1993.

Number of Respondents: 35.

Responses Per Respondent: 1.

Annual Responses: 35.

Average Burden Per Response: 10 hours.

Annual Burden Hours: 350.

Needs and Uses: This information will be collected from potentially responsible parties in the private sector to establish a base of knowledge pertaining to indemnification as practiced in that arena. The information will be used to provide congressionally mandated reports and to develop Federal policy relative to indemnification of environmental restoration contractors.

Affected Public: Businesses or other for-profit.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Peter N. Wiess. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 3, 1993.

L. M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–13488 Filed 6–8–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–666–000, et al.]

PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 1, 1993.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER93–666–000]

Take notice that PacifiCorp, on May 25, 1993, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, Amendment No. 3 (Amendment) to Firm Transmission Service Agreement dated November 9, 1989, as amended, with Montana Power Company (Montana).

The Amendment changes the Contract Demand of 45 MW commencing June 1, 1993.

PacifiCorp requests a waiver of prior notice be granted and that an effective date of June 1, 1993 be assigned to the Amendment. This date is consistent with the date Contract Demand changes to 45 MW.

Copies of this filing were supplied to Montana, Black Hills Power and Light Company, the Montana Public Service Commission, the Public Utility Commission of Oregon and the Public Service Commission of Wyoming.

Comment date: June 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Services, Inc.

[Docket No. ER93–665–000]

Take notice that on May 24, 1993, Entergy Services, Inc., on behalf of Arkansas Power & Light Company (AP&L), filed the Twentieth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between Arkansas Electric Cooperative Corporation and Arkansas Power & Light Company, dated May 12, 1993 (Twentieth Amendment). Entergy Services states that the purpose of the Twentieth Amendment is to amend Article IX, Section 3, "Term of Agreement," of the Power Coordination, Interchange and Transmission Service Agreement (PCITSA), between Arkansas Electric Cooperative Corporation (AECC) and AP&L, as amended, to extend the first effective cancellation date of the PCITSA from December 31, 1999 to December 31, 2018. Entergy Services requests that the Commission grant waiver of (1) its notice requirements and make the Twentieth Amendment effective as of May 12, 1993 and (2) section 35.13(c) of its Regulations.

Comment date: June 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Electric Power Co., L.P.

[Docket No. ER93–496–000]

Take notice that on May 25, 1993, Northern Electric Power Co., L.P. tendered for filing a supplement to the initial rate filing filed in the above-referenced docket on March 26, 1993.

Comment date: June 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Co.

[Docket No. ER93–667–000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on May 25, 1993, tendered for filing an agreement for the sale of energy and capacity to Central Vermont Public Service Corporation (Central Vermont).

Copies of the filing have been served upon Central Vermont, the Vermont Public Service Board, and the New Jersey Board of Regulatory Commissioners.

Comment date: June 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket Nos. ER93–375–000 and ER93–378–000]

Take notice that on May 26, 1993, Public Service Company of New Mexico (PNM) submitted for filing a letter supplementing its earlier filing (as previously supplemented) of the Contract for Electric Service between PNM and the City of Gallup, New Mexico. Under the Contract, PNM will sell firm power and energy to Gallup. The letter supplements the previous filings to reflect PNM's unilateral agreement to reduce the rates for Firm Power Substitution Service for an interim period. PNM states that copies of this filing have been served upon Gallup and the New Mexico Public Service Commission.

Comment date: June 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER93–663–000]

Take notice that on May 24, 1993, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P), tendered for filing an Interruptible Power Supply Service Agreement between CL&P and Bozrah Light and Power Company (BL&P).

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule to become effective June 15, 1993.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties and to the Connecticut Department of Public Utility Control.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's regulations.

Comment date: June 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13499 Filed 6–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1267]

Greenwood County, SC; Proposed Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included In or Eligible for Inclusion In the National Register of Historic Places

June 3, 1993.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgement of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the South Carolina Department of Archives and History (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to 36 CFR 800.13 of the Council's regulations implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470f), to prepare a programmatic agreement for managing properties in or eligible for inclusion in the National Register of Historic Places at Project No. 1267.

The programmatic agreement, upon approval by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until the agreement expires or is terminated (36 CFR 800.13[e]).

Greenwood County, South Carolina, as prospective licensee for the project, is being asked to participate in the consultation and is being invited to sign as a concurring party to the programmatic agreement.

For purposes of commenting on the programmatic agreement we propose to restrict the service list for Project No. 1267 as follows:

South Carolina Department of Archives and History, 1430 Senate Street, P.O. Box 11669, Columbia, SC 29211.

Advisory Council on Historic Preservation, Eastern Office of Project Review, The Old Post Office Building, suite 809, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Patrick J. Brennan, Chairman, County Council, County of Greenwood, 214 Sheffield Road, Greenwood, SC 29646.

[1] 18 CFR 385.2010.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (825 North Capitol Street NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13498 Filed 6–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–668–000]

Century Power Corp. Filing

June 1, 1993.

Take notice that on May 25, 1993, Century Power Corporation filed an executed tariff service agreement for the sale of short-term power between itself and San Diego Gas & Electric Company. Century requests that this service agreement be substituted for the unexecuted tariff service agreement which was accepted for filing by the Commission's letter order of December 9, 1992. Waiver of the notice requirement is requested to allow the executed service agreement to become effective January 1, 1993, the same date that the unexecuted service agreement was allowed to become effective under that letter order.

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 June 14, 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. 93–13500 Filed 6–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–4–32–000]

Colorado Interstate Gas Co.; Quarterly Purchased Gas Adjustment Filing

June 3, 1993.

Take notice that on May 28, 1993 Colorado Interstate Gas Company (CIG) submitted for filing an original and five copies of 1st Revised Ninth Revised Sheet Nos. 7.1 through 8.2, reflecting a 0.20 cent/Mcf increase in the commodity rate for the G–1, P–1, SG–1, and PS–1 Rate Schedules. CIG requests that these proposed tariff sheets be made effective on July 1, 1993.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

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 Sections 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13495 Filed 6–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–364–000]

Kern River Gas Transmission Co.; Request Under Blanket Authorization

June 3, 1993.

Take notice that on May 28, 1993, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–364–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct, own and operate a tap, metering and appurtenant facilities to provide natural gas deliveries to Bountiful Nevada Transmission Corporation (Bountiful Nevada), an intrastate pipeline company, at a point located in Clark County, Nevada, under the certificate issued to Kern River in Docket No. CP89–2048, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Kern River states that the delivery point will consist of a 3-inch tap, meter station and appurtenant facilities. Kern River also states that service will be provided to the delivery point for any of Kern River's Part 284 firm or interruptible shippers under the terms and conditions of the applicable Kern River Rate Schedules KRF–1, CH–1, MO–1, SH–1, UP–1 and KRI–1. It is stated that shippers will be able to deliver volumes to Bountiful Nevada in accordance with the nominal design capacity of 9,500 Mcf per day. In addition, it is stated that Bountiful Nevada, a privately owned intrastate transmission company, will then redeliver gas received from Kern River at the delivery point to the proposed Las Vegas Cogeneration Limited Partnership (Las Vegas Cogeneration) cogeneration facility in Clark County, Nevada. Kern River states that the cogeneration facility is currently under construction and is anticipated to commence operation on or about February 1, 1994. It is maintained that the delivery point will allow Las Vegas Cogeneration to access gas supplies from the Rocky Mountain supply areas.

It is stated that Kern River will be reimbursed by Bountiful Nevada for all costs incurred in connection with construction of the delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13493 Filed 6–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–229–000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

June 3, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, June 24, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1993).

For additional information, contact Carmen Gastilo at (202) 208–2182 or Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13494 Filed 6–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–403–000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

June 3, 1993.

Take notice that on June 3, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP93–403–000 a request pursuant to § § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a modification of an existing point of delivery to Public Service Electric & Gas Company (PSE&G) under the blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

TGPL states that it will construct, install, own, operate and maintain a modification of an existing delivery point to PSE&G (referred to as the "Squibb 'B' Delivery Point") which shall include a 6-inch hot tap valve and

appurtenant facilities at milepost 1792.50 on TGPL's existing 42-inch Mainline "E" pipeline.

The Squibb "B" Delivery Point will be used by PSE&G to provide supplemental supply security to the PSE&G-Squibb delivery point currently served by TGPL's Mainline "A". The authorized total transportation and sales service entitlement for PSE&G will not be altered from the current level, and the addition of the Squibb "B" Delivery Point will have no effect on TGPL's peak day or annual deliveries to PSE&G. Furthermore, TGPL has sufficient system delivery flexibility to accomplish deliveries at the Squibb "B" delivery point without detriment or disadvantage to TGPL's other gas transportation and sales customers and, therefore, the addition of such point will have no effect on TGPL's peak day or annual deliveries to such other customers. Also, the addition of such delivery point is not prohibited by TGPL's FERC Gas Tariff. PSE&G will continue to have total firm mainline sales and transportation capacity of 430,549 Mcf per day.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13496 Filed 6–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–11–011]

Texas Eastern Transmission Corp.; Request for Declaratory Order

June 3, 1993.

Take notice that on May 27, 1993,[1] Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77002, filed, in Docket No. RS92–11–011, a request for a declaratory order requesting that the Commission either (1) determine that the transportation service agreement between ANR Pipeline Company (ANR) and Texas Eastern, dated July 27, 1988 (ANR Service Agreement), expired on April 1, 1993, or (2) take regulatory action to terminate that service agreement, thus avoiding the payment by Texas Eastern's customers of potentially substantial Order No. 636 transition costs related to the ANR Service Agreement.

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 18 CFR 385.214 and Section 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 17, 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 to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Those parties that have intervened in Texas Eastern's restructuring proceeding, Docket No. RS92–11–000, need not intervene in the instant proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13497 Filed 6–8–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–51–NG]

Husky Gas Marketing, Inc.; Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Husky Gas Marketing, Inc. to export up to 18 Bcf of natural gas to Canada over a two-year period beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 2, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–13567 Filed 6–8–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $7,000,000, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Eason Drilling Company, formerly Eason Oil Company, and ITT Corporation. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Applications for Refund submitted for a portion of these funds must be filed in duplicate, postmarked no later than August 1, 1994. Applications should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications for Refund should display a reference to case number LEF–0040.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585 (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR § 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $7,000,000 that has been remitted by Eason Drilling Company, formerly Eason Oil Company, (Eason) and ITT Corporation to the DOE. The DOE is currently holding the funds in an interest bearing account pending distribution.

The DOE has determined to distribute these funds in accordance with the

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[1] Although Texas Eastern initially submitted its request for a declaratory order on May 18, 1993, the appropriate filing fee was not submitted until May 27, 1993, thus making the latter date the actual filing date.

DOE's subpart V refund procedures. Applications for Refund will be accepted from customers who purchased controlled refined petroleum products from Eason during the period November 1, 1973 through December 31, 1979. Applications for Refund must be postmarked no later than August 1, 1994 to meet the filing deadline.

Dated: June 1, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

NAMES OF FIRMS: EASON OIL COMPANY, ITT CORPORATION

DATE OF FILING: FEBRUARY 5, 1992

CASE NUMBER: LEF-0040

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures, 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the ERA on February 5, 1992 for funds obtained due to alleged pricing violations in the sale of natural gas liquid products and refined crude oil condensate. The funds at issue in that Petition were obtained through the settlement of DOE enforcement proceedings involving Eason Drilling Company (Eason Drilling), formerly Eason Oil Company (Eason), and Eason's former parent corporation, ITT Corporation (ITT), pursuant to 10 CFR part 205, subpart V.[1] The present Decision will set forth final procedures for the distribution of these funds to qualified purchasers of Eason's covered products.

I. Background

During the period covered by the Consent Order (November 1, 1973 through December 31, 1979), Eason owned all or part of several natural gas processing plants. In addition, Eason owned a substantial minority interest in a plant which, in addition to producing natural gas liquids, refined crude oil condensate into motor gasoline, kerosene and gas oil. Accordingly, Eason was subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of Eason records revealed possible violations of these regulations, in sales of Eason's covered products during the period November 1973 through December 1979. On the basis of this audit, the ERA issued a Proposed Remedial Order (PRO) to Eason on September 14, 1984. This Office affirmed in part these alleged violations and issued a Remedial Order to Eason on December 6, 1990. *Eason Oil Company*, 20 DOE ¶ 83,011 (1990). On January 4, 1991, Eason appealed the Remedial Order to the Federal Energy Regulatory Commission (Docket No. RO91-1-000).

In order to settle all claims between Eason and the DOE, the two parties entered into a Consent Order (the Consent Order) that resolves all matters relating to Eason's compliance with the federal petroleum price and allocation regulations during the period November 1, 1973 through December 31, 1979 (the Consent Order period). The Consent Order became final upon publication in the **Federal Register** on June 28, 1991. 56 FR 29640 (June 28, 1991). Execution of the Consent Order is neither an admission by Eason nor a finding by the DOE of any violation by Eason of any statute or regulation. Consent Order at ¶ 504.

The Consent Order covers Eason's sales of covered products from all of the natural gas processing plants in which it had an ownership interest. Information furnished to the DOE by ITT indicates that Eason sold 205,417,603 gallons of propane, butane, natural gasoline and ethane from following gas plants in which Eason had an ownership interest (the operator of the plant is indicated in parentheses): (1) Crescent, Oklahoma (Eason); (2) Laverne, Oklahoma (Sun); (3) Beaver, Oklahoma (Cabot, Carbon); (4) Okeene, Oklahoma (Amoco); (5) Thomas, Oklahoma (Mobil); (6) Star Lacey, Oklahoma (Amoco); (7) Elmwood, Oklahoma (Amoco); (8) Gillette, Wyoming (Arco); (9) Lacasane, Louisiana (T&P Oil Company); (10) Ames, Oklahoma (Tenneco); and (11) Dubach, Louisiana (Kerr-McGee). Eason's precise ownership interest in each of these plants and the corresponding volumes of covered products that it sold from each of these plants are listed in the Appendix to this Decision and Order. In addition, the Proposed Remedial Order issued to Eason found that the Dubach, Louisiana plant also refined crude oil condensate into motor gasoline, kerosene and gas oil. Based on information contained in the ERA audit workpapers, we estimate that Eason sold approximately 92,087,016 gallons of covered products produced from crude oil condensate during the audit period.[2] See Appendix.

Under the terms of the Consent Order, Eason deposited $7,000,000 into an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. These monies were paid in full on July 29, 1991.

II. The Proposed Decision and Order

On March 24, 1993, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged violation amount obtained from Eason. 58 Fed. Reg. 16822 (March 31, 1993). The OHA tentatively outlined procedures under which purchasers of Eason's refined covered products could apply for refunds. In order to permit applicants to make refund claims without incurring disproportionate costs as well as to allow the OHA to equitably and efficiently consider those claims, we set forth a number of presumptions pertaining to refund procedures.

First, we presumed that the alleged refined product overcharges were spread evenly over all of Eason's sales of refined covered products during the Consent Order period. We therefore proposed that an applicant's potential refund generally should be computed by multiplying the per-gallon refund amount by the number of gallons of Eason's refined covered products that the claimant purchased during the Consent Order period. The resulting figure is referred to as the claimant's "volumetric share" of the Eason Consent Order funds. Because an applicant may have been overcharged by more than the volumetric amount, we proposed that an applicant could rebut the volumetric refund presumption by showing that it sustained a greater amount of the overcharge.

Because it is potentially difficult, time-consuming, and expensive to demonstrate that one was forced to absorb any overcharges from Eason, we proposed to adopt a number of presumptions concerning injury. We proposed that resellers and retailers

[1] Eason was acquired by International Telephone and Telegraph Company (now ITT) on August 20, 1977. In December 1984, ITT sold Eason to Sohio Petroleum Company and Sonat, Inc. On July 22, 1985, ITT stipulated that it assumed liability for all violations arising from Eason's activities. Consequently, references to Eason in this Decision also refer to ITT.

[2] The ERA audit workpapers indicate that crude oil condensate purchases by the Dubach, Louisiana plant during the Consent Order period totalled 2,738,848.18 barrels, resulting in the production of approximately 115,031,624 gallons of motor gasoline, kerosene and gas/oil from this crude oil. Since the prices of kerosene and gas/oil were decontrolled in 1976, we have excluded the volumes of those products that were produced after the dates of decontrol. Accordingly, we find that Eason sold approximately 92,087,016 gallons of covered products from the Dubach, Louisiana plant during the Consent Order period.

claiming refunds of $10,000 or less, end-users, agricultural cooperatives, and certain types of regulated firms would be presumed injured by Eason's alleged overcharges. We proposed that refiners, resellers and retailers seeking refunds greater than $10,000 could receive a maximum of $50,000 based upon 60 percent of their volumetric share without having to prove injury. We also proposed to presume that claimants who made only spot purchases from Eason were not injured and must rebut that presumption to receive a refund. We stated that applicants not covered by one of the injury presumptions would be required to demonstrate that they were forced to absorb any overcharge by Eason in order to receive their full volumetric shares of the Eason Consent Order funds.

Finally, we proposed that any money remaining after all Eason refund claims are analyzed should be disbursed as indirect restitution in accordance with the provisions of the Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–4507 (1988).

The PDO provided a period of 30 days from the date of publication in the Federal Register in which comments could be filed regarding the tentative refund process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Eason settlement funds. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Eligibility for Refunds

As indicated above, the Consent Order settles:

> All civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between the DOE, * * *, and Eason, * * *, relating to Eason's compliance with the federal petroleum price and allocation regulations, * * *, during the period November 1, 1973 through December 31, 1979 * * *.

Consent Order at ¶ 101. The phrase federal petroleum price and allocation regulations is defined by the Consent Order as:

> All pricing, allocation, reporting and recordkeeping requirements imposed by or under the Economic Stabilization Act (ESA) of 1970, the Emergency Petroleum Allocation Act of 1974, the DOE Act, any and all amendments to said Acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150, and 10 CFR Parts 205, 210, 211, 212 and 213 including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms, and reporting and certification requirements regarding such regulations.

Consent Order at ¶ 202.

Accordingly, to the extent that is possible, the settlement amount of $7,000,000, plus accrued interest, will be distributed to purchasers of covered Eason NGLs, NGLPs and other covered refined products who can show that they were injured by Eason's pricing practices during the period November 1, 1973 through December 31, 1979.

B. Calculation of Refund Amount

We are adopting a volumetric method to apportion the Eason escrow account. Under this volumetric refund approach, a claimant's allocable share of the refined products pool is equal to the number of gallons of covered products purchased during the Consent Order period times a per gallon refund amount. We will derive the volumetric figure (per gallon refund amount) by dividing the $7,000,000 received from Eason by the total volume of covered products sold by the firm during the regulatory period. This yields a volumetric refund amount of $.02353 per gallon, exclusive of interest.[3] This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of covered products sold by Eason during the regulatory period. *E.g., American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,293 (1986).[4]

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from Eason during the period November 1973 through December 1979 (or the appropriate date of decontrol of each product), multiplied by the per gallon volumetric amount for this proceeding. Accordingly, each claimant will be required to establish, by documentation or reasonable estimation, the volume of products that it purchased during this period. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the Eason funds since the date of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

[3] To compute this figure, we estimated that Eason sold a total of 297,504,619 gallons of covered products during the period from November 1973 through December 1979.

[4] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

C. Showing of Injury

Each claimant will be required to document its purchases of covered products from Eason during the Consent Order period. In addition, in order to receive a refund, an applicant generally must demonstrate through the submission of detailed evidence that it did not pass on the alleged overcharges to its customers. See, *e.g., Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

However, as we have done in many prior refund cases, we will adopt specific injury presumptions that will simplify and streamline the refund process for some categories of customers: small claims, end-users, and regulated firms and cooperatives. These presumptions will excuse members of certain applicant categories from proving that they were injured by Eason's alleged overcharges, and are discussed below.

D. Reseller Applicants Seeking Refunds of $10,000 or Less

We are adopting a presumption, as we have in many previous cases, that resellers seeking small refunds were injured by Eason's pricing practices. See, *e.g., E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund.

In many prior proceedings, we have established a small claims threshold of $5,000. *E.g., Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987). In this proceeding, the volumetric factor is significantly higher than in most proceedings. As a result, the allocable share of many small retailers, resellers and refiners who would typically qualify for a refund at or below the usual small claims amount of $5,000 will be well above that amount in this proceeding. If we keep the small claims threshold at $5,000 in this proceeding, it would increase the number of firms, especially very small firms, that would be faced with the burden of making a detailed showing of injury in order to receive their allocable share. It would also increase the burden on this Office because of the need to analyze more detailed injury showings and would thus slow down the evaluation of claims. Therefore, to minimize these burdens, we are adopting a small claims threshold of $10,000. See *Enron Corp.*, 21 DOE ¶ 85,323 at 88,957 (1991).

Accordingly, under the proposed small-claims presumption in this proceeding, a claimant who claims a refund of $10,000 or less will not be required to submit any evidence of injury beyond establishing that it is one of the eligible customers that purchased the covered products from Eason. However, a reseller applicant must follow the procedures that are outlined below if the applicant is seeking a refund in excess of $10,000, plus interest accrued on that amount while in escrow.

E. Medium-Range Presumption

In lieu of making a detailed showing of injury, a reseller, retailer or refiner claimant whose allocable share of the Consent Order funds for purchases of Eason's refined products exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 60 percent of its allocable share up to $50,000. The use of this presumption reflects our conviction that these claimants were likely to have experienced some injury as a result of the alleged overcharges. In other proceedings involving NGLs and NGLPs, we have determined that a 60 percent presumption for the medium-range purchasers of NGLs and NGLPs accurately reflected the amount of their injury as a result of their purchases of those products. *Sauvage Gas Co.*, 17 DOE ¶ 85,304 (1988); see also *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987). Accordingly, a claimant in this group will only be required to provide documentation of its purchase volumes of Eason's covered products in order to be eligible to receive a refund of 60 percent of its total allocable share.

F. Reseller Applicants Seeking Larger Refunds

If a retailer, reseller or refiner claims an amount in excess of $10,000, and declines to accept the medium-range presumption, it will be required to provide a detailed demonstration of its injury. Such an applicant will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, such a claimant must show that market conditions would not permit it to pass through those increased costs. See, *e.g.*, *Quintana Energy Corp.*, 21 DOE ¶ 85,032 at 88,117 (1991).

G. End-users

We are adopting a presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry, were injured by Eason's alleged overcharges and are entitled to their full share of the settlement monies obtained from Eason. Unlike regulated firms in the petroleum industry, end-users were not subject to price controls during the Consent Order period. Moreover, these unregulated firms were not required to keep records that justified selling price increases by reference to cost increases. Therefore, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. See, *e.g.*, *American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,294 (1986). Therefore, any applicant claiming to be an end-user must establish that it was an Eason customer or a successor thereto and that the nature of its business made it an ultimate consumer of the Eason covered products that it purchased. If an applicant establishes those two facts, it will receive its full pro-rata share as its refund without making a detailed demonstration of injury.

H. Regulated Firms and Cooperatives

Regulated firms (such as public utilities) and agricultural cooperatives, which are required to pass on to their customers the benefit of any refund received, will be exempted from the requirement that they make a detailed showing of injury. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); see also *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We will require a regulated firm or cooperative to establish that it was an Eason customer or a successor thereto. In addition, we will require each such claimant to certify that it will pass any refund received through to its customers, to provide us with a full explanation of the manner in which it plans to accomplish this restitution to its customers and to notify the appropriate regulatory or membership body of the receipt of the refund money. If a regulated firm or cooperative meets these requirements, it will receive a refund equal to its full pro-rata share. However, any public utility claiming a refund of $10,000 or less, or accepting the medium-range presumption of injury, will not be required to submit the above referenced certifications and explanation. A cooperative's sales of covered product to non-members will be treated in the same manner as sales by other resellers or retailers.

I. Indirect Purchasers

Firms which made indirect purchases of covered Eason products during the Consent Order period may also apply for refunds. If an applicant did not purchase directly from Eason, but believes that covered products it purchased from another firm were originally purchased from Eason, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Eason products passed through Eason's alleged overcharges to its own customers. *E.g.*, *Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451–52 (1986).

J. Spot Purchasers

We are adopting the rebuttable presumption that a claimant who made only spot purchases from Eason was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered Eason products. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Eason. *E.g.*, *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

K. Applicants Seeking Refunds Based on Allocation Claims

We also recognize that, while the Consent Order makes no mention of known allocation violations, we may receive claims alleging Eason's failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 CFR part 211. Such claims could be based on the Consent Order's broad language regarding the matters settled. See Section II above. Any such application will be evaluated with reference to the standards set forth in subpart V implementation decisions such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Fuels, Inc.*, 17 DOE ¶ 85,575 (1989), action for review pending, CA–3–89–2983–G (N.D. Tex. filed Nov. 22, 1989). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the Consent Order firm and the likelihood that the Consent Order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it sought redress from the alleged allocation violation. Finally, the

claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the Agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Eason may have had to the alleged allocation violation. *E.g., id.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Eason. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the amount of Eason allocation violations in general and regarding the specific allocation violation alleged by the claimants. Finally, since the Eason Consent Order reflects a negotiated compromise of the issues involved in an enforcement proceeding against Eason, as well as potential unknown violations, and the Consent Order amount is therefore less than Eason's potential liability, we will pro rate any allocation refunds that would otherwise be disproportionately large in relation to the Consent Order fund. *Cf. Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989).

IV. Distribution of the Remainder of the Eason Consent Order Funds

In the event that money remains after all refund claims from the Eason fund have been analyzed, the remaining funds in that account will be disbursed as indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–4507 (1988). Pursuant to the PODRA, the funds will be distributed to state governments for use in energy conservation programs.

V. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased controlled refined petroleum products sold by Eason during the period November 1, 1973 through December 31, 1979. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[5] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names.

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm.

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application.

(4) Monthly schedules of the applicant's purchases of each type of refined petroleum product that it purchased from Eason during the Consent Order period. The applicant must indicate the name of its supplier and the delivery location. The applicant should indicate the source of its volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address and telephone number of its immediate supplier and indicate why it believes that the covered product was originally sold by Eason.

(6) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the Eason proceeding, and if so, the circumstances surrounding that filing or authorization.

(7) A statement whether the applicant was in any way affiliated with Eason. If so, the applicant should explain the nature of the affiliation.

(8) If the applicant is a reseller, retailer or refiner whose volumetric share exceeds $10,000, it must indicate whether it elects to receive its maximum refund under the presumptions of injury. If it does not elect a presumption of injury, it must submit a detailed showing that it was injured by Eason's pricing practices.

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along.

(10) A statement whether there has been any change in the ownership of the entity that purchased the covered Eason products at any time during or after the refund period. If so, the name and address of the current (or former) owner should be provided.

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

> I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

We also invite each applicant to submit copies of no more than five contemporaneous invoices or other proofs of purchase showing that it purchased product from Eason. While this information is not required of refund applicants, it may well expedite the processing of the refund application.

All applications should be either typed or printed and clearly labeled "Eason Oil Company Application for Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to:

[5] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

Eason Oil Company Refund Proceeding, Case No. LEF–0040, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is August 1, 1994.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Eason Drilling Company (formerly Eason Oil Company) and ITT Corporation, pursuant to the Consent Order finalized on June 28, 1991, may now be filed.

(2) All Applications submitted pursuant to Paragraph (1) above must be filed in duplicate and postmarked no later than August 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: June 1, 1993.

APPENDIX—EASON OIL COMPANY PRODUCT INFORMATION

Name of facility	Operator	Eason's ownership interest	Eason's sales volume
Natural Gas Liquid Products			
Crescent, OK	Eason	1.00000000	115,470,821
Laverne, OK	Sun	0.00585000	4,637,070
Beaver, OK	Cabot Carbon	0.01640400	695,227
Okeene, OK	Amoco	0.00994700	1,407,937
Thomas, OK (Putnam Oswego)	Mobil	0.01988400	2,322,486
Star Lacey, OK	Amoco	0.01159000	313,742
Elmwood, OK	Amoco	0.06321020	5,792,864
Gillette, WY	Arco	0.04180700	6,666,936
Lacasane, LA	T&P Oil Co.	0.29475000	9,102,870
Ames, OK	Tenneco	0.10886194	16,182,786
Dubach, LA	Kerr-McGee	0.25000000	42,824,864
Refined Products			
Dubach, LA	Kerr-McGee	0.25000000	92,087,016
Total			297,504,619

[FR Doc. 93–13573 Filed 6–8–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50766; FRL–4590–1]

Receipt of Notifications to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of two notifications of intent to conduct small-scale field testing of nonindigenous strains of *Bacillus thuringiensis* from the Ciba-Geigy Corporation.

DATES: Written comments must be received on or before July 9, 1993.

ADDRESSES: By mail: Comments, in triplicate, should bear the docket control number OPP–50754 and be submitted 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, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305–7690.

SUPPLEMENTARY INFORMATION: Two notifications of intent to conduct small-scale field testing pursuant to the EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313) have been received from the Ciba-Geigy Corporation of Greensboro, North Carolina. The purpose of the proposed testing is to evaluate the efficacy of six *Bacillus thuringiensis* strains isolated from the United Kingdom againt the Colorado potato beetle and five nonindigenous Bt strains isolated from Switzerland against lepidopterous pests. The field test for the strains isolated from Switzerland are to take place in California, Florida, Mississippi, and Texas from 1993 to 1995 with a combined acreage of 1.6 acres/year for each of the five strains. The commodities to be tested for the Swiss strains are cotton, field crops, ornamentals, and vegetables. The field tests for the United Kingdom strains are to take place in Florida, New York, Pennsylvania, and Wisconsin from 1993 to 1995 with a combined acreage of 0.32 acre/year for each of the six strains. The commodity to be tested for the United Kingdom strains is potato. Following the review of the Ciba-Geigy Corporation application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: May 21, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–13586 Filed 6–8–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 2, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0096

Title: Application for Ship Radio Station License and Temporary Operating Authority

Form Number: FCC Form 506/506–A

Action: Revision of a currently approved collection

Respondents: Individuals or households, state or local governments, non-profit institutions, businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting

Estimated Annual Burden: 106,192 responses; .364 hours average burden per response; 38,653 hours total annual burden

Needs and Uses: FCC rules require that applicants file the FCC Form 506/506A–A to apply for a new or modified ship radio station license. The form can also be used to renew a station license. The FCC Form 506–A is used by the applicant as a temporary operating authority ship station license. This form has been revised to include fee collection data and accompanying instructions have been expanded for further clarification/simplification.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–1351 Filed 6–8–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability: Approximately 102 Acres of Vacant Land Bordering the Northwest Corner of the Village of Ruidoso in South Central Lincoln County, NM

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that approximately 102 acres of vacant land bordering the northwest corner of the Village of Ruidoso in south central Lincoln County, New Mexico, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until September 7, 1993.

ADDRESSES: All written Notices of Serious Interest must be submitted to Marcia Rodgers, Legal Division, Federal Deposit Insurance Corporation, 707 17th Street, suite 3000, Denver, Colorado 80202, (303) 296–4703, ext. 3766, Fax (303) 292–3959.

SUPPLEMENTARY INFORMATION: The property is more fully described as a rectangular, undeveloped parcel of mountain land comprising approximately 102 acres located on the northwest border of the Village of Ruidoso in southern New Mexico. It is bordered on the east and west by residential development and on the south by Lincoln National Forest. The property is zoned R–1 (single family residential) in the Extra Territorial Zone of Lincoln County, and is transected from east to west by Alpine Village Road. Approximately 75% of the property is moderately level, with the remaining acreage containing steep slopes. The elevation of the property ranges from 6800–8000 feet above sea level, sloping generally to the south. The property is heavily wooded with ponderosa pine, cedar, pinion and oak brush. The property is located in the area of a mountain resort community which provides many recreational opportunities.

Written notice of serious interest to purchase the property must be received on or before September 7, 1993, by Marcia Rodgers at the above address and in substantially the following form:

Notice of Serious Interest

Re: Vacant land (102 acres) on the northwest border of the Village of Ruidoso in south central Lincoln County, New Mexico.

This Notice of Serious Interest is tendered in accordance with section 10 of the Coastal Barrier Improvement Act and publication in the **Federal Register** of a Notice of Availability on June 9, 1993, with respect to that property bordering the northwest corner of the Village of Ruidoso in Lincoln County, New Mexico, consisting of approximately 102 acres of vacant mountain land.

The (*Name and Address of The Agency or Other Qualified Organization*) is eligible to submit this notice under criteria set forth in Public Law 101–591, section 10(b)(2). The (*Name of The Agency or Other Qualified Organization*) intends to use this property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

The proposed terms of purchase or transfer are as follows:

[INSERT TERMS OF PURCHASE]

Dated: June 3, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–13506 Filed 6–8–93; 8:45 am]

BILLING CODE 6714–01–M

OFFICE OF THE FEDERAL REGISTER

Agreements Between the American Institute in Taiwan and the Coordination Council for North American Affairs

AGENCY: Office of the Federal Register (NARA).

ACTION: Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Coordination Council for North American Affairs in order to maintain cultural, commercial and other unofficial relations between the American people and the people on Taiwan. The Director of the Federal Register is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people on Taiwan are maintained on a nongovernmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) is its nongovernmental Taiwan counterpart.

Under section 1(a) of the Act, agreements concluded between the AIT and the CCNAA are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, 17th floor, Arlington, Virginia 22209. For further information contact the Corporate Secretary of AIT at this address, telephone: (703) 525–8474, fax: (703) 841–1385.

Following is a list of agreements between AIT and CCNAA which were in force as of January 1, 1993.

Dated June 1, 1993.

Clarke N. Ellis,

Deputy Managing Director and Corporate Secretary.

Dated: June 3, 1993.

Richard L. Claypoole,

Acting Director, Office of the Federal Register.

AIT-CCNAA Agreements

Aviation

Air transport agreement, with annexes and exchange of letters. Signed at Washington, March 5, 1980. Entered into force March 5, 1980.

Agreement implementing the air transport agreement of March 5, 1980. Effected by exchange of letters signed at Arlington and Washington, March 31, 1981. Entered into force March 31, 1981.

Memorandum of Understanding for consultations relating to the air transport agreement of March 5, 1980. Signed at Taipei October 15, 1981. Entered into force October 15, 1981.

Memorandum of agreement concerning the arrangement for certain aeronautical equipment and services relating to civil aviation, with annexes. Signed September 24 and October 23, 1981. Entered into force October 23, 1981.

Amendment 1 to memorandum of agreement concerning aeronautical equipment and services of September 24 and October 23, 1981; Signed on September 18, 1985, and September 23, 1985. Entered into force September 23, 1985.

Agreement amending Article 6 of the air transport agreement of March 5, 1980. Effected by Exchange of letters of May 8 and July 28, 1986 at Taipei. Entered into force July 28, 1986.

Amendment 2 to memorandum of agreement of September 24 and October 23, 1981 concerning aeronautical equipment and services, signed September 23 and October 17, 1991. Entered into force October 17, 1991.

Conservation

Memorandum on cooperation in forestry and natural resources conservation. Signed May 23 and July 4, 1991. Entered into force July 4, 1991.

Memorandum on cooperation in soil and water conservation under the guidelines for a cooperative program in the agricultural sciences. Signed at Washington on October 5, 1992. Entered into force October 5, 1992.

Customs

Agreement for technical assistance in customs operations and management, with attachment. Signed May 14 and June 4, 1991. Entered into force June 4, 1991.

Education and Culture

Agreement amending the agreement for financing certain educational and cultural exchange programs of April 23, 1964. Effected by exchange of letters at Taipei on April 14 and June 4, 1979. Entered into force June 4, 1979.

Agreement concerning the Taipei American School, with annex. Signed in Taipei February 3, 1983. Entered into force February 3, 1983.

Energy

Agreement concerning cooperation and assistance in electrical energy. Signed at Arlington and Washington June 24 and 28, 1983. Entered into force June 28, 1983.

Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed at Taipei October 3, 1984. Entered into force October 3, 1984.

Agreement amending and extending the agreement of October 3, 1984, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 19, 1989. Entered into force October 19, 1989.

Agreement abandoning in place in Taiwan the Argonaut Research Reactor loaned to National Tsing Hua University, signed November 28, 1990.

Environment

Guidelines for a cooperative program in the environmental sciences. Signed November 3, 1987. Entered into force November 3, 1987.

Guidelines for a cooperative program in the environmental protection. Signed October 18, 1990. Entered into force October 18, 1990.

Intellectual Property

Agreement concerning the protection and enforcement of rights in audiovisual works. Effected by exchange of letters at Arlington and Washington June 6 and June 27, 1989. Entered into force June 27, 1989.

Understanding concerning the protection of intellectual property rights. Signed at Washington June 5, 1992. Entered into force June 5, 1992.

Judicial Procedure

Memorandum of understanding on cooperation in the field of criminal investigations prosecutions. Signed at Taipei October 5, 1992. Entered into force October 5, 1992.

Labor

Guidelines for a cooperative program in labor affairs. Signed December 6, 1991. Entered into force December 6, 1991.

Maritime

Agreement concerning mutual implementation of the 1974 Convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington August 17 and September 7, 1982. Entered into force September 7, 1982.

Agreement concerning mutual implementation of the 1969 international convention on tonnage measurement. Effected by exchange of letters at Arlington and Washington May 13 and 26, 1983. Entered into force May 26, 1983.

Agreement concerning mutual implementation of the protocol of 1978 relating to the 1974 international convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

Agreement concerning mutual implementation of the protocol of 1978 relating to the international convention for the prevention of pollution from ships 1973. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

Agreement concerning mutual implementation of the 1966 international convention and load lines. Effected by exchange of letters at Arlington and Washington March 26 and April 10, 1985; Entered into Force April 10, 1985.

Agreement concerning the operating environment for ocean carriers. Effected by exchange of letters at Washington and Arlington October 25 and 27, 1989. Entered into force October 27, 1989.

Postal

Agreement concerning establishment of INTELPOST service. Effected by exchange of letters at Arlington and Washington April 19, 1990 and November 26, 1990. Entered into force November 26, 1990.

International business reply service agreement, with detailed regulations. Signed at Washington February 7, 1992. Entered into force February 7, 1992.

Privileges and Immunities

Agreement on privileges, exemptions and immunities, with addendum. Signed in Washington October 2, 1980. Entered into force October 2, 1980.

Agreement governing the use and disposal of vehicles imported by the American Institute in Taiwan and its personnel. Signed at Taipei April 21, 1986. Entered into force April 21, 1986.

Scientific & Technical Cooperation

Agreement on scientific cooperation. Effected by exchange of letters at Arlington and Washington on September 4, 1980. Entered into force September 4, 1980.

Contract relating to provision to the AIT of ionospheric weather observations by the CCNAA, with attachments, as extended. Signed November 26, 1980. Entered into force November 26, 1980.

Agreement concerning renewal & extension of the 1980 agreement on scientific cooperation. Signed and accepted March 10, 1987. Entered into force March 10, 1987.

Guidelines for a cooperative program in the biomedical sciences. Signed May 21, 1984. Entered into force May 21, 1984.

Agreement for technical assistance in dam design and construction, with appendices. Signed August 24, 1987. Entered into force August 24, 1987.

Agreement for a cooperative program in the sale and exchange of technical, scientific, and engineering information. Signed November 17, 1987. Entered into force November 17, 1987.

Agreement renewing and extending the agreement of November 17, 1987 for a cooperative program in the sale and exchange of technical, scientific and engineering information. Signed and accepted August 8, 1990. Entered into force August 8, 1990.

Agreement amending and extending the agreement of August 24, 1987, for technical assistance in dam design and construction. Signed May 11 and June 9, 1992. Entered into force June 9, 1992.

Amendment No. 1 to the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed April 20, 1989. Entered into force April 20, 1989.

Amendment No. 2 to the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed August 24, 1989. Entered into force August 24, 1989.

Guidelines for a cooperative program in food hygiene. Signed January 15 and 28, 1985. Entered into force January 28, 1985.

Guidelines for a cooperative program in the agricultural sciences. Signed January 15 and 28, 1986. Entered into force January 28, 1986.

Amendment to the 1986 guidelines for a cooperative program in the agricultural sciences. Effected by exchange of letters September 1 and 11, 1989. Entered into force September 11, 1989.

Cooperative Program on Hualien soil-structure interaction experiment. Dated and accepted September 28, 1990.

Guidelines for a cooperative program in the physical sciences. Signed March 10, 1987. Entered into force March 10, 1987.

Amendment No. 1 to the guidelines of March 10, 1987, for a cooperative program in the physical sciences. Signed on January 26, 1989. Entered into force January 26, 1989.

Amendment No. 2 to the guidelines of March 10, 1987, for a cooperative program in the physical sciences. Signed October 25, 1990 and March 22, 1991.

Guidelines for a cooperative program in atmospheric research. Signed May 4, 1987. Entered into force May 4, 1987.

Agreement for procurement of equipment for the Taiwan Snychrotron Radiation Research Laboratory, with appendices. Signed April 20, 1988. Entered into force April 20, 1988.

Agreement for technical cooperation in meteorology and forecast systems development, with implementing arrangements. Signed June 5 and 28, 1990. Entered into force June 28, 1990.

Agreement for technical cooperation in energy and water resources, with annex. Signed December 21, 1990 and February 13, 1991. Entered into force February 13, 1991.

Agreement for technical cooperation in geodetic research and use of advanced geodetic technology, with implementing arrangement. Signed January 11 and February 21, 1991. Entered into force February 21, 1991.

Cooperative program in highway-related sciences. Signed October 30, 1990 and January 7, 1992. Entered into force January 7, 1992.

Agreement for technical cooperation in seismology and earthquake monitoring systems development, with implementing arrangement. Signed July 22 and 24, 1992. Entered into force July 24, 1992.

Security of Information

Protection of information agreement. Signed September 15, 1981; Entered into force September 15, 1981.

Taxation

Agreement concerning the reciprocal exemption from income tax of income derived from the international operation of ships and aircraft. Effected by exchange of letters at Taipei May 31, 1988. Entered into force May 31, 1988.

Agreement for technical assistance in tax administration; with appendices. Signed August 1, 1989. Entered into force August 1, 1989.

Trade

Agreement concerning measures that the CCNAA will undertake in connection with implementation of the GATT Customs Valuation Code. Effected by exchange of letters at Bethesda and Arlington August 22, 1986. Entered into force August 22, 1986.

Memorandum on cooperation in enhancing commodity situation and outlook reporting. Signed February 7, 1991. Entered into force February 7, 1991.

Administrative arrangement concerning the textile visa system. Effected by exchange of letters at Arlington and Washington April 18 and May 1, 1991. Entered into force May 1, 1991.

Agreement concerning trade matters. Effected by exchange of letters at Arlington and Washington of December 31, 1981. Entered into force December 31, 1981.

Agreement concerning the export performance requirement affecting investment in the automotive sector. Effected by exchange of letters at Washington and Arlington of October 9, 1986. Entered into force October 9, 1986.

Agreement concerning beer, wine and cigarettes. Signed at Washington December 12, 1986. Entry into force December 12, 1986; effective January 1, 1987.

Agreement implementing the 1986 beer, wine and cigarettes agreement. Effected by exchange of letters at Taipei April 29, 1987. Entered into April 29, 1987; effective January 1, 1987.

Agreement regarding new requirements for health warning legends on cigarettes sold in the territory

represented by CCNAA. Effected by exchange of letters at Washington and Arlington October 7 and 16, 1991. Entered into force October 16, 1991.

Arrangement concerning trade in certain machine tools, with appendices. Signed December 15, 1986. Entered into force December 15, 1986.

Agreement concerning trade in whole turkeys, turkey parts processed turkey products and whole ducks, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington of March 16, 1989. Entered into force March 16, 1989.

Agreement on trade in high-quality beef, with technical addendum. Signed June 18, 1990. Entered into force June 18, 1990.

Agreement amending and extending the memorandum of February 7, 1991 on cooperation in enhancing commodity situation and outlook reporting. Signed June 18 and 29, 1992. Entered into force June 29, 1992.

Understanding concerning trade in certain machine tools. Signed at Washington June 30, 1992. Entered into force June 30, 1992.

Agreement concerning the protection of trade in strategic commodities and technical data, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington December 4, 1990 and April 8, 1991. Entered into force April 8, 1991.

Agreement concerning trade in textiles. Effected by exchange of letters at Arlington and Washington December 1 and December 11, 1992. Entered into force December 11, 1992.

Memorandum of understanding concerning a new quota arrangement for cotton and man-made fiber trousers. Signed at Washington December 18, 1992. Entered into force December 18, 1992.

[FR Doc. 93–13489 Filed 6–8–93; 8:45 am]
BILLING CODE 1505–02–M

FEDERAL RESERVE SYSTEM

John R. Adams 1991 S Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 28, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John R. Adams 1991 S Trust, Steamboat Springs, Colorado; to acquire 34.6 percent of the voting shares of Routt County National Bank Corporation, Steamboat Springs, Colorado, and thereby indirectly acquire First National Bank of Steamboat Springs, Steamboat Springs, Colorado.

2. Leonard F. Harper Trust, L.F. Harper, II, Omaha, Nebraska; Larry Kruckenberg, Great Bend, Kansas; and John W. Poos, Wichita, Kansas, Co-Trustees, to acquire 50 percent of the voting shares of Kinban, Inc., Kinsley, Kansas, and thereby indirectly acquire Kinsley Bank, Kinsley, Kansas.

3. Ronald L. Moore, Castle Rock, Colorado; to acquire an additional 9.0 percent of the voting shares of Rice Insurance Agency, Inc., Strasburg, Colorado, for a total of 30 percent, and thereby indirectly acquire First National Bank of Strasburg, Strasburg, Colorado, and The Byers State Bank, Byers, Colorado.

Board of Governors of the Federal Reserve System, June 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-13535 Filed 6-8-93; 8:45 am]
BILLING CODE 6210-01-F

Harris Financial, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 2, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Harris Financial, MHC, Harrisburg, Pennsylvania; to become a bank holding company by acquiring 83 percent of the voting shares of Harris Savings Bank, Harrisburg, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to acquire 100 percent of the voting shares of First Savings Bank of Forest City, SSB, Forest City, North Carolina.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community National Bank Corporation, Venice, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank of Sarasota County, Venice, Florida.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Peotone Bancorp, Inc., Peotone, Illinois; to acquire 50 percent of the voting shares of Rock River Bancorporation, Inc., Oregon, Illinois, and thereby indirectly acquire Rock River Bank, Oregon, Illinois.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Paloma Bancshares, Inc., Paloma, Illinois; to acquire 100 percent of the voting shares of Western Illinois Bancorp, Inc., Blandinsville, Illinois, and thereby indirectly acquire First National Bank in Blandinsville, Blandinsville, Illinois. Comments on this application must be received by June 23, 1993.

Board of Governors of the Federal Reserve System, June 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-13536 Filed 6-8-93; 8:45 am]

BILLING CODE 6210-01-F

The Royal Bank of Scotland Group, plc, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1993.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. The Royal Bank of Scotland Group, plc, Edinburgh, Scotland; The Royal Bank of Scotland, Edinburgh, Scotland; Citizens (U.K.) Limited, Edinburgh, Scotland; and Citizens Financial Group, Inc., Providence, Rhode Island; to acquire 100 percent of the voting shares of The Boston Five Cents Savings Bank, F.S.B., Boston, Massachusetts ("Boston Five"), pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Upon the acquisition, Boston Five will convert to a state bank and merge with Applicant's state savings bank subsidiary.

Board of Governors of the Federal Reserve System, June 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-13537 Filed 6-8-93; 8:45 am]

BILLING CODE 6210-01-F

OFFICE OF GOVERNMENT ETHICS

Public Information Collection Form Revision Submitted for OMB Approval

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of proposed revision of a public information collection form submitted to OMB for clearance.

SUMMARY: The Office of Government Ethics has submitted to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), a proposed revised version of the SF 278 Public Financial Disclosure Report, that collects information from the public. Since the form is also a Standard Form, OGE is submitting the proposed reprint revisions to the General Services Administration (GSA) for its clearance as well.

DATES: Comments on this proposal should be received by July 9, 1993.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503, telephone (202/FTS) 395–7316.

FOR FURTHER INFORMATION CONTACT: Judy Kim, Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, telephone (202) 523–5757, FAX (202) 523–6325. A copy of OGE's request for approval from OMB, including the proposed revised form, may be obtained by contacting Ms. Kim.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics sponsors the SF 278 Executive Branch Personnel Public Financial Disclosure Report which collects pertinent financial information from certain officials and high-level employees in the executive branch for conflicts of interest review and public disclosure, as required by statute, in order to promote the public trust in the integrity of Government employees.

The SF 278 Public Financial Disclosure Report collects information which is required to be reported by candidates, nominees, new entrants, incumbents and terminees of certain high- level positions within the executive branch of the Federal Government. Approximately 20,000 SF 278 forms are filed on an annual basis. While the majority of those who file the form are Government employees at the time they complete the form, candidates for President and Vice President, nominees, and some new entrants and terminees complete the form either before or after their Government service. Thus Paperwork Reduction Act approval by OMB is required for the SF 278 Public Financial Disclosure Report. The number of non-Government filers whose reports are transmitted to the Director, OGE, is estimated to average 280 per year.

The average response time for completion of the SF 278 is estimated to be three hours. This now presents a total annual public reporting burden at OGE of 840 hours (280 forms times 3 hours).

The information filed on the current version of the SF 278 is required by title I of the Ethics in Government Act of 1978 as amended by the Ethics Reform Act of 1989. This request for revision of the SF 278 is necessary in order to incorporate recent amendments to the Ethics in Government Act. In 1991, Congress amended provisions affecting the value of gifts required to be included on public financial disclosure reports for reporting periods after 1991. Section 314(a) of Public Law 102–90, effective January 1, 1993, established a single $250 threshold for both travel and non-travel gifts (when the "minimal value" under the foreign gifts act exceeds that threshold, which is not expected for at least the next three years, the higher "minimal value" figure will govern). The amendment also raised the current $75 exclusion for determining which gifts and reimbursements must be reported or aggregated to $100 on January 1, 1992 for reporting periods

after 1991 (also to be proportionately adjusted in the future once the foreign gifts "minimal value" exceeds $250). Also, under the Federal Employees Pay Comparability Act of 1990, Public Law 101- 509, General Schedule positions at GS–16, 17 and 18 were replaced by a new range of rates for positions classified "above GS–15." The rate of basic pay for these positions is not less than 120% of the minimum rate of basic pay payable for GS–15. This provision of the Comparability Act took effect in 1991. Congress amended the statutory language in the Ethics in Government Act to reflect this change in Public Law 102–378 (1992). The form and instructions are being modified to incorporate these statutory changes and to provide further clarification on some reporting items as needed based on administrative experience since the last revisions to the SF 278.

The proposed revisions to the SF 278 also include the addition of a Schedule A (Assets and Income) continuation sheet. This sheet will provide extra space for Asset and Income entries and reduce the amount of photocopying of Schedule A needed by various filers and their agencies.

The substantive changes are reflected in OGE regulations regarding executive branch public financial disclosure reporting at 5 CFR part 2634. Because OGE is trying to have the form available for use by those affected individuals on January 1, 1994, it is being submitted for clearance at this time in order to allow for its printing and stocking by GSA and ordering by executive branch departments and agencies once the clearance process is complete.

Approved: June 2, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 93–13571 Filed 6–8–93; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of information collection requirements previously approved by OMB under control number 0970–0044. This request, entitled "Refugee Assistance-by-Nationality Report" is submitted for use by the Office of Refugee Resettlement (ORR) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve R. Smith, Office of Information Systems Management, (ACF) by calling (202) 401–6965.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Refugee Assistance-by-Nationality Report (Form ORR–10).

OMB No.: 0970–0044.

Description: The Office of Refugee Resettlement, ACF, uses this form for the collection of information to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(a)(3) of the Act requires ORR to compile and maintain data, by State of residence and nationality, on the proportion of refugee receiving cash or medical assistance.

In order to meet this legislative requirements, ORR has, since 1983, required States to submit annual reports on cash and medical assistance caseloads for each major refugee nationality group. States need report only refugee assistance which is reimbursed by ORR; at the current time, States report only receipt of refugee cash assistance (RCA) and refugee medical assistance (RMA). Data submitted by the States on RCA and RMA utilization are compiled and analyzed by ORR staff who prepare a summary which lists the number of refugees in each major nationality group by state of residence.

This data is included in Appendix A of the annual Report to Congress on the Refugee Resettlement Program. The Report also contains analysis of the data, comparing the assistance caseload of major nationality groups with their arrival numbers during the RCA/RMA period of eligibility. The resulting proportion permits program managers to compare the relative utilization of Federally-funded RCA and RMA programs between different refugee nationalities and among States. The resulting insights are useful in designing programs to achieve the primary goal of the refugee program, which is the attainment of economic self-sufficiency by refugees as refugees as rapidly as possible.

Annual Number of Respondents: 50.

Annual Frequency: 1.

Average Burden Hours Per Response: 25 minutes.

Total Burden Hours: 135.8 hours.

(Includes an additional 115 hours for 23 states that compile data manually or use sampling techniques to estimate)

Dated: May 28, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–13593 Filed 6–8–93; 8:45 am]

BILLING CODE 4184–01–M

National Institutes of Health

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of a review committee of the National Institute of Mental Health for June 1993.

This meeting will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pubic Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meeting may be obtained from the contact person indicated.

Committee Name: Behavioral Subcommittee, Mental Health Special Projects Review Committee.

Contact: Monica F. Woodfork, Parklawn Building, room 9C15, Telephone: 301, 443–4843.

Meeting Date: June 10–11, 1993.

Place: Ramada Inn at Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.

Open: June 10, 1993, 9 a.m.–10 a.m.

Closed: June 10, 1993, 10 a.m.–5 p.m.; June 11, 1993, 9 a.m.–adjournment.

Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

This notice is being published less than 15 days prior to the meetings due to difficulty coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: June 3, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–13641 Filed 6–8–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–054–4333–02; GP3–251]

For a Wild and Scenic River Management Plan and Final Corridor Boundary, Oregon

AGENCY: Bureau of land Management, Prineville District, Prineville, Oregon, Department of the Interior.

ACTION: Notice.

SUMMARY: In compliance with the Wild and Scenic Rivers Act, this notice announces the availability of the Final Management Plan and Corridor Boundary for the designated segment of the North Fork Crooked River, a component of the Wild and Scenic Rivers System.

The final corridor boundary of the designated segment of the North Fork Crooked River lies entirely within the general legal description below:

Willamette Meridian:

T. 14 S., R. 21 E.
Portions of Sections: 32
T. 14 S., R. 22 E.
Portions of Sections: 19, 20, 21, 27, 28, 29, 30, 33, 34
T. 15 S., R. 21 E.
Portions of Sections: 5, 8, 9, 16, 17, 20, 21, 32
T. 15 S., R. 22 E.
Portions of Sections: 3, 9, 10, 16, 17, 20, 21, 28, 29, 31, 32
T. 16 S., R. 21 E.
Portions of Sections: 1, 12, 13, 14, 21, 22, 23, 27, 28, 32, 33
T. 16 S., R. 22 E.
Portions of Sections: 5, 6, 7, 18

A more detailed legal description is available upon request.

FOR FURTHER INFORMATION CONTACT: Harry R. Cosgriffe, Area Manager, Central Oregon Resource Area, Bureau of Land Management, Prineville District Office, 185 E. 4th Street, Prineville, OR 97754; telephone (503) 447–8731.

Dated: May 25, 1993.

James L. Hancock,

District Manager.

[FR Doc. 93–13590 Filed 6–8–93; 8:45 am]

BILLING CODE 4310–33–M

[ES–030–4210–06; MIES–000629, MIES–016817, MIES–012614, MIES–017976, and MIES–033804]

Realty Actions, Sales, Leases, Etc.; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Coast Guard (USCG) intends to relinquish custody, accountability, and control of the five parcels of federally owned land described below. All of the parcels were withdrawn in the 1800s by Executive Orders or Presidential Orders for lighthouse purposes. The land has been determined excess to the needs of navigational assistance at those locations.

DATES: Until July 9, 1993, the interested parties may submit comments about these voluntary relinquishments to the District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631; telephone number (414) 297–4413.

SUPPLEMENTARY INFORMATION:

MIES–000629 (South Manitou Island Light Station)

The proposed action is to revoke the Executive Order of June 14, 1839 which reserved, for lighthouse purposes, the following parcel:

T. 30N., R. 15W.,
Sec. 10, Part of Lot 1, Michigan Meridian, Leelanau County, Michigan (containing 10.15 acres more or less)

This light station was abandoned by USCG on December 12, 1958.

MIES–016817 (Grand Traverse Light Station)

The proposed action is to revoke the Presidential Order of June 30, 1851, which reserved, for lighthouse purposes, the following parcel:

T. 32N., R. 10W.,
Sec. 6, Part of Lots 2 and 3, Michigan Meridian, Leelanau County, Michigan (containing 13.90 acres more or less)

MIES–012614 (Big Sable Light Station)

The proposed action is to revoke the Executive Order of October 16, 1866, which reserved, for lighthouse purposes, the following parcel:

T. 19N., R. 18W.,
Sec. 7, S½ of Lot 1, All of Lot 2, Michigan Meridian, Mason County, Michigan (containing 57.50 acres more or less).

MIES–017976 (Presque Isle Light Station)

The proposed action is to revoke the Executive Order of April 2, 1868, which reserved, for lighthouse purposes, the following parcel:

T. 34N., R. 8E.,
Sec. 8, Lots 1 and 2, Michigan Meridian, Presque Isle County, Michigan (containing 98.75 acres more or less).

MIES–033804 (Point Betsie Light Station)

The proposed action is to modify the Presidential Order of July 17, 1855, which reserved, for lighthouse purposes, the following parcel:

T. 26N., R. 16W.,
Sec. 4, Part of Lot 5, Michigan Meridian, Benzie County, Michigan (containing 1.50 acres more or less).

The Presidential Order reserved a total of 9.50 acres for lighthouse purposes. Only 1.50 acres of that total will be affected by this proposed action.

Ordinarily, the major decision to be made in revocation action is to determine whether the subject land is suitable for return to the public domain for management, for disposal under public land laws, or whether the land should be reported to the General Services Administration for disposal as excess government property. If the first option is chosen, the parcels will remain in public ownership and be managed by the Bureau of Land Management (BLM). For all of the parcels except South Manitou Island, USCG intends to maintain the aids to navigation that are located there. After BLM has resumed management of the parcels, the aids to navigation will be authorized by BLM issuing right-of-ways to USCG.

In compliance with the National Environmental Policy Act, environmental assessments are being completed for these proposed actions. There will be no significant change in the human environment as a result of these actions for the foreseeable future.

The case files and environmental documentation concerning these withdrawals are available for review at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, suite 225, Milwaukee, Wisconsin 53203.

Dated: June 3, 1993.

Pat Johnson,

Acting District Manager.

[FR Doc. 93–13514 Filed 6–8–93; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–778664

Applicant: Field Museum of Natural History, Chicago, IL.

Applicant requests a permit to import five skeletal remains of chimpanzees *(Pan troglodytes schweinfurthii)* from Makerere University Biological Field Station, Uganda, for scientific research on diet and diseases.

PRT–778048

Applicant: Louisville Zoological Garden, Louisville, KY.

The applicant requests a permit to take (capture, surgically sex, retain or release) Marianas crows *(Corvus kubaryi)* on the island of Rota, Commonwealth of the Northern Marianas, until six pairs of reproductively mature crows are obtained for captive-breeding by the following zoos participating in the Marianas Archipelago Rescue and Survey: Honolulu Zoo, Houston Zoological Gardens, National Zoological Park Conservation & Research Center, and Philadelphia Zoological Garden. The participating zoos propose to use the captured individuals to develop captive-breeding techniques for enhancement of propagation and survival of the species.

PRT–778197

Applicant: Ronald Campbell, Hollsopple, PA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok culled from the captive-herd maintained by L. Tonk, Sondagarivierhoek, Graaff Reinst, Republic of South Africa, for enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 4, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–13516 Filed 6–8–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: July 16, 1993; 9:30 a.m. until 12 p.m.

Address: Sleeping Bear Dunes National Lakeshore Headquarters Empire, Michigan

Agenda: Chairman's welcome; minutes of March 19, 1993, meeting; statement of purpose; public input; update on park activities; old business; new business; public input; next meeting date; adjournment.

The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The advisory commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, Public Law 91–479. The purpose of the Commission, according to its charter is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction and administration of scenic roads, procurement of land, condemnation of commercial property; and the preparation and implementation of the land and water use management plan.

FOR FURTHER INFORMATION CONTACT: Ivan Miller, Superintendent, Sleeping Bear Dunes National Lakeshore, P.O. Box 277, Empire, Michigan 49630; 616–326–5134.

Dated: May 21, 1993.

Don H. Castleberry,

Regional Director.

[FR Doc. 93–13490 Filed 6–8–93; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Management Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8565.

OMB Reviewer: Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; (202) 395–7340.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: New form
Title: Foreign Shareholder Disclosure Report—in support of an Application for OPIC Financing—
Form Number: OPIC–139
Frequency of Use: Once per foreign shareholder per project
Type of Respondent: Business or other institutions
Standard Industrial Classification Codes: All
Description of Affected Public: Foreign shareholders that invest in overseas projects applying for OPIC financing
Reporting Hours: 1 hour per Report
Number of Responses: 10 per year
Federal Cost: $300 per year
Authority for Information Collection: Sections 231 and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended by the Jobs through Exports Act of 1992
Abstract (Needs and Uses): The Foreign Shareholder Disclosure Report, in support of a project sponsor's application for OPIC Financing, requests information as required per OPIC's governing legislation. Such information is needed to determine whether a project and its sponsor meet eligibility criteria for OPIC financing, specifically with regard to effects on the U.S. economy.

Dated: May 21, 1993.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 93–13568 Filed 6–8–93; 8:45 am]

BILLING CODE 3210–01–M

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8565.
OMB Reviewer: Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, room 3201, Washington, DC 20503; 202/395–7340.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: New form
Title: Sponsor Disclosure Report—in support of an Application for OPIC Financing
Form Number: OPIC 129
Frequency of Use: One per project sponsor per project
Types of Respondents: Business or other institutions
Standard Industrial Classification Codes: All
Description of Affected Public: U.S. Companies investing overseas
Reporting Hours: 4 hours per project
Number of Responses: 50 per year
Federal Cost: $3,000 per year
Authority for Information Collection: Sections 231 and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended
Abstract (Needs and Uses): The Sponsor Disclosure Report, in support of a project sponsor's application for OPIC financing, requests information as required per OPIC's governing legislation. Such information is needed to determine whether a project and its sponsor meet eligibility criteria for OPIC financing, specifically with regard to creditworthiness, effects on the U.S. economy, and legislative and regulatory compliance.

Dated: May 26, 1993.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 93–13569 Filed 6–8–93; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–564 (Final)]

Certain Stainless Steel Butt-weld Pipe Fittings From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Taiwan of certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter, provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective December 17, 1992, following a preliminary determination by the Department of Commerce that imports of certain stainless steel butt-weld pipe fittings from Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 22, 1992 (57 FR 60823). The hearing was held in Washington, DC, on January 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 3, 1993. The views of the Commission are contained in USITC Publication 2641 (June 1993), entitled "Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Determination of the Commission in Investigation No. 564 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 3, 1993.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford did not participate.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–13527 Filed 6–8–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32300]

Southern Pacific Transportation Co.—Trackage Rights Exemption—Peninsular Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to extend its previous grants of 4.7 miles trackage rights to Southern Pacific Transportation Company (SP) between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.70) for an additional 120 days. The trackage rights are to be on an interim basis (for 120 days) and were to become effective on or after June 1, 1993.

This grant of trackage rights is one of a series of transactions [1] that will facilitate freight, intercity passenger, and commuter service between Santa Clara Junction and Tamien, CA, during the transfer of commuter operations from SP to Amtrak. This notice is related to a notice filed in Finance Docket No. 32303, *Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company*, in which SP is granting JPB trackage rights over SP lines, on an interim basis for a period of 120 days.

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: Gary A. Laakso, Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

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. (1980).

Decided: June 3, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–13543 Filed 6–8–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 456X)]

CSX Transportation, Inc.—Abandonment Exemption—In Sampson County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by CSX Transportation, Inc., of the 3.53-mile segment of its Florence Division, W&W Subdivision, between milepost ACA–199.O near Turkey, and milepost ACA–202.53, at Clinton, in Sampson County, NC, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 9, 1993. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by June 21, 1993, petitions to stay must be filed by June 24, 1993, requests for a public use condition must be filed by June 29, 1993 and petitions to reopen must be filed by July 6, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 456X)to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative:

Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610.

[TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: June 1, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons dissented with a separate expression.

SIdney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–13541 Filed 6–8–93; 8:45 am]

BILLING CODE 7035–01–P–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (Act)

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed amended consent decree in *United States* v. *City of Algoma*, et al., Civil Action No. 91–C–1303, was lodged on June 3, 1993, with the United States District Court for the Eastern District of Wisconsin.

The proposed amended consent decree concerns the hazardous-waste site known as the Algoma Municipal Landfill ("Algoma"), located near Algoma, Wisconsin. The proposed amended consent decree requires the settlers, which include the City of Algoma and eight generators of hazardous substances sent to the Algoma site, to perform and finance the final remedy set forth in the Record of Decision with respect to the Algoma site issued by the U.S. Environmental

[1] Verified notices have been filed and approved in Finance Docket No. 31980, *Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Company* (not printed), served January 17, 1992; in Finance Docket No. 31983, *Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Power Board and San Mateo County Transit District* (not printed), served January 17, 1992; in Finance Docket No. 31985, *Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company* (not printed), served January 17, 1992; in Finance Docket No. 32091, *Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Power Board* (not printed), served July 13, 1992; in Finance Docket No. 32094, *Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company* (not printed), served July 13, 1992; in Finance Docket No. 32159, *Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company* (not printed), served October 8, 1992; in Finance Docket No. 32161, *Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board* (not printed), October 7, 1992; in Finance Docket No. 32200, *Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board* (not printed), served December 14, 1992; and in Finance Docket No. 32202, *Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company* (not printed), served December 14, 1992.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

Protection Agency ("EPA") on September 29, 1990, as modified by the Explanation of Significant Differences, published by EPA on November 19, 1992.

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 for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. City of Algoma, et al., DOJ Ref. #90–11–2–490.

The proposed consent decree may be examined at: the office of the United States Attorney, Eastern District of Wisconsin, Federal Building, Room 330, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202; the Region V Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, 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 $17.50 (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. 93–13508 Filed 6–8–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–8510, et al.]

Proposed Exemptions; Metropolitan Life Insurance Company (MET), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Metropolitan Life Insurance Company (Met) Located in New York, New York

[Application No. D–8510]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 23, 1987, if the exemption is granted, the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The past cash sale by a pooled real estate separate account (Account RE), which was managed by Met and in which certain employee benefit plans (the Plans) participated, of the interests owned by Account RE in certain parcels of property (the Parcels) to Met Life International Real Estate Partners Limited Partnership (the LP), a party in interest with respect to the Plans; and (2) the reimbursement in cash by Met to Account RE of certain amounts in connection with the above sale; provided that: (a) The terms of the transaction were similar to those which could be obtained at arm's length between third parties in similar circumstances; (b) the price paid by the LP to Account RE, plus the amount reimbursed by Met to Account RE was not less than the fair market value of Account RE's interests in the Parcels on December 23, 1987, the date of the sale; and (c) the transaction was reviewed and approved by an independent fiduciary, acting on behalf of the Plans participating in Account RE.[1]

Effective Date: If the proposed exemption is granted, it will be effective December 23, 1987.

[1] For purposes of this proposed exemption references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Summary of Facts and Representations

1. Met is a mutual life insurance company organized under the laws of the State of New York. Met had under management in its general account and all of its separate accounts, a portfolio of mortgage loans and real estate equities of approximately $26.9 billion, as of December 31, 1989, which comprised approximately twenty-one percent (21%) of all the assets of Met. During 1988, approximately $4 billion was invested in real estate investments.

2. The LP, is a Delaware limited partnership, organized in August 1987. The general partner of the LP is Met Life Real Estate Advisors, Inc. (the General Partner), a Delaware Corporation. The sole shareholder of the General Partner is Metropolitan Tower Corporation, a wholly-owned subsidiary of Met. The General Partner manages and controls the affairs of the LP.

3. At the time of the transaction, Account RE was a separate account within the contemplation of section 3(17) of the Act, organized by Met in 1972, pursuant to authorization of the New York Insurance Department under section 227 of the Insurance Law of the State of New York. In Account RE, income, gains and losses, whether or not realized, from assets allocated to it were credited or charged to it without regard to other income, gains, or losses of Met. Account RE was "open-ended" both with respect to investments and participation. Participation in Account RE was effected pursuant to group annuity contracts issued to the Plans or to the sponsors of such Plans which provided, among other things, that amounts received under the contracts were applied to Account RE and that the investment experience of Account RE was credited or charged to the participating contracts proportionately to the relative interests of such contracts in the assets held in Account RE. Account RE invested in equity and debt interests in real estate. The value of the real estate interests held in Account RE, as of June 30, 1990, was approximately $229.2 million. On the same date, twenty-six (26) Plans participated in Account RE.

4. Met was the investment manager/fiduciary with respect to the investment of the assets of Account RE and, as such, made investments in real estate for Account RE on a shared or parallel basis with Met's general account (the General Account). Account RE's investments were ordinarily in the form of equity interests in joint venture partnerships which had title to, managed, and/or developed real properties, such as hotels and office buildings. Account RE also held debt interests in the mortgages to which some of the properties were subject.[2]

5. The Parcels which are the subject of this proposed exemption are four properties which were jointly and entirely owned by Met's General Account and Account RE. It is represented that Account RE's and the General Account's interests in the Parcels were undivided equity only interests. It is represented that none of these Parcels in which Account RE had interests were subject to debt from any source.

The Parcels are located at the following addresses: (a) 400 Unicorn Park Drive, Woburn, Massachusetts (Parcel 1); (b) 100, 200, and 300 Unicorn Park Drive, Woburn Massachusetts (Parcel 2); (c) Market Square Center, Indianapolis, Indiana (Parcel 3); and (d) Bond Court Office Building, Cleveland, Ohio (Parcel 4).

Parcels 1 and 2 are described as four multi-story office buildings constructed between 1978–82, situated in an office park of 17.5 acres, approximately ten miles north of downtown Boston, Massachusetts. Parcels 1 and 2 contain a total of 275,149 square feet of rentable space.

Parcel 3 is a twenty story office building, erected about 1975, containing 396,776 square feet of rentable space, and a 485 car parking garage. Parcel 3 is situated on approximately 1.5 acres in the central business district of Indianapolis, Indiana.

Parcel 4 located in the downtown business district of Cleveland, Ohio, and is a twenty-two story office building, constructed in 1972 on an 88,000 square foot site. Parcel 4 contains 580,773 square feet of net rentable area with a separate four story 600 car parking garage.

These four Parcels were also part of a group described in a Confidential Private Placement Memorandum (the Memorandum) prepared by Met in connection with the private placement of limited partnership units (the Units) in the LP. It was the intention of Met to transfer the Parcels to the LP along with certain other properties wholly owned by Met (the Met Properties) which were also described in the Memorandum. In order to increase the attractiveness of the offering of the LP Units to potential investors, Met determined to convey the undivided equity interests in the Met Properties and in the Parcels (collectively, the Sale Properties) to the LP at prices lower than the fair market appraised values of such Sale Properties established by Landauer Associates, Inc. (Landauer). The fair market value of the Sale Properties conveyed by Met to the LP were all discounted by approximately the same small percentage.

6. At the request of Met, Landauer appraised the value of each of the Parcels for the purpose of describing the Parcels in the Memorandum. It is represented that Landauer is independent in that it has no direct or indirect current or prospective personal interest or bias with respect to the subject matter of the appraisals or in the parties involved. Further, it is represented that Landauer's employment and compensation for making the appraisals were in no way contingent upon the value reported. Landauer is qualified to make such determinations in that it has experience in commercial real estate investments. In addition, it is represented that the appraisals were made in conformity with and were subject to the requirements of the Code of Professional Ethics and Standards of Professional Practice of the American Institute of Real Estate Appraisers of the National Association of Realtors.

The total value of the Parcels was determined by Landauer to be $163 million, as of May 1, 1987. The single building located on Parcel 1 was valued at $14.5 million, while the value of the three buildings on Parcel 2 was approximately $24.5 million. Parcels 3 and 4 were appraised at $44 million and $80 million, respectively.

As of May 1, 1987, the specific interests owned by Account RE in Parcels 1, 2, 3, and 4 were respectively, 23.24%, 16.3%, 5%, and 7.5%. As a result, the values of Account RE's interests based on the Landauer appraisals were: (a) For Parcel 1—$3,369,800; (b) for Parcel 2—$3,993,500; (c) for Parcel 3—$2,200,000; and (d) for Parcel 4—$6,000,000, and the aggregate fair market value of the interests in the Parcels owned by Account RE was $15,563,300.

7. On September 21, 1987, the LP began offering Units for sale at the price of $500,000 for each Unit in the LP. The structure of this offering is described in detail in the Memorandum and provided generally for Met to: (1) Discount the fair market value of the Sale Properties by a small percentage; and (2) use this discounted value to transfer the Sale Properties to the LP in exchange for ninety-five percent (95%) cash and Units in the LP representing a

[2] For a discussion regarding the initial allocation of the debt and equity interests in certain real property investments between the General Account and Account RE, see Prohibited Transaction Exemption 88–93 (granted 53 FR 38803, October 3, 1988; proposed 52 FR 30977, August 18, 1987; exemption application no. D–4050A).

five percent (5%) general partnership interest in the LP.

On December 23, 1987, when the offer closed, Met had received total subscriptions in the amount of $225 million from the sale of the LP Units to outside investors. In consideration for cash received from subscriptions for Units, Met transferred undivided equity interests in the Sale Properties to the LP. Among the Sale Properties transferred at closing were the four subject Parcels in which both Met's General Account and Account RE were participating investors. It is represented that the cash purchase price paid by outside investors for Units of the LP and attributable to the value of the Parcels was $151,525,000. This amount reflected the small discount on the fair market value of the Parcels transferred to the LP, as well as, the amount attributable to the interest retained by the General Partner.

8. Because Met had its own interests in the Parcels and also acted as fiduciary on behalf of Account RE's interests in the same Parcels, it is represented that Met was concerned about conflicts of interest which would arise, if Account RE were to transfer its interests in the Parcels to the LP at less than fair market value, and were to participate in the structure of the offering, as described in the Memorandum. After consultation with independent counsel, Met determined that in light of the investment strategy of Account RE, as set forth in its investment guidelines, it was not in the interest of Account RE to participate in the structure of the offering and become involved in the LP as a holder of general partnership interests. Rather, the interests of Account RE would best be served, if, upon closing of the offering, Account RE were to receive: (1) A cash payment from the LP in exchange for the transfer to the LP of all of Account RE's interests in the Parcels; and (2) an additional cash payment from Met to ensure that Account RE would not receive less than fair market value for its interests in the Parcels. In this regard, Met proposed to pay to Account RE the difference between the fair market appraised value for the interests in the Parcels belonging to Account RE ($15,563,300) and that portion of the reduced sales proceeds ($15,203,100) attributable to Account RE's interests in such Parcels. Accordingly, it is represented that on December 23, 1987, the date of the closing, Account RE received $15,203,100, from the LP which amount constituted 97.7% of the fair market appraised value of all of Account RE's interests in the Parcels and received from Met an amount equal to $360,200 to cover the difference between the fair market appraised value of Account RE's interests in such Parcels, as determined by Landauer, and the amount paid to Account RE by the LP for such interests.

9. In addition to ensuring that Account RE received fair market value for its interest in the Parcels, Met engaged an independent fiduciary to consider the transaction which is the subject of this proposed exemption. The independent fiduciary was responsible for considering whether a sale to the LP of Account RE's interest in the Parcels or some other structure or form of participation in the LP would be desirable or necessary, in order to best protect the interest of and fully compensate Account RE. In addition, the independent fiduciary, acting on behalf of Account RE, was authorized to decide whether the subject transaction was appropriate for Account RE and in the interest of the Plans. Further, the independent fiduciary was to ensure that the consideration paid to Account RE for the sale of its interests in the Parcels was not less than fair market value. In the opinion of Met, the requirement that the independent fiduciary determine the appropriateness of the transaction implicitly contained the ability to reject the transaction.

Abram Barkan (Mr. Barkan), president of James Felt Realty Services (Felt Realty), an unincorporated Division of Grubb & Ellis Company, has acknowledged the status of Felt Realty as the independent fiduciary with respect to the assets of the Plans invested in Account RE and accepted on behalf of Felt Realty fiduciary responsibility for the subject transaction. Felt Realty agreed to act as the independent fiduciary on December 8, 1987, but Met had fully discussed the nature of the subject transaction with Mr. Barkan during the summer of 1987. As set forth in a letter from Met, dated December 8, 1987, Felt Realty's independent fiduciary role was to ensure that Account RE's participation in the subject transaction, as outlined herein, would be in the interest of Account RE and would result in its receiving full value for its investments. During the period between December 8, 1987, and December 23, 1987, the date of the closing, Met has represented that on several occasions it discussed the subject transaction with Mr. Barkan and that he orally approved such transaction prior to the closing. It is represented that Felt Realty, as independent fiduciary, confirmed its oral approval of the subject transaction in its formal report (the Formal Report) dated, April 28, 1988. Mr. Barkan has represented that prior to the closing in December 1987, Felt Realty had reached all of the conclusions which were later stated in the Formal Report and had advised Met that an all-cash transaction, rather than other potential forms of compensation, was in the best interest of Account RE. In addition, Mr. Barkan has represented that prior to the closing Felt had determined that the consideration to be received by Account RE for its interest in the Parcels was fair and adequate and had reached an agreement with Met that such consideration was subject to a price adjustment, if appropriate when the Formal Report was finalized.

With respect to the subject transaction, it is represented that on December 8, 1987, Met provided for review by Mr. Barkan and/or other officers of Felt Realty: (a) A copy of the Memorandum; (b) copies of the appraisal reports on the Parcels prepared by Landauer for inclusion in the Memorandum; (c) the most recent interim financial report on Account RE; (d) a copy of the then current profile on Account RE; (e) the 1986 annual report of Account RE; and (f) the operational investment guidelines for Account RE.

It is represented that Mr. Barkan, in fulfilling Felt Realty's role as independent fiduciary: (a) Reviewed the appraisal reports on the Parcels prepared by Landauer, including the list of general assumptions regarding continued leasing by major tenants and the limiting conditions with respect to good and marketable title, free of hazardous material; (b) contacted representatives of the managing agents for the Parcels to ascertain the conditions and status of lease negotiations with existing tenants, as well as other matters; (c) visited Parcels 1, 2, and 4; (d) discussed the physical and economic conditions of Parcel 3 with the building manager; (e) reviewed in-house data, as well as information from other sources with respect to the general economic conditions prevailing in each of the market areas and focused attention on the present and future status of the market for office space in those areas; (f) reviewed the terms of the Memorandum; (g) reviewed the 1986 Annual Report of Metropolitan Pension Real Estate Investments and Metropolitan Life Insurance Company Account RE; (h) obtained office market data from certain firms located in the Cleveland, Indianapolis, and Boston areas; and (i) reviewed Met's representations in its application for exemption which set forth the independent fiduciary's duties and responsibilities with respect to the subject transaction.

Based on all of the aforementioned information, Mr. Barkan represents that

in the transaction concluded in December 1987, Account RE received consideration which represented fair market value and fully compensated Account RE for its interest in the Parcels. In this regard, Mr. Barkan stated that he was particularly aware: (a) That the consideration paid to Account RE was based upon appraisal reports representing the fair market value of the Parcels; (b) that the conclusions set forth in such reports were fully documented in accordance with the standards prescribed by the American Institute of Real Estate Appraisers; and (c) that such appraisal reports were completed, as of May 1, 1987, prior to the date of the transaction, by Landauer, a respected valuation company well versed in the area of office buildings throughout the United States. Further, Felt Realty's independent findings, as a result of its analysis subsequent to May 1987, indicated no significant change in the real estate markets in which the Parcels are located. Finally, Mr. Barkan represents that no discount for a partial ownership was applied to Account RE's interest in the Parcels, even though on the open market partial interests in real estate similar to those held by Account RE are customarily valued at significant discounts to account for lack of management control and limited marketability.

Felt Realty represented that the sale of the Parcels was a cash transaction which permitted the immediate use of such funds by Account RE. Given the investment objective and liquidity considerations of Account RE, in the opinion of Felt Realty, it was in the best interests of participants and beneficiaries to sell rather than continue to hold their respective interest in the Parcels. In arriving at such conclusion, Felt Realty stated it was mindful that office building construction which is currently in place or proposed in the central business districts of Indianapolis and Cleveland could be particularly competitive to the buildings on Parcels 3 and 4 which are, respectively, sixteen (16) and thirteen (13) years old. In addition, for the buildings on Parcels 3 and 4, with major tenant concentrations of 52% and 43%, respectively, competition from developers looking for "Anchors" for new buildings could cause a significant vacancy situation to develop, which could seriously impact on future earnings upon expiration of existing leases on those properties. Finally, in the soft suburban office market in Boston, owners of recently completed buildings with heavy vacancies attract tenants by offering rent concessions and generous building installations. In the opinion of Mr. Barkan this situation would impact on lease renewal negotiations for the office space at Parcels 1 and 2, where 21% and 8% of the space in the buildings on those properties is subject to renewal in 1988 and 1989, respectively.

Felt Realty represents that for over fifty years it has offered expertise in the specialized fields of consultation on real estate transactions, appraisals, and investment marketing; and therefore, is qualified to act as independent fiduciary. In addition, Mr. Barkan has experience in operating a general real estate business which offers appraisal and consulting services. Further, Mr. Barkan was awarded the M.A.I. designation and is a member and past president of the American Society of Real Estate Counselors and the American Institute of Real Estate Appraisers.

It is represented that Felt Realty, at the time the transaction was entered, was completely independent of Met. Even though Felt Realty had previously performed for Met various services involving real property, it is represented that, at the time of the transaction, Felt Realty was not an affiliate of Met, was not on retainer from Met or any of its affiliates or subsidiaries, and was not subject to any understanding of a continuing relationship with Met or its affiliates or subsidiaries.

10. Met has stated that at the time the transaction was entered the values of the Parcels had substantially appreciated. It is represented that such appreciation was not likely to continue at so rapid a rate and that, therefore, the sale of the interests in the Parcels belonging to Account RE was accomplished at an opportune time in which to realize the gain. Second, Met has stated that the proceeds from the sale of Account RE's interests in the Parcels provided assets for Account RE to meet its liquidity requirements in regard to the withdrawal from Account RE of one of its larger participants. Third, Met has stated that the proceeds from the sale of Account RE's interests in the Parcels funded certain improvements in other properties in which Account RE maintained a participating interest and thereby enhanced their value. Fourth, Met has stated that the transaction improved the diversification of Account RE which had experienced some concentration in properties in the Midwest and in office buildings in general. Finally, it is represented that neither the Plans nor Account RE paid any fees, commissions, or costs associated with the sale of Account RE's interests in the Parcels to the LP.

11. In summary, Met represented that the proposed transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the sale of Account RE's interests in the Parcels was a one-time transaction for cash; (b) the price paid for Account RE's interests in the Parcels was based on a fair market appraisal of the value of the Parcels prepared by Landauer, a qualified independent appraiser; (c) Felt Realty, as the independent fiduciary, determined that the consideration paid to Account RE was fair and fully compensated Account RE for its interests in the Parcels; (d) Account RE obtained liquid assets which were desirable for the administration of Account RE and which enhanced the diversification of its portfolio; and (e) neither the Plans nor Account RE paid any fees, commissions, or costs associated with the sale of Account RE's interests in the Parcels to the LP.

Notice to Interested Persons

Met represents that there were more than 250,000 participants and beneficiaries in the Plans who participated in Account RE. Because of the very large number of potentially interested persons, the only practical means of notifying them is the publication of a notice of pending exemption in the **Federal Register** and the distribution of this notice to fiduciaries of those Plans which participated in Account RE at the time of the transaction or successors to such fiduciaries.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

New Emory University Health Plan (the Emory Plan) and The Emory Clinic Health Plan (the Clinic Plan; Together, the Plans) Located in Atlanta, Georgia

[Application Nos. D–9098 and D–9099]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406 (b)(1) and (b)(2) of the Act shall not apply to: (1) The selection by the Plans of health care service providers affiliated with Emory University (Emory) and the Emory Clinic (the Clinic) who are participating

in a preferred provider network of physicians, hospitals and other health care providers (the Network), which may provide services to the Plans; (2) and the direct or indirect payment of fees charged by physicians, hospitals and other health care providers affiliated with Emory and the Clinic, who are parties in interest with respect to the Plans,[3] in connection with health care services rendered to participants and beneficiaries of the Plans, provided the conditions set forth in Section II below are satisfied.

Section II. Conditions

A. At least 50% of the physicians and 50% of the hospitals included in the Network are not affiliated with Emory or the Clinic;

B. All fees charged by health care providers within the Network, whether or not they are affiliated with Emory and/or the Clinic, have been negotiated on behalf of the Plans by their independent fiduciary;

C. The Plans' independent fiduciary selects the health care providers who participate in the Network;

D. Emory and the Clinic will engage a qualified, independent organization to conduct a thorough audit of the processing of benefit claims by The Prudential Insurance Company of America (Prudential) at the close of the first year of operation of the managed care arrangement described herein, and at least every two years thereafter (if Prudential continues to perform the claims processing function);

E. All dealings between the Plans and the health care providers affiliated with Emory and/or the Clinic included within the Network are on a basis no less favorable to the Plans than such dealings with unaffiliated health care providers who are included within the Network; and

F. Participants and beneficiaries of the Plans are permitted to select any health care provider that they desire, whether that provider participates in the Network or not, and regardless of whether the provider is affiliated with Emory and/or the Clinic.

Effective Date: If the proposed exemption is granted, the exemption will be effective January 1, 1993.

Summary of Facts and Representations

1. Emory is a private non-profit university located in Atlanta, Georgia. Among the many facilities that compose Emory are a medical school and two hospitals (the University Hospitals). The University Hospitals, which are part of the University and not separately incorporated, are staffed by employees of Emory.

The Clinic is a medical partnership located on Emory's campus. It was established to allow members of the faculty of Emory's medical school to engage in the private practice of medicine while continuing to teach and do research. Each of the Clinic's approximately 516 physicians is a member of the faculty of the medical school and is on the staff of one or both of the University Hospitals. As such, each is an employee of Emory as well as a partner or employee of the Clinic.

2. Effective January 1, 1993, Emory and the Clinic established the Plans, which are self-insured health care benefit plans identical in substance, for their respective employees and their dependents to replace existing health plans (the Prior Plans). Emory and the Clinic expect the Plans to provide a means for exercising better control over health care benefit costs by, among other things, making extensive use of the health care facilities and personnel of Emory and the Clinic. The Emory Plan is expected to cover approximately 10,273 employees of Emory and 6,330 dependents. The Clinic Plan is expected to cover approximately 1,154 employees of the Clinic and 461 dependents. The Plans will offer two health care options: (a) Membership in the PruCare HMO (PruCare), a health maintenance organization which is affiliated with Prudential, and (b) a managed care arrangement (EmoryCare). Participants in the Plans will make fixed contributions that will be targeted to cover only about 40% of the costs, and Emory and the Clinic will pay whatever is necessary to make up the balance. Participant contributions will be collected by payroll deductions.

3. EmoryCare will utilize a "managed care" concept approach to health care, which involves the selection by each covered employee and dependent of a primary care physician who will be responsible for working with the employee or dependent to manage health care cost.[4] The physician will attempt to avoid medically unnecessary expenditures for treatments at the secondary or tertiary level (i.e., services of specialists and hospital visits), and will also emphasize preventive medicine. Another feature of the EmoryCare option will be the availability to Plan participants selecting EmoryCare of the Network, which will consist of Atlanta-area health care providers who will enter into agreements to provide specified health care services to Plan participants at costs below those prevailing in the Atlanta area. Participants will not be required to seek health care within the Network. However, they will have an incentive to do so because they will be entitled to substantially more favorable coinsurance and deductibles if they select Network members than if they do not. Coinsurance and deductibles for out-of-Network health care will be roughly comparable to those applicable under the Prior Plans. Thus, in addition to making health care available to employees and their dependents at lower cost than out-of-Network health care in the Atlanta area, the EmoryCare program will allow them to recover a greater percentage of their health care expenditures than the Prior Plans if they select Network providers.

4. Under the Plans as in effect for 1993, in-Network services under EmoryCare and services under PruCare will not be subject to deductibles. Some out-of-Network services for participants choosing EmoryCare will be subject to deductibles. Some health care services provided within the Network will be subject to a flat copayment of $10 or $50, and others will be subject to a copayment equal to 10% of the total charge. In addition, a participant will be required to pay 10% of the first $15,000 of eligible charges incurred within the Network by the participant or a beneficiary of the participant. Services provided by out-of-Network providers will generally be subject to a 30% co-payment (i.e., the Plans will pay for 70% of the costs), in addition to a deductible. Further, a participant will be required to pay 30% of the first $15,000 of eligible out-of-Network charges incurred by the participant or beneficiary. Aggregate charges in excess of $15,000 (whether in-Network or not) will be paid in full by the Plans. All eligible charges incurred by a participant and his or her covered beneficiaries during a calendar year are aggregated for purposes of applying the $15,000 limit on charges with respect to which a co-payment is required.

5. When a participant or beneficiary selects care from an in-Network provider, if the service is one to which a flat co-payment applies, the provider

[3] The Department believes that any relief from section 406(a) of the Act that may be necessary in connection with this transaction is provided by the statutory exemption for the provision of services to a plan by a party in interest contained in section 408(b)(2) of the Act, and it is inappropriate to provide any relief herein from section 406(a) beyond that provided by the statutory exemption.

[4] Participants in the Plans are free to select any primary care physician they desire, regardless of whether the physician is a member of the Network or is affiliated with Emory and/or the Clinic. As of March 11, 1993, the Network included 681 primary care physicians, of whom 114 had an affiliation with Emory and/or the Clinic. As of that date, the Network included a total of 1743 health service providers, of whom 690 had an affiliation with Emory and/or the Clinic.

will collect the co-payment directly from the participant and will be reimbursed for the balance by the Plans. If the service is one to which a 10% copayment applies, the provider will be reimbursed for the entire charge by the Plans. The Plans will bill participants for any amounts owed by them or their beneficiaries.

6. When a participant or beneficiary who has selected EmoryCare receives out-of-Network health care services, the providers will generally bill the participant directly, and the participant will submit the bill to the appropriate Plan, although participants will be able to authorize providers to bill the Plans directly. The Plan will pay the provider the amount it owes under its terms. The participant will be responsible for paying the balance of the bill.

7. After seeking competitive bids from a number of organizations, Emory and the Clinic, with the assistance of two outside consultants, have selected Prudential as independent fiduciary to administer the Plans. Prudential is an independent insurance company that is not affiliated with either Emory or the Clinic. Prudential's selection was made by a committee composed of 23 Emory and Clinic officials and employees. This committee selected Prudential on the basis of both cost and quality of service. As to the EmoryCare option, the Prudential agreement (the Agreement) is to be an "administrative services only" contract, so that Prudential will not insure benefits under the EmoryCare option, but will only provide administrative services, including the processing of benefit claims. Prudential will be compensated for its services by a flat monthly fee for each participating employee. Prudential will insure benefits under the PruCare option, at least initially.[5] Emory and the Clinic have the option to self-insure the benefits under the PruCare option, and are giving consideration to doing so in the future.

8. Among Prudential's duties is the creation and maintenance of the Network. Under the Agreement, Prudential will have absolute discretion to negotiate fee arrangements with all Network members. However, Emory and the Clinic are to play a continuing role in making certain that the quality of health care services available through the Network remains at an acceptably high level. Emory and the Clinic have reached agreement with Prudential on quality-related criteria[6] which are minimum requirements for inclusion of practitioners in the Network. These criteria rely in part on standards developed by units within Prudential which regularly engage in sanctioning medical service providers for other managed care and HMO networks nationwide, as well as procedures which Prudential has developed for those purposes. Emory has furnished Prudential with a list of over 1500 physicians and 18 hospitals it would like to have included in the Network. The list includes the University Hospitals, the Clinic and its partners and physician employees, members of the faculty of Emory's medical school, and other parties affiliated with Emory and the Clinic. It also includes other Atlanta area physicians and hospitals, many of whose names were obtained in a poll of eligible employees. Emory and the Clinic have not retained and do not have the right to refuse to allow Prudential to include any health care service providers in the Network.

9. It is anticipated that the Network will include more physicians who are not affiliated with Emory or the Clinic than those who are, and at least 15 hospitals, only two of which will be part of Emory. The applicants specifically represent that at least 50% of the physicians and 50% of the hospitals included in the Network will not be affiliated with Emory or the Clinic. Providers on the list furnished by Emory to Prudential who do not wish to participate in the Network or with whom Prudential is unable to negotiate appropriate fees will not be included in the Network. The Network will be constructed to assure maximum accessibility for participating employees, based on data which has been provided by Emory and the Clinic as to where their employees live. Prudential has already begun the process of negotiating fee arrangements with health service providers who are to be included in the Network.

10. Prudential will also provide medical management services, define the level of health care services to be provided, and negotiate payment terms and rates with in-Network providers, including the University Hospitals and the Clinic. In addition, Prudential will provide claims administration services.

11. The applicants represent that the provision of the above-described services by Prudential pursuant to the Agreement will be subject to strict conditions and oversight which will provide safeguards against any possible conflict of interest by Prudential. Thus, the applicants represent that:

(a) The Agreement will explicitly hold Prudential to "the same care and skill as a similarly situated provider of like service would exercise following commonly accepted insurance industry and managed care practices."

(b) Prudential will explicitly be designated as the "named fiduciary" (as defined in the Act) for administration of claims and appeals of denied claims under the EmoryCare option, and will be responsible for administering claims for benefits and reviewing denied claims under that option. In discharging these responsibilities, Prudential will be required to act in accordance with the documents and the instruments governing the Plans and procedures described in section 503 of the Act and the regulations thereunder.

(c) Emory and the Clinic will have the right to arrange for an audit of Prudential's claims administration records at any time during Prudential's normal business hours. Prudential must permit Emory and the Clinic to inspect records and other information regarding claims for benefits submitted by persons covered by the Plans. Emory and the Clinic represent that they will engage the benefits consulting firm of Towers, Perrin, Forster & Crosby or a similarly qualified independent organization to conduct a thorough audit of Prudential's processing of benefit claims at the close of the first year of operation of the EmoryCare program and at least every two years thereafter (if Prudential continues to perform the claims processing function). Emory and the Clinic will have claims processing audits performed more frequently if

[5] Under the PruCare option, for a flat monthly premium, participants who elect that option (and their beneficiaries) can obtain health care services either without additional charge, or, in some cases, with a small flat copayment, from specified health care providers. These providers are members of a multispecialty group medical practice that has contracted exclusively with Prudential to provide health care services to members of PruCare. Charges for health care services rendered to participants or their beneficiaries by providers who are not members of the PruCare network are not covered.

[6] The applicants represent that the agreement with Prudential calls for 14 criteria which must be satisfied for a practitioner to be included within the Network. At least 10 of these criteria are objective standards, and it can be easily verified whether practitioners are in compliance with them. Among the criteria are: (a) the physician must hold a current license to practice in the appropriate state; (b) the practitioner must be either board-certified, board-eligible or actively engaged in the practice of a recognized specialty in the local medical community for a specified number of years; (c) the practitioner must maintain professional medical malpractice insurance and have a verifiable medical malpractice history that meets national corporate standards established by Prudential; (d) the practitioner must maintain full admitting privileges and be a physician in good standing at one or more designated participating inpatient facilities within the appropriate service area; (e) the practitioner must provide data to substantiate that all continuing medical education requirements of the state, specialty boards, AMA Physician's Recognition Award or other appropriate guidelines have been met; and (f) the practitioner must be willing to participate in and accept peer review mechanisms established by Prudential.

circumstances indicate that such audits are warranted in light of Prudential's performance.

(d) Emory and the Clinic will have the right to terminate Prudential's provision of administrative services under the EmoryCare option on 30 days' written notice on Prudential's breach of material obligations unless the breach is cured within the 30 day period, and will have an unqualified right to terminate Prudential on 90 days' written notice beginning on January 1, 1994. Emory and the Clinic have a newly formed oversight committee specifically established to monitor participant satisfaction with the EmoryCare program.

(e) Prudential will establish a complaint resolution procedure for resolving disputes with participants and beneficiaries, including both coverage disputes and disputes as to medical care. The complaint resolution procedure will allow ultimate resort to arbitration in the event that Prudential and the participant are unable to reach agreement.

(f) Prudential has agreed to performance guarantees, under which it will forfeit specific amounts of the compensation to which it would otherwise be entitled if it fails to meet specified performance standards covering a wide range of its duties in connection with the EmoryCare option. Prudential has agreed to place at risk, subject to its meeting these performance standards, a total of $250,000 of the compensation to which it would otherwise be entitled for each of the years 1993, 1994, and 1995 (i.e., a total of $750,000 for all three years). These performance standards include speed and accuracy in the processing of claims, responsiveness to Plan participants' telephone and written inquiries, and conducting random surveys of Plan participants to determine their satisfaction with Prudential's performance. The Agreement provides that Prudential will forfeit specific dollar amounts of its fee unless specific performance criteria are satisfied, including participant satisfaction.

(g) Fiduciaries of the Plans responsible for monitoring Prudential's payment of claims who are affiliated with Emory and the Clinic and who are not affiliated with Prudential will receive from Prudential weekly, monthly and quarterly reports showing the number of claims paid in each such period. The monthly and quarterly reports show the number and percentage of claims which have been paid within 15 days after receipt by Prudential, between 16 and 30 days after receipt, between 31 and 45 days after receipt, and more than 45 days after receipt. The weekly reports show the number and percentage of claims paid within 10 days after receipt, between 11 and 15 days after receipt, between 16 and 20 days after receipt, between 21 and 25 days after receipt, between 26 and 30 days after receipt, between 31 and 45 days after receipt, and more than 45 days after receipt.

12. Emory and the Clinic have concluded that Prudential would be the most appropriate organization to administer the EmoryCare option because, in their judgment, Prudential offers the most highly qualified personnel and facilities to operate a managed care program and has a successful track record of operating such programs. At the same time, Emory and the Clinic have offered PruCare as an option under the Prior Plans for a number of years, and participants and beneficiaries have been amply satisfied with the medical services provided by PruCare. The applicants represent that given the extensive safeguards described in rep. 11, above, there is no reason to deprive the Plans of the services of Prudential, which Emory and the Clinic have concluded offers the highest available quality of health care for both Plan options.

13. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) At least 50% of the physicians, hospitals, and other health care providers in the Network will be unaffiliated with Emory or the Clinic, so Plan participants will be able to use unaffiliated providers at the same favorable terms as providers affiliated with Emory and the Clinic; (b) all fees charged by health care providers affiliated with Emory and/or the Clinic will be reasonable in light of fees charged by health care providers unaffiliated with Emory and/or the Clinic for comparable services; (c) the proposed exemption will expand the range of choices that will be available to participants and beneficiaries within the Network on favorable terms as to fees, coinsurance and deductibles; (d) the Plans will cover out-of-Network health care on terms comparable to those available under the Prior Plans; and (e) Plan participants and beneficiaries will be free to choose whether or not to use providers who are affiliated with Emory or the Clinic, as well as deciding whether or not to use providers who are members of the Network.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Meister-Neiberg Defined Benefit Pension Plan (the Plan) Located in South Elgin, Illinois

[Application No. D–9306]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed series of loans (the Loans), originated within a five year period, by the Plan to Meister-Neiberg Company, Inc. (the Employer) and Kingsport Development, Inc. (Kingsport), an affiliate of the Employer, parties in interest with respect to the Plan; provided that the following conditions are met:

(a) The amount of the Plan's assets involved in the Loans does not exceed 25% of the Plan's total assets at any time during the transactions;

(b) All terms and conditions of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(c) An independent, qualified fiduciary determines on behalf of the Plan that each Loan is feasible, in the best interests of the Plan as an investment for the Plan's portfolio, and protective of the Plan and its participants and beneficiaries; and

(d) The independent, qualified fiduciary monitors compliance by the Employer and Kingsport with the terms and conditions of the Loans throughout the duration of the transactions, taking any action necessary to safeguard the Plan's interest, and monitors compliance by all parties with the terms and conditions of the exemption.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date the Final Grant of the proposed exemption is published in the **Federal Register**. Subsequent to the expiration of this exemption, the Plan may hold Loans originated during this five year period until the Loans are repaid or otherwise terminated. Should the applicant wish to continue entering into any Loans beyond the five year

period, the applicant may submit another application for exemption. At such time, the applicant must demonstrate: (i) Whether and how compliance with the exemption has been achieved; (ii) the number of Loans engaged in under the exemption; and (iii) the particular decisions made by the independent fiduciary for the Plan regarding the Loans.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with eight participants and approximately $3,825,000 in total assets as of August 31, 1991. The trustee of the Plan, and the decision-maker for the investment of the Plan's assets, is Nathan Neiberg (Mr. Neiberg). Mr. Neiberg is the president and major shareholder of the Employer. The Employer is a home builder in the Chicago metropolitan area, with its principal place of business located at 35 Kingsport Drive, South Elgin, Illinois.

2. The applicant requests an exemption, similar to an exemption previously granted to the applicant in 1986, that would permit the Plan to make Loans to the Employer or its affiliate, Kingsport, for a period of five years.[7] The Employer and Kingsport will use the proceeds of the Loans to develop certain unimproved real property for sale to third party buyers. The Loans will be for terms not to exceed five years. The interest rate for the Loans will be variable at two percent over the prime rate of the Cole-Taylor Bank in Chicago, Illinois, and will be adjusted quarterly. The Loans will have an interest rate floor of eight percent. Each Loan will require that principal and interest payments be made monthly in an amount necessary to fully amortize the Loan over the period established as the duration for the Loan. The Employer or Kingsport may fully or partially prepay the Loans at any time. The Loans will be secured by first mortgages on parcels of real property owned by the Employer or Kingsport which are being developed with the proceeds of the Loans. Each property will be appraised prior to any Loan and the collateral for each Loan will equal at least 150% of such Loan. If the collateral falls below 150% of the outstanding balance of a Loan, additional collateral will be pledged by the borrower so that the collateral will be equal to at least 150% of the outstanding balance of the Loan at all times. The Plan will make no Loan that would cause the cumulative amount of such outstanding Loans to exceed 25% of the Plan's total assets.

The Employer and Kingsport, as mortgagors under the terms of the Loan, will be liable for all collection costs including attorney's fees in the event of default on any Loan. Each Loan will provide that the entire amount of the Loan shall become due and payable upon any failure by the Employer or Kingsport to make a payment when due, the failure to deliver additional collateral when demanded, or any change in the financial condition of the Employer or Kingsport which poses a substantial security risk, such as bankruptcy of the Employer or Kingsport, death or bankruptcy of stockholders holding 50% or more of the outstanding shares of the Employer or Kingsport, an assignment for the benefit of creditors, or a sale of substantially all the assets of the Employer or Kingsport.

3. The applicant represents that Kingsport purchased from an unrelated party in 1990 an approximately 46.2 acre parcel of unimproved real property located on Hopps Road in South Elgin, Illinois (the Property) for $1,272,000. The Property was appraised by Lee Lansford, CA-R (Mr. Lansford), of L.L. Lansford and Associates, an independent, qualified real estate appraiser in Roselle, Illinois, as having a fair market value of $1,285,000, as of February 15, 1991. Kingsport has subdivided the Property for development into 236 lots of which Phase I consists of 132 lots and Phase II consists of 104 lots. Phase I is under development at the present time. Kingsport and the Employer wish to borrow $375,000 from the Plan (the First Loan) to assist the development of Phase II of the Property, pursuant to the terms and conditions discussed above. Mr. Lansford has appraised the approximately 17.9 acre parcel of the Property to be used as collateral for the First Loan as having a fair market value of $650,000, as of February 18, 1993.

4. Anthony M. Slawniak, Esq. (Mr. Slawniak), an attorney with offices located at 111 North Canal Street in Chicago, Illinois, has agreed to act as an independent trustee and fiduciary for the Plan with respect to the proposed Loans. Mr. Slawniak in an Illinois licensed attorney and certified public accountant, primarily engaged in the practice of real estate and tax law, with twenty years of experience in dealing with employee benefit plans subject to the Act. Mr. Slawniak has experience with numerous types of real estate transactions and is familiar with the fiduciary responsibility provisions of the Act. Mr. Slawniak acknowledges his duties, responsibilities and liabilities in acting as a fiduciary for the Plan under the Act. Mr. Slawniak states that he has had no prior business relationships with the Employer or its affiliates, including Mr. Neiberg, and does not intend to have any future relationships with such persons other than serving as the Plan's independent fiduciary for the Loans.

5. Mr. Slawniak represents that he has reviewed the mortgage documents for the First Loan and other relevant information, including Mr. Lansford's recent appraisal of the 17.9 acre parcel of the Property to be used as collateral for such Loan. Mr. Slawniak states that the terms of the First Loan are at least as favorable to the Plan as the terms which would exist in an arm's-length loan from an unrelated financial institution. In this regard, Mr. Slawniak notes that the applicant has provided a letter dated March 12, 1993 from Andrew J. Zych, Executive Vice President of Northwestern Savings and Loan Associates in Chicago, Illinois (Northwestern), which states that Northwestern would make a loan to the Employer under the same terms and conditions as those proposed for the First Loan. In addition, Mr. Slawniak believes that the default restrictions and collateral requirements for the First Loan are more protective of the Plan's interests than arm's-length loans that would be made by an unrelated financial institution.

Mr. Slawniak states that based on Mr. Lansford's appraisal, the First Loan should be well secured in the event of default. Mr. Slawniak will ensure that the fair market value of the Property used to secure the First Loan will remain at least 150% of the principal amount of the First Loan, throughout its duration, and will require that additional property be used to secure the First Loan if this value/loan ratio cannot be maintained.

6. Mr. Slawniak states that the First Loan as well as the other proposed Loans will offer the Plan an excellent rate of return in comparison with other investment opportunities involving similar risk. Mr. Slawniak has reviewed the Plan's investment portfolio and considered the diversification and liquidity needs of the Plan. Based on this review, Mr. Slawniak represents that the Loans would be prudent and

[7] See Prohibited Transaction Exemption (PTE) 86–130, 51 FR 41665, November 18, 1986. The applicant represents that three loans were made by the Plan to the Employer pursuant to PTE 86–130. The applicant states that all of these loans represented less than 25% of the Plan's assets throughout the duration of the loans and were paid in accordance with the terms of the loans, as described in the Notice of Proposed Exemption for the Plan (see 51 FR 32143, September 9, 1986). The applicant states further that the Plan received all principal and interest payments on a timely basis and there were no defaults by the Employer on these loans.

proper investments for the Plan and would be in the best interests of the Plan and its participants and beneficiaries.

7. Mr. Slawniak states that he will monitor the Loans and take all appropriate actions necessary to protect the interests of the Plan and its participants and beneficiaries, including foreclosure on any real property used as collateral for a Loan in the event of a default. Mr. Slawniak believes that the Loans will be well secured by the Plan's first mortgage interest in the properties used as collateral. Mr. Slawniak will ensure that each Loan is secured by property having an appraised fair market value of at least 150% of such Loan, as established by an independent, qualified appraiser. Mr. Slawniak will monitor the condition and adequacy of the properties used as collateral for the Loans to ensure that each Loan remains adequately secured at all times. Mr. Slawniak will have the authority to immediately require that additional property be used as security for a Loan, if the value of the collateral does not at least equal 150% of the unpaid principal amount of the Loan. Mr. Slawniak will also have the authority to declare an acceleration of payments or a default under the terms of the Loan if either the Employer or Kingsport, as mortgagor, fails to provide additional collateral for the Loan. Finally, Mr. Slawniak will have the authority to declare an acceleration of payments or a default on any Loan if necessary to maintain an appropriate ratio between the amount of the Loans and the capitalization of the Employer and Kingsport.

Mr. Slawniak has reviewed the financial stability of the Employer and Kingsport, including recent financial statements and income tax returns. By letter dated April 20, 1993, Mr. Slawniak represents that the financial statements of the Employer and Kingsport for the fiscal year ending December 31, 1992, indicate that such entities have a combined net worth which exceeds $2 million. Mr. Slawniak states that the capitalization of the Employer and Kingsport is currently more than five times the amount of the First Loan.[8] Mr. Slawniak also notes that Kingsport had net income of approximately $750,000 for the fiscal year ending December 31, 1992. Mr. Slawniak concludes that both the Employer and Kingsport are well capitalized and generate sufficient cash flow to cover the proposed payments on the Loans.

8. Mr. Slawniak will monitor the Plan's assets to ensure that the total outstanding principal balance of the Loans does not exceed 25% of the Plan's total assets. Mr. Slawniak acknowledges that he is responsible for compliance by the parties with all of the terms and conditions of the requested exemption, including the 25% limitation. Mr. Slawniak understands that the effectiveness of the exemption will be dependent on such compliance.

9. In summary, the applicant represents that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (a) The rate of return to the Plan on the Loans will be commensurate with the prevailing rate earned on similar loans made by financial institutions in the Chicago area; (b) each Loan will be secured by real property having an appraised fair market value of at least 150% of such Loan, as established by an independent, qualified appraiser; (c) no more than 25% of the Plan's total assets will be invested in the Loans; (d) the Plan's interests with respect to the Loans will be represented by an independent fiduciary who will monitor the Loans as well as the conditions of the exemption, and will take all appropriate actions necessary to safeguard the best interests of the Plan and its participants and beneficiaries; and (e) the Plan's independent fiduciary has reviewed and approved the terms of the First Loan and will continue to review and approve each proposed Loan to determine whether the Loans are in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

[8] The Department notes that it is Mr. Slawniak's responsibility as the Plan's independent fiduciary for the Loans to ensure that the total outstanding principal balance, plus accrued but unpaid interest, for all Loans remain at an appropriate amount in comparison to the capitalization of the Employer and its affiliates even though such amount is less than 25% of the Plan's total assets and each Loan is secured by property which is at least 150% of the amount of the Loan. In this regard, Mr. Slawniak should consider the capitalization of the Employer and Kingsport prior to any approval for the Plan to make an additional Loan after the First Loan and should declare an acceleration of payments on any Loan if necessary to maintain an appropriate ratio between the amount of the Loans and the capitalization of such entities.

Main Urology Associates, P.C. Profit Sharing Plan, and Main Urology Associates, P.C. Money Purchase Pension Plan (together, the Plans) Located in Buffalo, New York

[Application Nos. D–9310 and D–9311]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a proposed Loan of $420,000 (the Loan) by the individual accounts of four participants in the Plans (the Accounts) to G.H.W.A. Realty Company (GHWA), a party in interest with respect to the Plans; provided the following conditions are satisfied:

(A) All terms of the Loan are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party; (B) For the duration of the Loan, each Account's participation in the Loan does not exceed twenty-five percent of the net assets of the Account at any time; (C) For the duration of the Loan, the Plans' interests with respect to the Loan are represented by Mr. Franklin Pack, an independent fiduciary who will monitor and enforce GHWA's compliance with the Loan terms and the conditions of this exemption; and (D) Upon the making of the Loan and for its duration, the Loan is secured by a perfected lien on real property having a fair market value of no less than 150% of the sum of the outstanding principal balance of the Loan and the outstanding balance of any liens superior to the Loan.

Summary of Facts and Representations

1. The Plans are defined contribution plans which provide for participant-directed investment of individual participant accounts. The Plans are sponsored by Main Urology Associates, P.C. (the Employer), a New York professional corporation engaged in the practice of urological medicine in Buffalo, New York. The trustees of the Plans are Gerald Hardner, Dattatraya Wagle, and David Albert (the Trustees), each of whom is a 25 percent shareholder of the Employer and a participant in the Plan. The Employer's principal place of business is a clinic building and land located at 2162 Main Street in Buffalo (the Original Property). The Original Property is owned by GHWA, a New York general partnership which leases the Original Property to

the Employer. Each of the Trustees is a 25 percent general partner in GHWA, and the fourth 25 percent general partner of GHWA is Philip Aliotta, who is also a 25 percent shareholder of the Employer.

2. GHWA has entered into an agreement for an exchange of real property pursuant to section 1031 of the Internal Revenue Code (the Exchange Agreement). Under the Exchange Agreement, GHWA will acquire a parcel of vacant land (the New Property) owned by 6675 Main Street, Inc. (the Seller) and located at 6653 Main Street in Williamsville, New York, in exchange for the Original Property. Williamsville is situated within the Town of Amherst, New York, adjacent to Buffalo. Each property has a stipulated value of $175,000 under the Exchange Agreement. GHWA intends to construct upon the New Property a multi-tenant office and professional building in which the Employer will be the primary tenant. Accordingly, GHWA has arranged for the construction of a 10,605 square foot building (the New Building) on the New Property at a contract cost of $1,114,337. GHWA is securing construction-phase financing for the project from the Pathway Development Corporation, which is owned by Morton H. Wittlin, who is the Plans' accountant, and by individual partners of GHWA.

In response to development incentives and inducements offered by the Town of Amherst, New York, pursuant to the New York State Industrial Development Act, GHWA has agreed to an arrangement with the Industrial Development Agency of Amherst (the IDA), which will provide a ten-year exemption from real property taxes on the New Building and sales taxes on the material used in construction. In exchange for the tax exemption, GHWA agrees to transfer title to the New Property to IDA, including all improvements, for ten years upon completion of the New Building, and to make payments-in-lieu-of-taxes, payable to the Town of Amherst, in accordance with a schedule established by IDA. IDA will lease the improved New Property back to GHWA under a 10 year lease (the IDA Lease), during which GHWA will have exclusive rights to the New Property. The IDA Lease may be terminated by GHWA at any time by the payment of $1.00, although the exemption from real property taxes will also terminate upon any termination of the IDA Lease. Title to the New Property reverts back to GHWA upon termination of the IDA Lease. After commencement of the IDA Lease, GHWA will commence immediately to sublease to the Employer approximately 7,500 square feet of the New Building. The remaining space in the New Building will be leased to unrelated third parties.

As additional permanent financing to replace the construction-phase financing of the project, GHWA proposes to borrow funds from the Plan, and the Trustees and Mr. Aliotta propose to direct that their individual participant accounts in the Plans (the Accounts) lend $420,000 to GHWA (the Loan) for this purpose. An exemption is requested for the Loan under the terms and conditions described herein.

3. All terms of the Loan will be embodied in a written agreement (the Agreement) between GHWA and the Plans, under which the interests of the Accounts are represented by Franklin Pack, Esq. (the Fiduciary), an independent fiduciary who will represent the interests of the Accounts for all purposes with respect to the proposed Loan. The Fiduciary represents that he is independent of and unrelated to the Employer and GHWA, and that he has substantial fiduciary experience under the Act. The Fiduciary will monitor GHWA's compliance with all terms of the Agreement and the conditions of this proposed exemption, including disbursement and repayment of the Loan, and will pursue appropriate remedies on behalf of the Plans in the event of any default or noncompliance.

4. The Loan is proposed in the principal amount of $420,000. Participation in the Loan will be limited to the Accounts of the Trustees and Mr. Aliotta, and no other Plan assets will be affected by the Loan. Each of those participating in the Loan has determined that such participation is appropriate for and in the best interests of his Account. The Trustees represent that it is contemplated that the Loan will be allocated equally among the Accounts which participate in the Loan, and that it is possible that the Account of Mr. Aliotta may not participate in the Loan. No more than 25 percent of the assets of any Account will be contributed to the Loan. The Loan principal will bear interest, adjusted quarterly, at a rate equal to the prime rate published in the "Money Rates" section of the Wall Street Journal, plus 4 percent. In the event such prime rate is no longer published, the outstanding principal balance of the Loan will bear interest, adjusted quarterly, at a rate equal to the prime rate as announced by Fleet Bank of New York, plus four percent. Under the Agreement, the Loan will be repaid over fifteen years in monthly installments of principal and interest, pursuant to a schedule in the Agreement, and will be callable exclusively by the Fiduciary at the end of each five year period during the Loan term according to a procedure specified in the Agreement.

5. The Loan will be secured by a duly filed and perfected security interest in the New Property, including the New Building (the Collateral), subordinate only to a first lien held by the Fleet Bank of New York (the First Mortgage), which will finance $500,000 of the New Building construction. The IDA will take title to the New Property subject to the First Mortgage and the Plans' mortgage, under both of which GHWA remains liable for repayment. The First Mortgage secures a loan which also has a fifteen-year term, callable every five years, with a fixed rate of interest equal to the greater of (1) 8.95 percent per annum, or (2) 275 basis points about the average interest rate on U.S. Treasury notes with terms of five years and greater. The Trustees represent that the Plans' lien on the Collateral will be fully perfected and recorded prior to GHWA's transfer of the New Property and the New Building to IDA, and that the Plans' interest in the Collateral will not be affected by the transfer. In an appraisal as of December 24, 1992, Raymond F. Cunningham, president of Cash Realty of N.Y., Inc. in Williamsville, New York, determined that the New Property, including the projected value of New Building completed according to specifications, had a fair market value of $1,425,000. Under the Agreement, the Fiduciary will not disburse the Loan funds to GHWA from the Accounts until the New Building has been completed and he has determined, pursuant to a reappraisal of the New Property by Mr. Cunningham, that the Collateral has an appraised value of no less than 150 percent of the sum of the proposed Loan and the outstanding balance of the First Mortgage. The Fiduciary will also ensure that the funds to be disbursed to GHWA as the Loan do not exceed 25 percent of the net assets of any of the Accounts.

6. The Fiduciary represents that after a review and evaluation of the proposed Loan, he has determined that the proposed transaction will afford sufficient diversification to each of the Accounts, and that the Collateral will be of sufficient value to secure both the First Mortgage and the Loan. The Fiduciary states that he believes that adequate safeguards are in place to assure that the construction has been completed and that the Collateral has attained the value required by the Agreement prior to any disbursal of Loan funds. The Fiduciary represents that the interest rate proposed for the

Loan is appropriate, having determined that the prevailing rate for commercial second mortgages in the same geographic location is prime plus three percent to prime plus four percent.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The only assets of the Plans involved in the Loan will be assets of the Accounts, the participants of which desire that the transaction be consummated; (2) No other Plan assets, aside from the Accounts of the Trustees and Mr. Aliotta, will be affected by the proposed transaction; (3) No more than twenty five percent of the assets of any of the Accounts will be involved in the Loan; (4) The Loan will be secured by a lien on the New Building and New Property, the value of which must be at least 150 percent of the sum of the Loan plus the outstanding First Mortgage balance; (5) The interests of the Plans for all purposes with respect to the Loan are represented by the Fiduciary, who will not disburse any Loan funds until completion of the New Building and determination that the value of the Collateral is sufficient; and (6) The Loan is callable at the end of each five-year period during its term.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Pro Golf Discount/Distributors of Atlanta, Inc., Profit Sharing Plan (the Plan), Located in Norcross, Georgia

[Application No. D–9370]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale for cash of certain limited partnership interests (the Interests) from the Plan to William B. Neidlinger (Neidlinger), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Interests is established by a general partner of the partnerships who is independent of Neidlinger and Pro Golf Discount/Distributors of Atlanta, Inc. (the Employer);

2. Neidlinger pays all cash to the Plan for the Interests;

3. The cash payment is no less than the greater of the current fair market value of the Interests or the total expenditures of the Plan on the Interests as of the date of sale; and

4. The Plan pays no fees or other expenses in connection with the sale.

Summary of Facts and Representations

1. The Employer is engaged in the retail sale of golf equipment in the Atlanta area. Neidlinger is the president and sole shareholder of the Employer. Neidlinger is also the trustee of the Plan as well as a participant in the Plan. As of October 31, 1992, the Plan had approximately 21 participants and total assets of $273,576.

2. During 1988 and 1989, the Plan purchased the Interests in three real estate limited partnerships sponsored by Koven Financial Services, Inc., an independent investment banking firm located in Marietta, Georgia. The general partners of the partnerships are Robert Koven (Koven) and Claude McGinnis. Neidlinger, as trustee of the Plan, learned of these investment opportunities from the general partners and sought to diversify a portion of the Plan's assets through investments in real estate. The three limited partnerships are named Kimball Bridge I, Kimball Bridge II and Bethel II. The Interests are not publicly traded and the applicant represents that they are highly illiquid.[9]

Each partnership was organized for the purpose of acquiring and holding for investment raw land located in the northern suburbs of Atlanta. The offering price per Interest for each partnership was payable in annual installments, with five to seven years now remaining, plus interest under the terms of a promissory note. The Plan made initial capital contributions totaling $26,890 for the Interests. In addition to this original amount, annual capital contributions plus interest were required (totaling $86,784 in the aggregate for the three partnerships) to be utilized for real property taxes, management fees and other carrying costs of the partnerships' land investments. As of March 31, 1993, the Plan had invested a total of $72,357, including the initial contributions, in the Interests.

[9] The Department expresses no opinion as to whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the Interests. Section 404(a)(1) of the Act requires, among other things, that a plan fiduciary must act prudently and solely in the interest of the participants and beneficiaries of the plan.

3. The Plan owns only a small percentage (2.25 percent or less) of each of the three partnerships. The applicant represents that there is no relationship between Neidlinger or the Employer and any of the partnerships or the general partners. Neither Neidlinger nor the Employer has invested separately in any of the partnerships. No improvements have been made on any of the land held by the partnerships and such land has not been used at any time by the Employer or any other party in interest with respect to the Plan. The property of the partnerships is not situated in close proximity of any other property owned by Neidlinger or the Employer. During the time the Plan has held the Interests, the Plan has received no income and no capital distributions from any of the partnerships.

Koven has estimated that as of September 15, 1992, the fair market value of the Interests was as follows: $20,400 for Kimball Bridge I, $22,031 for Kimball Bridge II and $29,048 for Bethel II. Accordingly, the total fair market value of the Plan's investment in the partnerships as of that date was $71,479.

4. The Plan proposes to sell the Interests to Neidlinger for cash. Neidlinger will pay the Plan the greater of the current fair market value of the Interests, based on an updated independent appraisal from Koven, or the total expenditures of the Plan in regard to the Interests as of the date of sale. The Plan will pay no fees or other expenses in connection with the transaction. The Plan desires to sell the Interests at this time because the Interests are illiquid and no sale of the land held by any of the three partnerships is anticipated in the next few years. Also, the partnerships are not expected to make distributions in the near future. A sale of the Interests will relieve the Plan of the obligation to make any additional annual capital contributions and interest payments to the partnerships.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) Neidlinger will pay no less than the greater of the current fair market value of the Interests or the total expenditures of the Plan on the Interests as of the date of sale; (2) the sale will be a one-time transaction for cash; (3) the Plan will pay no fees or commissions in regard to the sale; and (4) the transaction will relieve the Plan of the obligation to make any further capital contributions to the partnerships.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of June, 1993.

Ivan Strasfeld,

Director of Exemption Determinations.

[FR Doc. 93–13570 Filed 6–8–93; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting of the Full Board in Denver, Colorado

Pursuant to the Nuclear Waste Technical Review Board's authority under section 5051 of the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100–203), the Board will hold its summer meeting July 13–14, 1993, in Denver, Colorado. The meeting will focus on thermal loading—integrating science and engineering. The Board would like to review the Department of Energy's (DOE) plans and progress toward evaluating a thermal-loading strategy. Specifically, the Board is interested in how various thermal-loading strategies could affect the designs of the exploratory studies facility, the waste packages, and the repository. The Board has invited representatives from the DOE and its contractors, the Electric Power Research Institute, the Southwest Research Institute, the state of Nevada, and other interested organizations to participate in the meeting. A round-table discussion will complete each day's presentations. The meeting, which is open to the public, will be held at the Stouffer Concourse Hotel, 3801 Quebec Street, Denver, Colorado 80207; telephone (303) 399–7500.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for disposal of that waste.

Transcripts of the meeting will be available on a library-basis from Victoria Reich, Board librarian, beginning August 25, 1993. For further information, contact Paula N. Alford, Director, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473; (FAX) 703–235–4495.

Dated: June 3, 1993.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 93–13513 Filed 6–8–93; 8:45 am]

BILLING CODE 6820-AM-M

UNITED STATES 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 May 17, 1993, through May 27, 1993. The last biweekly notice was published on May 26, 1993 (58 FR 30189).

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 July 9, 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, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: April 15, 1993

Description of amendments request: The proposed amendment to the Facility Operating Licenses DPR-71 and DPR-62 would rescind Confirmatory Order EA-82-106, that required the implementation of the Brunswick Improvement Program (BIP).

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. There are no physical changes to any safety-related equipment, no changes in any Technical Specification surveillance requirements or setpoints, and no changes to the manner in which the plant is operated as a result of the proposed amendment. The proposed license amendment terminates the requirements of Confirmatory Order EA-82-106, which formalized CP&L's commitment to the BIP. In accordance with its original schedule, the program was essentially completed as of December 31, 1983. In a letter dated April 3, 1984, the NRC's Regional Administrator stated that the NRC had "inspected each task action item in the BIP and found that CP&L had satisfied the requirements imposed by Confirmatory Order EA-82-106." The letter also requested CP&L to provide a periodic status report on those BIP actions that were "closed out due to being implemented, but will continue in an ongoing status." These status reports were provided by CP&L until May 30, 1986, when the final status report was submitted.

NRC Inspection Report Nos. 50-325/89-20 and 50-324/89-20, dated September 22, 1989, documents the results of an inspection to determine if the long-term BIP items, intended to ensure continued improvement, were in place. This report also correlated BIP Items with the findings of the NRC Diagnostic Evaluation Team (DET) Inspection dated August 2, 1989. For each of the long-term BIP Items, the inspection report found that either the objective of the BIP Item continued to be met or that DET Findings addressed the issue. Each of the DET Findings were addressed by CP&L in the IAP, and NRC Inspection Report Nos. 50-325/89-34 and 50-324/89-34, dated November 30, 1989, established Unresolved Items (URIs) and Inspector Followup Items (IFIs) for a large number of the DET Findings and corresponding IAP actions in order to track these items to closure through subsequent inspection activities. A number of the BIP Items were subsequently closed during NRC inspections in 1990, 1991, and 1992 through closure of corresponding URIs and IFIs. Since the long-term BIP items are being met and have been closed by closure of corresponding DET Findings, or are addressed by the Brunswick Three-Year Plan, maintaining the requirements of Confirmatory Order EA-82-106 in the Brunswick licenses is no longer necessary.

Based on the above, the proposed amendment cannot involve a significant increase in 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. As stated above, the proposed amendment does not involve any changes to safety-related equipment, Technical Specification surveillance requirements or setpoints, or the manner in which the plant is operated. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident.

3. The proposed amendment does not involve a significant reduction in the margin of safety. While each of the specific BIP actions was appropriate at the time of implementation, some of these actions are either implemented, no longer necessary, or their objectives can be achieved in a more efficient manner. As described in CP&L's letter dated October 26, 1987 (Serial: NLS-87-188), the Company committed to perform periodic review in five areas: Technical Specification Surveillance; In-Service Inspection/Appendix J; Commitment Verification; Technical Specification Amendments; and Regulatory Requirements Changes. Based on the results of these periodic reviews, enhancement to management programs, and ongoing improvements in procedural controls, CP&L believes that line management continues to improve with appropriate control of existing programs and, as such, termination of Confirmatory Order EA-82-106 would facilitate evolving management and process improvements.

Therefore, based on the above reasoning, the proposed amendment 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 North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Singh S. Bajwa

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: May 15, 1993

Description of amendment request: The proposed amendment would remove license conditions for the Emergency Diesel Generators (EDG) specified by condition 2.C.(8) and defined in Attachment 1 to Operating License NPF-63, as originally imposed by NUREG-1216, "Safety Evaluation Report Related to the Operability of Emergency Diesel Generators Manufactured by Transamerica Delaval, Inc.," dated August 1986. Specifically, both condition 2.C.(8) and Attachment 1 to the Operating License would be removed. These license conditions currently require engine teardowns for component inspections; however, inspections that have been performed to date across the industry have not shown any significant wear patterns or problems that could not have been detected by other means (such as trending operational parameters) which do not require extensive teardown. The basis that led to this proposed change as documented in the amendment request is as followed: The Transamerica Delaval, Inc. (TDI) Owners Group was formed in late 1983 following the crankshaft failure of an Enterprise emergency diesel generator (EDG) at the Shoreham Nuclear Plant. The Owners Group developed a detailed Program Plan to provide for generic design review and quality reverification (DR/QR) of Enterprise EDGs. This plan was reviewed and approved by the Nuclear Regulatory Commission (NRC) in a Safety Evaluation Report (SER) dated August 13, 1984. Following issuance of the SER, the Owners Group member utilities developed and implemented the DR/QR in response to and in accordance with the Program Plan. The specific details of the DR/QR were submitted to the NRC for review and the results of this review were documented in NUREG-1216, "Safety Evaluation Report Related to the Operability and Reliability of Emergency Diesel Generators Manufactured by Transamerica Delaval, Inc.," dated August 1986. NUREG-1216 outlines specific provisions that were incorporated as a condition of the

Shearon Harris Nuclear Power Plant (SHNPP) Operating License. These conditions were imposed on SHNPP, as well as other plants with Enterprise EDGs being licensed at the time, since little operating history of these engines was available at the time of the DR/QR review. Since that time, the industry has accumulated over 9,000 hours of operation of these engines. The inspections required by the license conditions have not revealed any problems from operation of the engines, and many utilities have determined that more damage is actually being done to the engines during teardown and inspection than from operation. The bases for these conclusions are documented in the generic submittal of the TDI Owners Group entitled "Generic Licensing Submittal for Emergency Diesel Generators, Conditions of License for Utilities with Enterprise Engines," dated December 8, 1992 in a letter from J. B. George and C. W. Hendrix to the NRC. That document is incorporated by reference to this request for license amendment and is the basis by which the following proposed change is sought.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A failure of an Emergency Diesel Generator (EDG) is not an initiator for any Final Safety Analysis Report (FSAR) Chapter 15 accident scenario. Accordingly, there can be no increase in the probability of any accident previously evaluated. Eliminating the teardowns and inspections would actually decrease the consequences of an accident because the availability and reliability of the engine would increase as a result of less frequent teardowns. Therefore, removal of the existing conditions from the Operating License will not result in an 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 removal of license conditions will not involve any modifications or additions to plant equipment and the design and operation of the unit will not be affected. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed removal of the Emergency Diesel Generator license conditions from the Operating License does not affect any parameters which relate to the margin of safety as defined in the Technical Specifications. However, based upon both plant-specific and industry operating experience with these engines, it is probable that the overall margin of safety for the plant will be increased based on a higher availability. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Singh S. Bajwa

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: May 18, 1993

Description of amendment request: The proposed amendment would revise the basis of the scram and isolation setpoints for the main steamline radiation monitors as defined in NRC Safety Evaluation Reports of January 18, 1989, and August 24, 1989. The proposed change would reduce the potential for unwarranted challenges to safety systems during a special test of the Hydrogen Water Chemistry (HWC).

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 analyzed.

The proposed change revises the basis of the Technical Specification for the MSLRM [Main Steam Line Radiation Monitor] and Isolation setpoint. The proposed change does not affect any accident precursor or initiator. Therefore, the probability of an accident is not affected by the proposed change.

The MSLRMs provide reactor scram and reactor vessel and primary containment isolation signals when high activity levels are detected in the main steam lines. However, the only design basis accident which takes credit for the MSLRM is the Control Rod Drop Accident (CRDA). Generic analyses of the CRDA have shown that fuel failures are not expected to result from a CRDA occurring at greater than 10% power levels. In addition, the industry has performed an analysis which demonstrates that the radiological release consequence of the CRDA is within the NRC acceptance criteria even without automatic MSIV closure. The proposed change of the basis for the MSLRM scram and isolation setpoint Technical Specification will reduce the potential for unwarranted challenges to safety systems during a special test of the Quad Cities Unit 2 HWC system in mid-1993.

Based upon the power level during the special test (greater than or equal to 85% of rated power) and the analyses described above, the proposed change of the basis for the MSLRM scram and isolation setpoint Technical Specification does not significantly increase the consequences of the radiological release consequence following the design basis accident (CRDA), above the NRC acceptance criteria (SRP 15.4.9). Therefore, the proposed change does not significantly increase the consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed change does not decrease the ability of the MSLRMs to perform their intended function, nor does the proposed change create any opportunities for a new or different accident outside of those previously evaluated. No new or different modes of plant operation are introduced by the proposed changes. Therefore, there is no possibility of creating any new failure mechanisms which could initiate a new or different kind of accident from those previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed change of the basis for the MSLRM scram and isolation setpoint in the Technical Specifications will reduce the potential for unwarranted challenges to safety systems during a special test of the Quad Cities Unit 2 HWC system in mid-1993. The current MSLRM setpoint of fifteen times NFPB, (without hydrogen addition,) results in a calculated dose rate of 1.5 R/hr following a CRDA. For a CRDA, the dose rate at the MSLRM has been evaluated to be 8 R/hr. The proposed change to the basis of the Technical Specification would revise the NFPB from an assumed 100 mR/hr (as described in NRC SERs dated January 18, 1989 and August 24, 1989), to the current actual measured level of 150 mR/hr. Using the current actual NFPB of 150 mR/hr, a revised setpoint of 2.25 R/hr would still be well below the CRDA analyses value of 8 R/hr. Some increased time to closure for the MSIVs would result, however, generic industry analyses (approved by the NRC in an SER dated May 15, 1991) has shown that offsite doses during a CRDA without automatic MSIV closure would remain less than 25% of the 10 CFR 100 guidelines. Therefore, the proposed change does not significantly 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: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

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: May 26, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications by relocating the battery equalization charge requirements to a licensee controlled document.

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. Do the changes involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Relocation of the battery equalization requirements to licensee control does not alter the Limiting Condition for Operation (LCO) requirements to maintain operable DC power sources. Continued performance of battery surveillances specified within the Technical Specifications provide assurance that DC power sources are available and operable. Through conformance with the LCO's requirements to maintain operable DC power sources, assumed functions are assured. Therefore, the proposed changes do not represent a significant increase in the probability or consequences of accidents previously evaluated.

2. Do the changes create the possibility of a new or different kind of accident from any previously analyzed?

Relocation of the battery equalization requirements to licensee control does not represent a change in design. Battery equalization requirements will be performed in accordance with vendor recommendations, and will be evaluated in accordance with the requirements of 10 CFR 50.59. Periodic monitoring of battery parameters, retained with the Technical Specifications, provide information necessary to evaluate the need to perform a battery equalization independent of a specified equalization frequency within the Technical Specifications. As such, relocation of the battery equalization requirements to licensee control does not create the possibility of a new or different kind of accident from those previously analyzed.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The relocation of the battery equalization requirements does not alter the operability requirements for the DC power sources required for plant operation. The surveillance requirements specified within the Technical Specifications for the DC power sources provide assurance that the DC sources will be capable of performing their intended functions. These surveillances provide for periodic monitoring of battery parameters that are indicative of the need to perform battery equalizations. Battery equalizations will continue to be performed when required in accordance with vendor recommendations, thus assuring required capacity is maintained. Therefore, the proposed changes do not create 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: 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: May 19, 1993

Description of amendment request: The amendment will revise the Technical Specifications (TS) to reflect staff positions and improvements to the TS in response to Generic Letter 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."

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 (SHC), 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 proposed changes only address the operability and surveillance requirements for the [power-operated relief valves] PORVs, block valves, and the [low temperature overpressure protection] LTOP systems. The changes were proposed mainly to reflect the guidance of [Generic Letter] GL 90-06. The changes are more restrictive than present requirements. Also, the changes provide the operator with additional guidance that was not previously available. Therefore, the changes will not impact the probability of occurrence or consequences of an accident previously analyzed.

The proposed changes to Technical Specification 3.4.4 a, which requires that power be maintained to the closed block valve(s), allows the valve(s) to be operable and opened to allow the PORV to be used to control [reactor coolant system] RCS pressure. Maintaining power to the block valve cannot result in an initiating event for any previously analyzed accidents.

The proposed changes to Technical Specification 3.4.4 e and f establish remedial measures that are consistent with the function of the block valves. The prime importance for the capability to close the block valve is to isolate a stuck-open PORV. Therefore, if the block valve(s) cannot be restored to operable status within one hour, the remedial action is to place the PORV in manual control (i.e., the control switch in close position) to preclude its automatic opening for an overpressure event and to avoid the potential for a stuck-open PORV at a time that the block valve is inoperable. This change cannot result in an initiating event for the accidents previously evaluated.

The proposed change to Technical Specification Section 3.4.4 e and f to maintain the power to the block valve will not increase the dose consequences. No credit is taken for block valve closure in the analysis of an inadvertent opening of the PORV. Since the proposed change to Technical Specification 3.4.4 e and f to place the PORV in manual control (i.e., the control switch in 'close' position) will avoid the potential for a stuck-open PORV, there will be no effect on the dose consequences.

At present, once per 18 months, the Haddam Neck Plant's PORVs are cycled at cold shutdown conditions. The proposed change will require that once per 18 months PORVs be cycled during Modes 3 or 4 and not during power operation to simulate the temperature and environmental effects on the PORV.

The proposed changes to Technical Specification 3/4.9.3 provide enhanced operational flexibility through the use of a [spring loaded relief valve] SLRV or RCS vent. The APPLICABILITY statement has been changed for clarification purposes with no change in intent and no safety implications. It should be noted that the Haddam Neck Plant's LTOP system is unique and cannot directly use standard industry proposed specifications.

As recommended in GL 90-06, the applicability for Mode 6 was clarified as "when the head is on the reactor vessel" rather than "Mode 6 with the reactor vessel head on." ACTION a for one LTOP inoperable has been changed to make it applicable for Mode 4 only, versus the present applicability in Modes 4, 5, and 6. It also clarifies what actions must be performed when Mode 5 is entered during the required cooldown, thus eliminating the potential for

confusion with the requirements of new ACTION b.

ACTION b was added as stated in Attachment B-1 of GL 90-06 for one LTOP inoperable in Modes 5 or 6.

A new ACTION d has been added which requires periodic surveillance or a vent path opened in response to ACTIONs a, b, or c. Surveillance 4.4.9.3.2 has been changed to make the surveillance of a vent path opened per the requirements of [limiting condition for operation] LCO 3.4.9.3.b consistent with the requirements of ACTION d.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to Technical Specification 3/4.4.4 do not create the possibility of an accident of a different type than previously evaluated, since there is no change to the design of the plant and plant operations are only being altered enough to allow a block valve and PORV to be placed in conditions which allow them to better perform their safety functions.

The proposed changes to Technical Specification 3/4.4.9.3 do not create the possibility of an accident of a different type than previously evaluated, since there is no change to the design of the plant and the way the plant is operated.

3. Involve a significant reduction in a margin of safety.

The change in ACTION statement a for Specification 3.4.4.4 will instruct the operator to maintain power to the block valve when it is required to be closed because of excess PORV seat leakage. This change is acceptable and safe because the PORVs and block valves will still be available to manually function as required by emergency operating procedures. In addition, the automatic opening function of the PORVs and block valves is to open preemptively to prevent the pressurizer code safety valves from opening; however, they are not credited in the safety analysis as a means of overpressure protection. The new ACTION statements e and f for Specification 3/4.4.4 will place the plant in essentially the same condition, in the same time frame, as would a failed PORV(s). This change is safe and also provides the operators with additional guidance that was previously not available.

The change for Surveillance 4.4.4.6 assures the PORVs will operate from either air supply. The change clarifies the testing performed presently.

The new ACTION b of Specification 3/4.9.3 for one LTOP inoperable in Modes 5 or 6 is more restrictive than present requirements since its allowable time for corrective action is considerably shorter. This change is consistent with GL 90-06. The new surveillance requirement (4.4.9.3.2), which requires locked open valves used in a vent path to be verified open at least once per 31 days, is more restrictive since no requirement presently exists.

There is no degradation in the operability and surveillance requirements for the PORVs and block valves and the LTOP systems. There will be no change in actual practice for, or resulting performance of, these systems. All other changes are proposed mainly to clarify each requirement. For Modes 1, 2, and 3, safety-related overpressure protection is provided by the pressurizer code safety relief valves. Therefore, there will be no adverse impact on the margin of safety as defined in the bases of any technical specification.

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

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: April 1, 1993

Description of amendment request: The proposed amendment would revise the technical specifications Administrative Controls section regarding the Nuclear Facilities Safety Committee (NFSC). Certain senior management functions related to the NFSC currently performed by the President of the Company, would be reassigned to the Executive Vice President - Central Operations. The change would also eliminate the requirement for the NFSC to review and concur in the administrative control procedure which describes the policy for changing, reviewing, and approving procedures. In place of NFSC concurrence a requirement would be added to require concurrence by the Vice President, Nuclear Power.

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 since:

1. There is no significant increase in the probability or consequences of an accident.

This is an administrative change which is being proposed at the convenience of the Company. Since this change maintains a consistent level of oversight while continuing to ensure the independence and technical experience of NFSC [Nuclear Facilities Safety Committee] and since the SNSC [Station Nuclear Safety Committee] and Vice President, Nuclear Power concurrence with the administrative control procedure provides sufficient oversight of this procedure, this change does not increase the probability or consequences of an accident.

2. The possibility of a new or different kind of accident from any previously evaluated has not been created.

This is an administrative change of the reporting relationship for NFSC which does not significantly decrease the level of upper management to which NFSC reports. The concurrence by SNSC and the Vice President, Nuclear Power of the administrative control procedure provides sufficient oversight.

3. There has been no reduction in the margin of safety.

The independence and technical experience of the NFSC will be preserved. This change is consistent with the requirements of American National Standard ANSI N18.7-1972 "Administrative Controls for Nuclear Power Plants."

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: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 27, 1993, as supplemented March 15, 1993

Description of amendment request: The proposed amendments revise the frequency for the Radiological Effluent Report, and modify the requirements for "Fuel Assemblies" in the "Design Features" Section of the Technical Specifications in accordance with Generic Letter 90-02, Supplement 1.

Basis for proposed no significant hazards consideration determination: The NRC amended its regulations to reduce the regulatory burden on nuclear licensees. This action reflects an initiative undertaken by the Commission in response to a Presidential memorandum requesting that selected Federal agencies review and modify regulations that would eliminate any unnecessary burden of governmental regulations and ensure that the regulated community is not subject to duplicative or inconsistent regulation. Revising the requirement for the submission of reports concerning the quality of principal nuclides released to unrestricted areas in liquid and gaseous effluents from

semiannually to annually, was an area identified where regulations could be revised to reduce regulatory burden on licensees without, in any way, reducing the protection for the public health and safety or the common defense and security.

The requirements for fuel assemblies specify the quantity of fuel assemblies, the active fuel rod length and the number of fuel rods per assembly. Flexibility to deviate from the number of fuel rods per assembly and active fuel rod length is desirable to permit timely removal of fuel rods that are found to be leaking during a refueling outage or are determined to be probable sources of future leakage. This improvement in the licensee's fuel performance program will provide for reductions in future occupational radiation exposure and plant radiological releases.

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. Revise the frequency for the Radiological Effluent Report

The proposed revision to the frequency of the Radiological Effluent Report will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

Implementation of the revised frequency for the Radiological Effluent Report will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released. By modifying the regulations to eliminate any unnecessary burden of duplicative or inconsistent regulatory reporting, the present margin of safety is not reduced.

Accordingly, this proposed change does not involve a significant hazard.

2. Modify the requirements for "Fuel Assemblies" in the "Design Features" section of TS in accordance with GL 90-02, Supplement 1

The proposed change to the requirements for "Fuel Assemblies" in the "Design Features" section of TS will not involve a significant increase in the probability or consequences of an accident previously evaluated because the modification merely provides a broader blanket under which any future specific modifications to the plant or changes to its safety analysis may be performed, while still requiring that any such change meet the same standards and criteria that they would have been subject to.

The creation of a new or different kind of accident from any previously evaluated accident is not considered a possibility because the change is administrative in nature and does not represent an actual modification to the plant or change to its safety analyses.

The margin of safety is maintained by adherence to other fuel related to TS limits and the FSAR [Final Safety Analysis Report] design bases. The change does not directly affect any safety system or the safety limits, and thus does not affect the plant 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: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: May 20, 1993

Description of amendment request: The proposed amendments to the Technical Specifications (TS) will change the surveillance interval specified for performing an air or smoke flow test through the Containment Spray headers from 5 years to 10 years. The proposed surveillance interval is consistent with NUREG-1432, "Standard Technical Specifications for Combustion Engineering Plants" and staff recommendations contained in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements."

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:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of 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 a safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment extends the surveillance interval required for performing a qualitative smoke or air flow test on the Containment Spray headers. This surveillance test is not designed to track degradation of equipment by monitoring or trending performance and, therefore, does not necessarily predict the adequacy or future operability of the spray system. Assumptions made in the plant safety analyses involving operability of the Containment Spray System to mitigate the consequences of an accident are not changed. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of plant operation defined in the Facility License. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The revised surveillance interval proposed by this submittal will not change or otherwise influence the degree of operability assumed for the Containment Spray System in the plant safety analyses. The basis for any Technical Specification that is related to the establishment of or maintenance of a nuclear safety margin is likewise unchanged. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

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: April 20, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for Turkey Point Units 3 and 4 to delete the lead/lag compensator term on the measured reactor coolant system (RCS) loop temperature difference (Delta T) from the overtemperature and overpower Delta T (OT and OP delta-T) reactor trip functions. Specifically, Note 1 in Table 2.2-1, "Reactor Trip System Instrumentation Setpoints," would be revised to set the time constants, (tau) t_1 and t_2, from 8 and 3 seconds respectively, to zero seconds each.

Basis for proposed no significant hazards consideration determination: The OT delta-T and OP delta-T reactor trip functions are defined, respectively, in TS Table 2.2.1, Notes 1 and 3. These protective functions provide core protection against Departure from Nucleate Boiling (DNB) and assurance of fuel integrity. This is accomplished by continuously comparing the measured OP and OT delta-T values to the calculated values and by generating a reactor trip signal when the measured values exceed their setpoints. To better anticipate the reactor trip signal, the measured OP and OT delta-T values are multiplied by a lead/lag compensator term before comparing them to the calculated values. The licensee is experiencing spurious OT delta-T turbine runbacks caused by RCS hot leg temperature oscillations which the licensee attributes to its removal of resistance temperature devices (RTD) bypass manifolds and implementation of direct mounted RTDs. To reduce the potential for these spurious turbine runback or reactor trip signals, the licensee proposes to eliminate the lead/lag compensator term on the measured OP and OT delta-T values in the reactor trip functions.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The amendment will not increase the probability or consequences of an accident previously evaluated since the lead/lag compensator term on measured [delta]T in the overtemperature [delta]T and overpower [delta]T reactor trip functions are not required or assumed for accident mitigation in any of the UFSAR [Updated Final Safety Analysis Report] safety analyses that comprise the Turkey Point licensing basis. In addition, the reactor protection system will continue to perform its intended design functions of ensuring that the core and reactor coolant system do not exceed their safety limits during normal operation or design basis anticipated operational occurrences.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The overtemperature [delta]T reactor trip function is used as the primary protection for three UFSAR Chapter 14 accident scenarios: Rod Withdrawal at Power (UFSAR Chapter 14.1.2), Dropped Rod at Power (UFSAR Chapter 14.1.3), and Boron Dilution Mode 1 (UFSAR Chapter 14.1.5). The overpower [delta]T reactor trip function is not used as the primary protection for any UFSAR Chapter 14 accident scenario; however it is assumed in the overpower kw/ft analysis performed by Westinghouse for each fuel reload. The lead/lag compensator term on measured [delta]T in the overtemperature [delta]T and overpower [delta]T reactor trip function are not required or assumed for accident mitigation in any of the UFSAR safety analyses that comprise the Turkey Point licensing basis.

The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously analyzed, since the operating modes, plant configuration and safety analysis assumptions will not be changed from those previously analyzed in the UFSAR.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The margin of safety for the proposed amendment is defined in the licensing basis safety analysis. The overtemperature [delta]T reactor trip function is used as the primary protection for three UFSAR Chapter 14 accident scenarios: Rod Withdrawal at Power (UFSAR Chapter 14.1.2), Dropped Rod at Power (UFSAR Chapter 14.1.3), and Boron Dilution Mode 1 (UFSAR Chapter 14.1.5). The overpower [delta]T reactor trip is not used as the primary protection for any UFSAR Chapter 14 accident scenario; however it is assumed in the overpower kw/ft analysis performed by Westinghouse for each fuel reload. The lead/lag compensator term on measured [delta]T for the overtemperature [delta]T and overpower [delta]T reactor trip functions are not required or assumed for accident mitigation in any of the safety analyses that comprise the Turkey Point licensing basis.

The proposed amendments will not reduce the margin of safety since the plant operating and safety limits, the input assumptions to the safety analyses and the plant response to transients as analyzed in the Turkey Points Units 3 & 4 licensing basis will not be changed from those previously analyzed in the UFSAR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No.1, Dauphin County, Pennsylvania

Date of amendment request: April 12, 1993

Description of amendment request: The requested amendment would revise the Technical Specifications (TS) to lower the minimum specified flow rate for the Auxiliary and Fuel Handling Building Ventilation System from 106,929 cfm to 100,580 cfm. The change would also remove references to flow recorder FR-151 because this instrument is no longer used to measure flow rate in this system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to reduce the TS exhaust flow low limit will not involve an increase in the probability of occurrence or the consequences of an accident previously evaluated. The reduction of flow rate will maintain the original design basis and the functioning of safety equipment is unaffected. Similarly, deleting the reference to FR-151 will not impact plant design such that the safety functions of any [safety] system or component would be challenged.

2. The proposed change will not create the possibility of a new or different kind of accident than any previously evaluated since there is no physical change to plant configuration and it does not adversely affect the performance of any equipment.

3. The proposed change will not reduce the margin of safety as defined in the basis of any TS in that the reduced exhaust flow is not associated with any margin of safety indicated in the bases of any TS. Similarly, the deleted reference to FR-151 will not reduce the margin of safety due to the availability of other methods to estimate total exhaust flow if either FR-149 or FR-150 were not operable.

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, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 10, 1992

Description of amendment request: The proposed license amendment would change Technical Specifications 3/4.4.4 and 3/4.4.9 and the associated Bases to incorporate the recommendations provided in Generic Letter 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)." Additional changes to improve clarity and accuracy would also be made. Additional changes would implement verification of PORV operability during Modes 5 and 6.

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 change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed changes to Technical Specification 3/4.4.4 and its associated Bases increase the reliability of the power-operated relief valves (PORVs) and block valves to perform their intended function. The proposed changes to Technical Specification 3/4.4.9 and its associated Bases increase the flexibility and availability of the overpressure protection system to mitigate a low-temperature overpressurization event. The proposed changes will not cause any design or analysis acceptance criteria to be exceeded and do not affect safe operation of the plant; therefore, accident probabilities or consequences are unaffected.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes improve the clarity and accuracy of Technical Specifications 3/4.4.4 and 3/4.4.9 and the associated Bases and do not involve any changes to the design or configuration of the facility. No change to the system as evaluated in the licensee's safety analysis is proposed. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes to Technical Specification 3/4.4.4 and its associated Bases increase the reliability of the power-operated relief valves (PORVs) and block valves to perform their intended function. The proposed changes to Technical Specification 3/4.4.9 and its associated Bases increases the flexibility and availability of the overpressure protection system to mitigate a low-temperature overpressurization event. The proposed changes do not affect any technical specification 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: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of application for amendment: August 18, 1992

Brief description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.6.3, "Containment Isolation Valves," by changing the wording in the Action Statement to require at least one isolation "barrier" to be maintained operable, as opposed to at least one isolation "valve." A footnote would also be added to clarify that an isolation barrier may either be an isolation valve or a closed system as defined by General Design Criteria (GDC) 57 of Appendix A to 10 CFR Part 50.

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 change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The accident mitigation requirements of the containment isolation valves are not affected by the proposed change. The proposed change clarifies the applicability of GDC 57 penetrations and their associated isolation valves to TS 3.6.3, as intended by referencing the Bases. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

There would be no new modes of operation introduced by the proposed change. Also, the containment isolation valves would not be operated in any new or different way from what is currently allowed. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change does not change a safety limit, a Limiting Condition for Operation, or a Surveillance Requirement. There would also be no affect on the method of operation of the containment isolation valves. Therefore, the proposed change does not involve a significant reduction in any 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 request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P. C., 1615 L Street, N.W., Washington D.C. 20036

NRC Project Director: Suzanne C. Black

Long Island Power Authority, Docket No. 50-322, Shoreham Nuclear Power Station, Unit 1 (SNPS), Wading River, New York

Date of application for amendment: Amendment No. 10, December 14, 1992

Brief description of amendment: This amendment would revise the SNPS Defueled Technical Specifications (DTS) by deleting the requirement that the Radioactive Effluent Release Report be submitted on a semi-annual basis and adds the requirement to the DTS that the Radioactive Effluent Release Report be submitted annually, in accordance with the revised 10 CFR 50.36a. In addition, this amendment eliminates from the DTS the requirements for an Alternating Current (A.C.) Sources and Onsite Power Distribution Systems. The staff has determined that the proposed amendment does not require a significant hazard consideration, pursuant to 10 CFR 50.92.

Possession-Only License No. NFP-82: Amendment revises the DTS.

Local Public Document Room location: Shoreham Wading River Public Library, Shoreham Wading River High School, Route 25A, Shoreham, NY 11792

Attorney for licensee: Mr. W. Taylor Reveley, III, Hunton and Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond VA 23219-4074

NRC Project Manager: Clayton L. Pittiglio, Jr.

NRC Division Director: Richard L. Bangart

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: May 14, 1993

Description of amendment request: The proposed amendment would revise the Appendix A Technical Specifications to make the following editorial changes: correct obvious typographical errors, add temperature degree signs (°), add commas and periods for clarity, provide consistent page headings/titles, adjust line spacing (repagination), remove all intentionally blank pages, renumber all pages, remove outdated footnotes, and add the delta symbol in place of the word delta. In addition, the proposed amendment would delete pertinent portions of the Technical Specifications that related to one-time only date extensions which have since expired, correct references to revised regulations, delete an outdated last paragraph in Bases Sections 3.3.7 and 4.3.7, add clarifying headings of "Shutdown," "Refuel," "Startup," and "Run" to Tables 3.6.2f and 3.6.2h, and delete footnotes and table notations referring to the completed Hydrogen Water Chemistry feasibility test. The proposed changes are purely administrative and do not involve substantive changes to the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates administrative changes and does not affect assumptions contained in any safety analyses nor do the changes affect Technical Specifications that preserve safety analyses assumptions. Additionally, these proposed changes do not modify the physical design or operation of the plant. The proposed changes are purely administrative in nature and only change typographical errors, make editorial changes for consistency, repaginate and renumber the document, and delete pertinent portions of the Technical Specifications that are no longer effective or have been previously approved for deletion. Retyping of the Technical Specification pages allows for better clarity, readability and control of Technical Specification pages for future amendment requests. Therefore, the proposed amendment will not increase the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since there are no changes in the way the plant is operated and plant equipment and physical features are not affected, the potential for an unanalyzed accident is not created. The proposed changes are administrative in nature and do not affect any accident initiators for Nine Mile Point Unit 1. The proposed changes are purely administrative in nature and only change typographical errors, make editorial changes for consistency, repaginate and renumber the document, and delete pertinent portions of the Technical Specifications that are no longer effective or have been previously approved for deletion. Niagara Mohawk believes that it is prudent to have the Technical Specification pages re-typed into a word processing database. This allows for better clarity, readability and control of Technical Specification pages for future amendment requests. The proposed amendment will, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

As a result of the proposed amendment, there will be no changes to the physical design of the plant. No margin of safety is affected by this change. The initial conditions and methodologies utilized in the conduct of the accident analyses are unchanged. The analysis results are not impacted.

With the proposed changes, all safety criteria previously evaluated are still met since these changes are purely administrative in nature and only change typographical errors, make editorial changes for consistency, repaginate and renumber the document, and delete pertinent portions of the Technical Specifications that are no longer effective or have been previously approved for deletion.

The proposed changes are administrative in nature and do not affect the safe operation of the plant. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Therefore, based on the above evaluation, Niagara Mohawk has concluded that these changes do not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: April 30, 1993

Description of amendment request: The proposed amendment would make two changes to Action Statement a.2. of Limiting Condition for Operation (LCO) 3.6.5.3 for the Standby Gas Treatment System (SGTS). This Action Statement applies when irradiated fuel is being handled in the reactor building and during core alterations and operations with a potential for draining the reactor vessel. The current Action Statement permits these activities to continue for up to 7 days when one SGTS subsystem is inoperable. The first proposed change would permit these activities to continue beyond 7 days with one SGTS subsystem inoperable provided the operable SGTS subsystem is in

operation. The second proposed change would exempt Action Statement a.2. of LCO 3.6.5.3 from the requirements of LCO 3.0.4. This would allow the handling of irradiated fuel in the reactor building, core alterations, or operations with the potential for draining the reactor vessel to commence with an inoperable SGTS subsystem provided the operable SGTS subsystem is in operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

SGTS [Standby Gas Treatment System] responds to a release of radioactivity to the secondary containment by establishing and maintaining a negative pressure in secondary containment and by providing a filtered elevated release. That is, the SGTS responds to an accident. Therefore, the proposed changes to the Technical Specifications cannot increase the probability of an accident previously evaluated.

Section 15.7.4 of the USAR [Updated Safety Analysis Report] evaluates a fuel bundle drop accident. The radiological consequences of this accident are provided in USAR Table 15.7-12 and are a small fraction of the guidelines of 10 CFR Part 100 and less than the GDC [General Design Criterion] 19 limit. For a fuel bundle drop accident, the USAR analysis does not take credit for operation of the SGTS. With an SGTS subsystem running prior to the release of radioactivity to the secondary containment, the SGTS startup delay is eliminated, thereby decreasing the amount of radioactivity released to the environment. Therefore, the Technical Specification changes do not significantly increase the consequences of a previously evaluated accident.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment does not involve any accident precursors or initiators. During an accident involving the release of radioactivity to the secondary containment atmosphere, a SGTS subsystem would already be running and would filter the secondary containment atmosphere. With an operable SGTS subsystem in operation, its safety function is being performed.

Accordingly, the proposed Technical Specification changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The current Technical Specifications, LCO 3.6.5.3, provide a margin of safety by requiring both SGTS subsystems to be operable during activities involving the handling of irradiated fuel in the reactor building, core alterations and operations with a potential for draining the reactor vessel. With one SGTS subsystem inoperable, the current Technical Specifications allow continuation of these activities for up to seven days, at which time these activities must be stopped. These Technical Specification requirements ensure that an SGTS subsystem will be available to provide a filtered release to the environment during an accident which could result in the release of radioactivity to the secondary containment atmosphere.

The first proposed change to the Technical Specification action statement a.2 of LCO 3.6.5.3 would allow continuation of handling of irradiated fuel in the reactor building, core alterations and operations with a potential for draining the reactor vessel beyond seven days with one SGTS subsystem inoperable provided the operable SGTS subsystem is in operation. A plant specific PRA [Probabilistic Risk Assessment] was performed to evaluate the probability of a bundle drop event resulting in a need to start the SGTS with a concurrent failure of the SGTS that would result in an unfiltered ground level release under the current and proposed Technical Specification change. The results of this assessment indicate that the probability is not significantly increased. In addition, the order of magnitude of the probability of such a release, under the current or proposed Technical Specifications, is very small, i.e., 10^{-7}.

The probability of core alterations or operations with a potential for draining the reactor vessel resulting in a need to start the SGTS with a concurrent failure of SGTS that would result in an unfiltered ground level release is less than 10^{-7}. Accordingly, from a probablistic perspective, a fuel bundle drop accident is bounding.

By placing the remaining operable SGTS subsystem in operation, active single failures associated with its startup have been eliminated. These eliminated failures include automatic initiation instrumentation, relaying logic, breaker operation, fan operation, and valve operation. With an operable SGTS subsystem in operation, its safety function is being performed. In addition, the status of the operating SGTS subsystem is indicated in the control room. Therefore, the running, operable SGTS subsystem provides a level of safety equivalent to two non-running, operable SGTS subsystems.

Based upon the above analysis, the margin of safety is not significantly reduced by allowing activities involving the handling of irradiated fuel in the reactor building, core alterations or operations with a potential for draining the reactor vessel to continue beyond seven days with one SGTS subsystem inoperable since the operable SGTS subsystem is in operation.

In addition, the second proposed Technical Specification change would allow entry * into the defined operational condition for LCO 3.6.5.3 while relying on the provisions contained in the above proposed change to action statement a.2 of LCO 3.6.5.3. Entry into the * operational condition for LCO 3.6.5.3 with one SGTS subsystem inoperable and the other SGTS subsystem operable and in operation provides an equivalent level of safety to two operable non-running SGTS subsystems for activities involving the movement of irradiated fuel in the reactor building, core alterations and operations with a potential for draining the reactor vessel. Therefore, this change will not significantly 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: May 7, 1993

Description of amendment request: The proposed amendment represents an addition to Technical Specification (TS) Section 3/4.10, "Special Test Exceptions." Specifically, TS 3/4.10.7, "Inservice Leak and Hydrostatic Testing," would be added to permit remaining in OPERATIONAL CONDITION 4 with reactor coolant temperatures greater than 200 degrees F to facilitate inservice leak and hydrostatic testing. The proposed changes are consistent with NUREG-1433, "Standard Technical Specifications - General Electric Plants, BWR/4."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are requested to allow inservice leak and hydrostatic testing with the reactor in the cold shutdown mode and the average reactor coolant temperature greater than 200°F. The change to allow

inservice and hydrostatic testing in the cold shutdown mode will not increase the probability or the consequences of an accident. The probability of a leak in the reactor coolant pressure boundary during inservice leak and hydrostatic testing is not increased by considering the reactor in the cold shutdown mode. Since the hydrostatic test is performed water solid or near water solid in case of the inservice leakage test, all rods in, at low decay heat values, and near cold shutdown conditions, the stored energy in the reactor core will be very low. Under these conditions, the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, the secondary containment will be OPERABLE and will be capable of handling any airborne radioactivity from steam leaks that could occur during the performance of hydrostatic or leak testing. Requiring the secondary containment to be OPERABLE will conservatively ensure that any potential airborne radiation from leaks can be filtered through the Standby Gas Treatment System, thereby limiting radiation releases to the environment.

Thus, consequences of a leak under pressure testing conditions, with the secondary containment OPERABLE, will be conservatively bounded by the consequences of the postulated main steam line break outside of secondary containment accident analysis described in the USAR [Updated Safety Analysis Report]. That analysis assumes a ground level release and the activity is based on a core with significantly higher stored energy and coolant activity.

Therefore, the changes will not increase the consequences of an accident. In the event of a large primary system leak, the reactor vessel would rapidly depressurize, allowing the low pressure ECCS [emergency core cooling system] subsystems to operate. The capability of the subsystems that are required for cold shutdown conditions would be more than adequate to keep the core flooded under this low decay heat load condition. Small system leaks would be detected by leakage inspections before significant inventory loss occurred. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Allowing the reactor to be considered in the cold shutdown condition during inservice leak or hydrostatic testing, when the reactor coolant temperature is [greater than] 200°F, essentially provides an exception to hot shutdown requirements, including OPERABILITY of primary containment and the full complement of redundant Emergency Core Cooling Systems. Since the hydrostatic test is performed water solid, or near water solid in the case of the inservice leakage test, all rods in, at low decay heat values, and near cold shutdown conditions, the stored energy in the reactor core will be very low. Under these conditions, the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, the secondary containment will be OPERABLE and will be capable of handling any airborne radioactivity or leaks that could occur.

The inservice leak or hydrostatic test remains unchanged except for a slight increase in coolant temperature. The potential for a system leak remains unchanged since the reactor coolant system is designed for temperatures exceeding 500°F with similar pressures. There are no alterations of any plant systems that cope with the spectrum of accidents. The only difference is that a different subset of systems would be utilized from those of OPERATIONAL CONDITION 3. Therefore, this will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes allow inservice leak and hydrostatic testing to be performed with coolant temperature [greater than] 200°F and the reactor in OPERATIONAL CONDITION 4. Since the reactor vessel head will be in place, secondary containment integrity maintained and all systems required to be operable in accordance with the Technical Specifications, the proposed changes will not have any impact on any design bases accident or safety limit. This is because hydrostatic testing is performed water solid, or near water solid in the case of the inservice leakage test, all rods in, at low decay heat values, and near cold shutdown conditions where stored energy in the core is very low. Under these conditions the potential for failed fuel and subsequent increase in coolant activity would be minimal. The RPV [reactor pressure vessel] would rapidly depressurize in the event of a large primary system leak and the low pressure injection systems normally operable in OPERATIONAL CONDITION 4 would be more than adequate to keep the core flooded. This would ensure that the fuel would not exceed the 2200°F peak clad temperature limit. Moreover, requiring secondary containment, including isolation on LOCA [loss-of-coolant accident] parameters, to be operable will assure that any potential airborne radiation can be filtered through the Standby Gas Treatment System. This will assure that doses remain within the limits of 10CFR[Part]100 guidelines. Small system leaks would be detected by inspection before significant inventory loss has occurred. Therefore, this special test exception will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: May 18, 1993

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.6.1.2.a to allow a one-time extension of the required test interval for the Primary Containment Integrated Leakage Rate (Type A) Test. The proposed change would extend the interval for conducting the second Type A test for the first 10-year service period from 40 plus or minus 10 months to 54 months to allow the Type A test to be performed during the fourth refueling outage. The extension would expire upon completion of the fourth refueling outage. The interval extension would avoid the necessity for the licensee to perform an additional Type A test beyond the required three tests during the first 10-year service interval. Without this extension a fourth Type A test would be required during the shutdown for the 10-year inservice inspection in order to fully meet the requirements of TS 4.6.1.2.a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed extension of the Type A test surveillance interval does not increase the chances of a previously analyzed accident occurring. Containment integrity is required for the mitigation of accident consequences. Furthermore, containment leakage is not the precursor to any analyzed event. Extension of the Type A test surveillance interval will not affect the containment's ability to maintain leakage below that assumed in the safety analysis. The previous Type A test was completed successfully and there have been no plant modifications (other than those that required Type B or C testing) since the last test which could directly affect the test results. Type B and C testing of individual penetrations has been satisfactory and will continue to be performed in accordance with the Technical Specifications. There have

been no pressure or temperature excursions in the containment which could have adversely affected containment integrity. Hence, the ability of the containment to maintain leakage within the Type A test limits will be maintained.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed one time extension of the Type A test frequency will not affect the test methodology or acceptance criteria nor does it alter the physical containment structure or boundary in any way. There will be no addition or removal of plant hardware. No new plant operating modes are being introduced. Results of the previous Type A tests are well below allowable limits, and there have been no plant modifications since the last test nor are any planned, that could directly impact the previous Type A test results.

Therefore, the proposed change will not create the possibility of a new or different accident from any previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Safety margins are established through the Nine Mile Point Unit 2 safety analyses as reflected in the Technical Specification Limiting Conditions for Operation. Containment leak rates assumed in the safety analyses are not increased by the proposed change to the surveillance interval. The acceptance criteria which must be met to verify that leak rates remain within assumed values will also not be changed.

Although the test frequency will be relaxed for the one time extension, no plant modifications have been made nor are planned which would invalidate past leak test results which confirm acceptable containment integrity. Furthermore, Type B and C testing of individual penetrations has been satisfactory and will continue to be performed in accordance with the Technical Specifications to assure that containment integrity is maintained.

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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

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 19, 1993

Description of amendment request: The proposed amendment changes limiting conditions for operation to provide changes called for in NRC staff Generic Letter 90-06. Generic Letter 90-06 called for changes to address the issues of power-operated relief valve (PORV) and block valve reliability and low temperature overprotection. In addition the licensee proposed changes to define more clearly the reactor system vent path.

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:

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the changes cannot result in an initiating event for any previously analyzed accidents, nor do they increase the probability of initiating events already considered. There will be no effect on dose consequences for accidents previously evaluated. The changes enhance the reliability of power-operated relief valves and block valves and provide additional low-temperature overprotection.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)). This is because there is no change to the design of the plant, and the proposed changes do not affect the manner by which the facility is operated, except that plant operations are being altered enough to allow a block valve and PORV to be placed in conditions which allow them to better perform their safety functions.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or reduce the effectiveness of equipment or features which affect the operational characteristics of the facility.

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

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 31, 1992

Description of amendment request: The proposed amendment would change Limiting Condition for Operation 3.3.A.2, "Reactivity margin - stuck control rods," and corresponding Surveillance Requirement 4.3.A.2, "Reactivity margin - stuck control rods" by eliminating an optional alternative to control rod drive testing requirements. The proposed amendment would totally rewrite the technical specification to clarify its intent.

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. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is administrative in nature and has no adverse impact on control rod drive operability or reliability, fuel reliability, or the ability to maintain adequate shutdown margin. Elimination of the option to perform monthly notch testing represents a return to a more conservative and restrictive requirement for control rod drive testing. Therefore, the proposed amendment will not increase the probability or consequences of any accident previously analyzed.

b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

As indicated in Licensee Event Report 92-005-00, we have already discontinued performing control rod drive notch testing on a monthly basis and have returned to performing this test weekly as permitted under the current specification. No safety-related equipment, safety function, or plant operations will be altered as a result of the proposed amendment. 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.

c. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not adversely affect safety. The intent of the specification, which is to assure that the core can be shutdown at all times with the remaining control rods assuming the strongest control rod does not insert, is unchanged. Elimination of the option to perform monthly notch testing represents a return to a more conservative and restrictive requirement for control rod drive testing. The other changes clarify, but do not alter, current Technical Specification requirements. By reducing the potential for misinterpretation, these changes serve to improve compliance with the specifications, thereby enhancing 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: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

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 amendment request: January 9, 1991, August 19, 1991, June 22, 1992 and August 3, 1992

Description of amendment request: The amendments would change the Susquehanna Steam Electric Station (SSES), Units 1 and 2 Technical Specifications to revise the isolation setpoints for the ambient and differential temperature leak detection function in the Reactor Water Cleanup (RWCU) System penetration room and the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) room coolers.

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 change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The SSES FSAR does not analyze the size of the small leak on which the temperature setpoints are based. Other accidents which result in coolant leakage outside containment are analyzed in FSAR Sections 15.6.2 (Instrument Line Break) and 15.6.4 (Steam System Piping Break Outside Containment). Both of these are assumed accidents, with no causes identified. The analysis in Section 15.6.4 is the enveloping evaluation for pipe breaks outside containment. The proposed 25 gpm leakage rate basis is well below the leakage corresponding to a catastrophic pipe failure for the applicable system piping and does not significantly increase the risk of a break.

The radiological consequences of a coolant leak outside primary containment was analyzed. The analysis concludes that there is no impact on the 10 CFR 100 offsite dose limits or on the 10 CFR 50, Appendix A, GDC 19 control room dose limits.

Additionally, the temperature switches and isolation valves are redundant. Failure of a single switch to detect a leak does not preclude detection and, where appropriate, isolation by the other switch and valve. The reliability of the temperature switches is not affected by the setpoint. The methods of leak detection provide backup for the temperature instruments.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed technical specification change does not affect any systems other than leak detection and does not affect the ability to detect and isolate leakage. Although a 25 gpm leak is not specifically analyzed in the FSAR, it is bounded by the analysis in Chapter 15.6.4. This proposed change does not, therefore, create the possibility of an accident or malfunction of a different type than any evaluated previously in the FSAR.

3. The proposed change does not involve a significant reduction in a margin of safety.

The temperature switches and setpoints are listed in Technical Specification Section 3.3.2, "Isolation Actuation Instrumentation," but the Technical Specification basis does not discuss setpoint basis with respect to leakage rate or process conditions. The bases does, however, state "the setpoints "... are established at a level away from the normal operating range to prevent inadvertent actuation of the system involved." Temperature measurement is not discussed in the basis for Technical Specification 3.4.3, "Reactor Coolant System Leakage."

The proposed technical specification change satisfies the bases for Section 3.3.2 by defining that the setpoints margin above maximum design temperatures, but does not reduce any margin of safety defined for any Technical Specification.

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: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

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 amendment request: April 30, 1993

Description of amendment request: The amendments would revise the Susquehanna Steam Electric Station (SES) Technical Specifications (TS) to delete the requirements in Section 3/4 3.8 on the Turbine Overspeed Protection System. Specifically, the amendments would: 1) delete the Limiting Condition for Operation in Section 3.3.8 that the turbine overspeed system be in operation, 2) delete the surveillance requirements in Section 4.3.8, and 3) delete the Bases for Section 3/4 3.8. The licensee states that even if the requirements on the Turbine Overspeed Protection System are deleted from the TSs, the testing and maintenance requirements will be maintained in an administrative program to ensure the performance of periodic testing and maintenance in line with vendor recommendations.

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. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

No technical change in the operation, maintenance, and testing of the Turbine Overspeed Protection System is being proposed. The requirements for testing and maintenance of the Turbine Overspeed Protection System will be kept in an administrative program outside of Technical Specifications, to ensure the performance of periodic testing and maintenance in line with vendor recommendations.

Deletion of the Turbine Overspeed Protection System Technical Specification does not impact the safe operation of Susquehanna SES. From the perspective of missile protection, which is the basis for the Technical Specification, Susqehanna SES has been determined to be adequately protected from all postulated turbine missiles per NUREG-0776. Susquehanna SES has installed monoblock low pressure rotors which are less susceptible to turbine burst. In addition, separate mechanical and electrical sensing mechanisms are used which are capable of initiating fast closure of the turbine steam valves.

2. This proposal does not create the possibility of a new or different kind of accident or from any accident previously evaluated.

The proposed change does not alter the operation of the Turbine/Generator System or the design function of the Overspeed Protection System. As such, plant operation remains bounded by the existing safety analyses given in the FSAR. Maintenance and testing of the overspeed system will be continued in line with vendor recommendations.

3. This change does not involve a significant reduction in a margin of safety.

No physical change to the system or its design purpose is being proposed. No change to the maintenance and testing regime for the system is being proposed. Therefore, the margin of safety associated with the Overspeed Protection System is maintained.

Continuation of the maintenance and testing regime will ensure that the system continues to be available for its design purpose.

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: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

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 amendment request: May 4, 1993

Description of amendment request: The amendments would change the Susquehanna Steam Electric Station (SSES), Units 1 and 2 Technical Specifications (TS) to revise the surveillance requirements associated with the verification of drywell-to-suppression chamber bypass leakage limits. Specifically, the proposed changes:

1. decrease the test frequency of the drywell-to-suppression chamber bypass test to coincide with the test frequency for the 10 CFR Part 50, Appendix J, Integrated Leakage Rate Test (ILRT). This test frequency would require that the low pressure bypass tests be conducted at 40 plus minus 10 month intervals during each 10-year service period (ref. Specification 4.6.1.2a), and

2. require an additional surveillance test to measure the Vacuum Breaker (VB) leakage area, A/(k)1/2, for those outages for which the above drywell-to-suppression chamber bypass test is not scheduled.

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:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Enclosure 1 [not included in this notice] documents test data which indicates minimal suppression pool bypass leakage. Based on this data, the risk of suppression pool bypass leakage from non-VB sources is no greater than that of other primary containment structures which are tested on the proposed ILRT frequency. Testing of the drywell-to-suppression chamber VBs will continue to be performed on a refueling and inspection outage frequency to ensure that their contribution to the leakage area is acceptable. Therefore, the proposed change will not significantly impact the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This change proposes a new frequency for verifying that passive containment structures have sufficient integrity. No changes to the physical plant nor how its systems are operated are being proposed. Therefore, the possibility of a new or different kind of accident will not be created.

3. Involve a significant reduction in a margin of safety.

The current Technical Specifications conservatively require that suppression pool bypass leakage area be limited to 10% of that analyzed by design. The data provided and evaluated in Enclosure 1 shows significant margin to this conservative limit. The majority of this measured leakage area is attributable to the VBs, which are proposed to be continued to be tested on an 18 month frequency. Therefore, it is anticipated that future drywell-to-suppression chamber bypass leak tests at ILRT intervals will easily meet the Technical Specification LCO, which is not being proposed for change. This ensures that a significant reduction in a margin of safety will not occur.

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: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: February 25, 1993

Description of amendment request: The proposed amendment would revise certain Technical Specification Limiting Conditions for Operation (LCO) action statements to adopt consistent terminology for the action statements and more clearly distinguish between the different actions associated with each LCO. The proposed amendment would also add action times to LCO action statements that previously did not specify action times and revise three LCO action statements to specify new LCO requirements.

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:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revisions involve no hardware changes, no changes to the operation of any systems or components, no changes to structures, and alters procedures only to the extent of clarifying required action or changing the actions required by the LCOs. LCOs which did not have a specified action time limit now have one. Three specifications were revised to require consistent terminal conditions with associated specifications. The changes to the various LCOs make the revised LCOs consistent with the Technical Specifications.

In all cases, the changes do not alter the probabilities or consequences of the accident scenarios.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment revisions involve no hardware changes, no changes to the operation of any systems or components, no changes to structures, and alters procedures only to the extent that the LCOs have modified ATLs [action time limits] or revised terminal conditions. These changes do not affect the manner in which the reactor is operated. In all cases, the resulting changes do not pose a safety issue concern different from those analyzed previously for the FSAR

[Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report].

3. involve a significant reduction in a margin of safety.

The proposed amendment revisions involve no hardware changes, no changes to the operation of any systems or components, no changes to structures, and alters procedures only to the extent that the LCOs have modified ATLs or revised terminal conditions. The addition of an ATL for fulfilling the required actions in a LCO adds specificity to the specification. The changes to the terminal condition after implementation of an action requirement is consistent with related specifications and therefore will not significantly increase or decrease 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: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: April 15, 1993

Description of amendment request: The proposed amendment would make four changes to Technical Specification (TS) Table 4.7-2, "Exception to Type C Tests." The first change would add system numbers to the valve identification numbers for seven control rod drive containment isolation valves to be consistent with valve identifiers in the TS, and clarify penetration arrangements. The second change would remove valves 10MOV-57 and 10MOV-67 from the table because they are not containment isolation valves as defined in the current plant licensing basis. The third change would add valves 10RHR-729A and 10RHR-729B to the table to exempt them from Type C testing based on the current plant licensing basis. The fourth change would correct three errors introduced in Amendment No. 143.

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:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve[s] no hardware modifications, no changes to the operation of any system or component, no changes to structures, and alters procedures only to the extent necessary to clarify surveillance requirements. These changes will not alter the accident analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff SER [Safety Evaluation Report].

Page 212, Table 4.7-2, Correction of Valve Identification Numbers and Clarification of Penetration Arrangement

Renaming valves will not alter their ability to function or require revision of surveillance requirements. The use of a different identifier for a valve or set of valves will not alter previously analyzed conditions or scenarios.

An editorial change to clarify the arrangement of lines penetrating the containment will not alter the physical arrangement of the penetrating lines nor will it require any change to the relevant surveillance tests and procedures. There is therefore no change to previously analyzed conditions or scenarios.

Page 213a, Table 4.7-2, Removal of Non-Containment Isolation Valves

Removing valves 10MOV-57 and 10MOV-67 from a table listing containment isolation valves will not alter their intended function. These valves are not containment isolation valves and were erroneously included in Table 4.7-2. These valves receive a PCIS [primary containment isolation system] signal to prevent diversion of reactor/torus water. Removal of these valves from this table will remove their exemption status to Type C testing but since they do not form part of the containment boundary their revised status has no affect on previously analyzed conditions or scenarios and will not require local leak rate testing.

Page 213a, Table 4.7-2, Addition of Containment Isolation Valves

The addition of valves 10RHR-729A and B to Table 4.7-2 does not alter or affect previously analyzed conditions or scenarios. The operation and testing of these valves have not been changed by this submittal. Valves 10RHR-729A&B remain normally closed isolating the RHR [residual heat removal] to radwaste drain down lines from penetrations X-225A and X-225B, respectively.

Pages 213 and 213a, Table 4.7-2, Errors Introduced by Amendment 143

The deletion of two erroneous surveillance requirements, for valves 10MOV-34 (A and B), and the correction of the functional identifier for containment penetration X-221, will not alter the ability of these systems/components in performing their intended functions. These errors were inadvertently introduced by a previous amendment. Editorial corrections of this nature improves the consistency of the Technical Specifications without reducing the associated systems [i.e., CRD [control rod drive], RHR, or RCIC [reactor core isolation cooling]) ability in performing their intended functions.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes do not alter the operation of any of the affected systems (i.e., CRD, RHR, or RCIC). The changes are administrative in nature and do not alter the accident analyses in the FSAR or the NRC staff SER.

Page 212, Table 4.7-2, Correction of Valve Identification Numbers and Clarification of Penetration Arrangement

Changing the identifier for a component will not alter the operability or manner in which the component functions. An editorial clarification which does not require changes to existing operating limitations or surveillance requirements will not result in a new or different kind of accident.

Page 213a, Table 4.7-2, Removal of Non-Containment Isolation Valves

The removal of valves from a listing will not alter their ability to perform intended functions. Therefore, this change will not result in a new or different kind of accident.

Page 213a, Table 4.7-2, Addition of Containment Isolation Valves

The inclusion of two existing valves in Table 4.7-2, which will remain normally closed, will not result in any changes to cause a new or different accident scenario.

Pages 213 and 213a, Table 4.7-2, Errors Introduced by Amendment 143

Correcting errors will not affect the functionality of systems or components. There is no requirement for performing Type C tests on valves 10MOV-34A&B and the correction to penetration X-221 clarifies the purpose of that penetration. These changes will not result in a new or different accident scenario.

3. involve a significant reduction in a margin of safety.

Page 212, Table 4.7-2, Correction of Valve Identification Numbers and Clarification of Penetration Arrangement

The changing of valve labeling format will not affect the margin of safety nor will an editorial clarification to a penetration arrangement. There is no affect on valve operation or function and no affect on existing CRD penetration surveillance requirements.

Page 213a, Table 4.7-2, Removal of Non-Containment Isolation Valves

The deletion of two valves erroneously included in a table listing containment isolation valves will not affect the margin of safety. Operation of these valves and their associated systems will not be affected by the inclusion or removal from a table since they do not perform a containment isolation function. Since these valves are not CIVs [containment isolation valves] the fact that they are no longer exempted from local leak rate testing is irrelevant.

Page 213a, Table 4.7-2, Addition of Containment Isolation Valves

The addition of 10RHR-729A&B to Table 4.7-2 will not involve a significant reduction in the margin of safety. Because they meet the design basis criteria of Specification 4.7.A.2.c.(3.), these valves are exempted from

Type C testing. Though they are not currently listed in this table, the correction of this omission will not cause any significant negative change in the margin of safety.

Pages 213 and 213a, Table 4.7-2, Errors Introduced by Amendment 143

The deletion of an unnecessary testing requirement, and the correction of an error, both of which were inadvertently introduced by a prior amendment, will not affect the margin of safety. Operation of these systems (i.e., CRD, RHR, or RCIC) and the associated valves will not be altered by these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 22, 1992

Description of amendment request: The amendment request proposes revising Technical Specification Sections 4.0.3 and 4.0.4 and associated Bases on the applicability of surveillance requirements in accordance with the guidance of Generic Letter 87-09, "Sections 5.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements."

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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the application of ACTION requirements and Surveillance Requirements enhances the consistent operation of the facility preventing unnecessary shutdowns, thereby avoiding conditions in which the plant is more susceptible to upset. Allowing adequate time to perform missed surveillances avoids pressure on the plant staff to perform both surveillance and plant shutdown simultaneously. Since the proposed change does not involve any change to the configuration or method of operation of plant equipment, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not alter the method and manner of plant operation. The intent of these changes is to resolve the problems regarding the general requirements of Section 4.0 of the Technical Specifications. The changes therefore do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The consistent and reasonable application of Surveillance Requirements and their associated ACTION requirements is the intent of the changes to Technical Specification 4.0.3 and 4.0.4. The provision allowing a minimum of 24 hours to complete a missed surveillance allows adequate time to perform required activities while avoiding unnecessary cycling of the facility. The potential for a reduced margin of safety due to the malfunctioning of equipment during this time period is more than compensated for by the increased margin of safety in maintaining the plant in a steady state condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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 Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Suzanne C. Black

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.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 29, 1992, as supplemented on May 7, 1993.

Brief description of amendments: The amendments revise the Technical Specifications by expanding the acceptable methods for obtaining samples from charcoal filter units. The change includes the option to take charcoal samples from standard adsorber trays in accordance with the Nuclear Regulatory Commission Regulatory Guide 1.52, "Design, Testing, and Maintenance Criteria for Post Accident Engineered Safety Feature Atmosphere Cleanup System Air Filtration and Absorption Units of Light-Water-Cooled Nuclear Power Plant," Revision 2, dated March 1978.

Date of issuance: May 21, 1993

Effective date: May 21, 1993

Amendment Nos.: 181 and 157

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48813) The Commission's related

evaluation of these amendments is contained in a Safety Evaluation dated May 21, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: December 8, 1992

Brief description of amendments: The amendments change the Technical Specifications (TS) to revise the neutron monitoring instrumentation surveillance requirements associated with existing footnote (d) to TS Tables 4.3.1-1 and 4.3.4-1 to clarify that, when changing from Operational Condition 1 to Operational Condition 2, the performance of the required surveillance within 12 hours is not required if it was performed within the previous 7 days.

In addition, a new footnote (i) replacing footnote (d) on the average power range monitor (APRM) upscale (fixed) trip functional test frequency would be incorporated into TS Table 4.3.4-1 to clarify that, when changing from Operational Condition 1 to Operational Condition 2, the performance of the required surveillance within 12 hours is not required if it was performed within the previous 92 days.

Date of issuance: May 21, 1993

Effective date: May 21, 1993

Amendment Nos.: 162 and 193

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16217) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 21, 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.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: December 28, 1990, as supplemented April 10, 1991, September 29, 1992 and February 10, 1993.

Brief description of amendment: The amendment revises the Action Requirements associated with TS 3.1.2.2, Flow Paths - Operating; TS 3.1.2.4, Charging Pumps - Operating; and TS 3.7.1.1, Safety Valves.

Date of issuance: May 17, 1993

Effective date: May 17, 1993

Amendment No. 36

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6869) The April 10, 1991, September 29, 1992, and February 10, 1993, letters provided clarifying information and did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: March 31, 1992, as supplemented May 18, 1992.

Brief description of amendments: The amendments revise several Technical Specification requirements relative to the Byron ultimate heat sink.

Date of issuance: May 17, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 54 and 54

Facility Operating License Nos. NPF-37 and NPF-66: The amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24664) The May 18, 1992, submittal provided additional 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 May 17, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 29, 1991, September 30, 1991, and October 2, 1991

Brief description of amendments: The amendments delete Technical Specification (TS) Section 3.11/4.11, "High Energy Piping Integrity (Outside Containment)," TS Section 3.12/4.12, "Fire Protection Systems," the fire brigade manning requirements from TS 6.1.C, and changes the license conditions regarding fire protection.

Date of issuance: May 13, 1993

Effective date: May 13, 1993

Amendment Nos.: 141 and 136

Facility Operating License Nos. DPR-29 and DPR-30. The amendments revised Licenses and Technical Specifications.

Date of initial notice in **Federal Register:** August 19, 1992 (57 FR 37561)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: March 22, 1993

Brief description of amendment: The amendment will 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.

The 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.

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.

Date of issuance: May 17, 1993

Effective date: May 17, 1993

Amendment No.: 157

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19475) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 17, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: March 16, 1993

Brief description of amendment: The amendment makes editorial changes to the Technical Specifications (TS) which are administrative in nature. These changes can be characterized into one of the following groups:

(1) incorporation of missing sections in the index,

(2) providing editorial consistency throughout the TS,

(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.

Date of issuance: May 27, 1993

Effective date: May 27, 1993

Amendment No.: 158

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19474). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 27, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: January 29, 1993, supplemented April 30, 1993

Brief description of amendment: The amendment revises the Administrative Control Section of the Technical Specifications to reflect a restructuring of the Nuclear Operations Department.

Date of issuance: May 24, 1993

Effective date: May 24, 1993

Amendment No.: 109

Facility Operating License No. DPR-6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16222) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 30, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) 3/4.4.3.2 - Reactor Coolant System Operational Leakage, to implement the guidance contained in Generic Letter (GL) 88-01 and Supplement 1 to that GL. The amendment changes the reactor coolant system (RCS) unidentified leakage rate of change limit in Operational Condition (OP CON) 1, retains the current limit for RCS unidentified leakage rate of change in OP CONs 2 and 3, changes the surveillance frequency for leakage monitoring in OP CON 1, and revises the related bases for these Technical Specifications.

Date of issuance: May 26, 1993

Effective date: May 26, 1993

Amendment No.: 89

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61110) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 26, 1993

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: February 26, 1993

Brief description of amendment: This amendment provides additional action statements consistent with the current design of the leakage detection systems and supports increased operational flexibility while preserving adequate monitoring of the reactor coolant pressure boundary.

Date of issuance: May 17, 1993

Effective date: May 17, 1993

Amendment No: 107

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19477) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 15, 1991, as supplemented by letter dated January 24, 1992.

Brief description of amendments: The amendment changes Technical Specifications 3.3.1 and 3.3.2 for South Texas Project, Units 1 and 2 (STP). Specifically, two tables regarding response times of reactor trip system instrumentation and engineering safety features are removed from the STP Technical Specifications. These tables are placed in Chapter 16 of the STP Updated Final Safety Analysis Report (UFSAR).

Date of issuance: May 18, 1993

Effective date: May 18, 1993 to be implemented within 30 days of issuance

Amendment Nos.: Amendment Nos. 50 and 39

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1991 (56 FR

66920) The January 24, 1992, submittal requested a 30-day implementation period following date of issuance of the amendment and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 18, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 14, 1993

Brief description of amendments: The amendments change the Appendix A Technical Specifications by revising the Limiting Conditions for Operation of Technical Specification 3.2.1.5, 3.2.1.6, 3.5.5, and 3.9.1 to reflect changes in systems containing borated water for Unit 2. Changes for Unit 1 will be implemented during its fifth refueling outage.

Date of issuance: May 25, 1993

Effective date: May 25, 1993, to be implemented not later than the completion of the third refueling outage for Unit 2.

Amendment Nos.: Amendment Nos. 51 and 40

Facility Operating license Nos. NPF-76 and NPF-80. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16226). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 11, 1993

Brief description of amendment: The amendment modifies the Clinton Power Station Technical Specifications by: (1) revising Specification 5.3.1, "Fuel Assemblies," to make the fuel design features more generic to allow use of other NRC-approved fuel designs, (2) revising Specification 5.3.2, "Control Rod Assemblies," to allow the use of NRC-approved control rod designs which contain hafnium metal in addition to boron carbide powder, and (3) revising Specification 3.3.1, "Reactor Protection System Instrumentation," and its Bases to transfer the specific value of the simulated thermal power time constant for the Average Power Range Neutron Monitors (APRMs) from the Technical Specifications to the Core Operating Limits Report (COLR).

Date of issuance: May 25, 1993.

Effective date: May 25, 1993.

Amendment No.: 75

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16862) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 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.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: March 4, 1993

Brief description of amendment: The amendment reorganizes plant radiation monitors into two new groupings; Radiation Area Monitors, and Radiation Process and Effluent Monitors. A monthly functional test is established for all monitors, and all daily checks of these monitors may now be performed using an internally-generated test signal.

Date of issuance: May 19, 1993

Effective date: May 19, 1993

Amendment No.: 138

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19483) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: March 12, 1993

Brief description of amendment: The amendment 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.

Date of issuance: May 17, 1993

Effective date: May 17, 1993

Amendment No.: 62

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19484) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

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: March 11, 1993, as supplemented by letter dated May 13, 1993

Brief description of amendments: These amendments clarify the Technical Specification Section 1.0 definition of the term "Shutdown Mode" to reflect as-built facility design.

Date of issuance: May 20, 1993

Effective date: May 20, 1993

Amendments Nos.: 174 and 177

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19487) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 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.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 26, 1993

Brief description of amendment: This amendment modifies

Facility Operating License No. NPF-1 to a possession only license allowing the licensee to possess and maintain but not operate the facility.

Date of issuance: May 5, 1993

Effective date: May 5, 1993

Amendment No.: 190

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16228) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 27, 1993

Brief description of amendment: This amendment permits Portland General Electric Company to replace the 10 CFR Part 55 licensed operator program with an approved Certified Fuel Handler Certification and Recertification Training Program.

Date of issuance: May 6, 1993

Effective date: May 6, 1993

Amendment No.: 191

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16869) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: February 22, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) 4.0.B and associated Bases to remove the 3.5 limit on extending surveillance intervals consistent with the recommendations provided in Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals." The amendment also deletes the definition of "Surveillance Frequency" in TS 1.0. T for consistency.

Date of issuance: May 18, 1993

Effective date: May 18, 1993

Amendment No.: 188

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16870) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: February 22, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) 4.9.G.1 and associated Bases consistent with the guidance provided in Generic Letter 91-09, "Modification of Surveillance Interval for the Electrical Protective Assemblies in Power Supplies for the Reactor Protection System." TS 4.9.G.1 had previously required channel functional testing of the reactor protection system electrical protection assemblies at least once every 6 months. The revised TS 4.9.G.1 requires channel functional testing each time the plant is in cold shutdown for a period of more than 24 hours, unless performed in the previous 6 months. In addition, three minor editorial changes have been made to TS 4.9.G.2 to improve clarity.

Date of issuance: May 24, 1993

Effective date: May 24, 1993

Amendment No.: 189

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16870) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: January 18, 1993

Brief description of amendments: Revised Technical Specification Section 4.6.4.2 regarding the surveillance requirements of the Electric Hydrogen Recombiners to make the requirements more conservative for Unit 2 and more technically correct for Unit 1 and to allow consistency between the Units.

Date of issuance: May 18, 1993

Effective date: May 18, 1993

Amendment Nos. 141 and 120

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8780) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 18, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: January 15, 1993, and supplemented March 31, 1993. The supplemental information submitted March 31, 1993, did not affect the proposed no significant hazards consideration determination.

Brief description of amendment: This amendment modified the Technical Specifications incorporated in Facility Operating License No. DPR-13 as Appendix A to permit the replacement of the 10 CFR Part 55 licensed operator program with an approved Fuel Handler Certification (FHC) program at the San Onofre Nuclear Generating Station, Unit

1 (SONGS 1) plant. Further, this amendment will now allow the use of operators qualified in accordance with the FHC program, rather than operators licensed in accordance with 10 CFR Part 55. This reduction of operator qualifications and staffing requirements is based on the permanently defueled and shutdown status of SONGS 1.

Date of issuance: May 27, 1993
Effective date: May 27, 1993
Amendment No.: 154
Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7005) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 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

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: December 24, 1992
Brief description of amendments: The licensee proposes to revise Technical Specification 3/4.9.7, "Fuel Handling Machine - Spent Fuel Storage Pool Building," to allow long-term use of the spent fuel cask pool cover.
Date of issuance: May 17, 1993
Effective date: May 17, 1993
Amendment Nos.: 104 and 93
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 8785) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 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

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: December 11, 1992
Brief description of amendments: The amendments change the Technical Specifications (TS) to: (1) revise Unit 1 Index page IX to provide the correct page number; (2) revise the diesel fuel oil storage system requirement to reflect that each storage tank must contain a minimum of 25,000 gallons of usable fuel rather than merely specifying 25,000 gallons of fuel. Technical Specification 3/4.8.2 is also revised to reflect this change; (3) revise the Action statement associated with an offsite circuit inoperable to reflect new requirements for surveillance activities and offsite circuit restoration. This change also deletes the exception to TS 3.0.4; (4) revise the Action statement associated with one diesel generator set inoperable to reflect new requirements for surveillance activities and remove note ** which states that if the scheduled yearly maintenance of a diesel generator set exceeds 10 days, the diesel generator set must be declared inoperable. This change also reflects new requirements for diesel generator operability status restoration; (5) revise the Action statement associated with one offsite circuit and one diesel generator set inoperable to reflect new requirements for surveillance activities and remove note ** which states that if the scheduled yearly maintenance of a diesel generator set exceeds 10 days, the diesel generator set must be declared inoperable. This change also reflects new requirements for diesel generator operability status restoration and offsite circuit restoration; (6) revise the Action statement associated with both of the offsite circuits inoperable to reflect new requirement for surveillance activities on the diesel generator sets. This change also reflects new requirements for diesel generator operability status restoration and offsite circuit restoration; (7) revise the Action statement associated with both of the diesel generator sets inoperable to reflect new requirements for surveillance activities on offsite AC sources. The change also reflects new requirements for diesel generator operability status restoration.
Date of issuance: May 21, 1993
Effective date: May 21, 1993
Amendment Nos.: 98 and 90
Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.
Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8787) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 21, 1993.
No significant hazards consideration comments received: No
Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

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: August 20, 1992, supplemented April 30, 1993 (TS 309) and May 17, 1993.
Brief description of amendments: The license amendments revise the Browns Ferry Nuclear Plant (BFN) Technical Specification (TS) in accordance with the guidelines of Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications." The BFN TS were revised by relocating fuel cycle-specific parameter limits from the TS to a Core Operating Limits Report which is submitted for NRC review prior to startup. (Note: Requested TS changes related to Section 5.0 were not approved by these amendments. The NRC will address changes to TS Section 5.0 separately).
Date of issuance: May 20, 1993
Effective date: May 20, 1993
Amendment Nos.: 197-Unit 1; 214-Unit 2; 170-Unit 3
Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revise the technical specifications.
Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48828) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1993.
No significant hazards consideration comments received: None
Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment requests: November 10, 1992 and November 10, 1992. Each application was supplemented by letter dated March 17, 1993.
Brief description of amendment: The amendments revised the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2 Technical Specifications to 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 and to reduce the frequency of direct observation of the movement of the above valves from every 31 days to every 6 weeks. The amendments also replace 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.

Date of issuance: May 21, 1993
Effective date: May 21, 1993, to be implemented within 30 days of issuance.
Amendment Nos.: Amendment Nos. 15 and 1
Facility Operating License Nos. NPF-87 and NPF-89: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19489 and 58 FR 19489).
No significant hazards consideration comments received: No
Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

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: June 1, 1990
Brief description of amendments: The amendments revised Technical Specification 15.3.3, "Emergency Core Cooling System, Auxiliary Cooling Systems, Air Recirculation Fan Coolers, and Containment Spray," to permit an accumulator to be inoperable for up to one hour for reasons other than testing.
Date of issuance: May 20, 1993
Effective date: May 20, 1993
Amendment Nos.: 139 and 143
Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43819)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

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 July 9, 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).

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: May 5, 1993

Brief description of amendments: The amendments provide an interim acceptance criteria for control rod drop time on Oconee Unit 1. Specifically, Control Rod Group 1, Rod 8 and Control Rod Group 2, Rod 5 are considered operable with an insertion time of less than or equal to 2.00 seconds provided that: (1) the average insertion time for the remaining rods in Group 1 and the average insertion time for the remaining rods in Group 2 is less than or equal to 1.50 seconds, and (2) the core average negative reactivity insertion rate is within the assumptions of the safety analysis. This acceptance criteria applies until the end of the current fuel cycle for Oconee Unit 1.

Date of issuance: May 18, 1993

Effective date: May 18, 1993

Amendment Nos.: 200, 200, and 197

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 18, 1993.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 23, 1993, as supplemented by letter dated May 7, 1993

Brief description of amendment: The proposed changes modify the Cooper Nuclear Station Technical Specifications to delete Section 3/4.5.H, "Engineered Safeguards Compartments Cooling," and the associated Bases section from the TS.

Date of issuance: May 19, 1993

Effective date: May 19, 1993

Amendment No.: 163

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (58 FR 26174 and 26988). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided an opportunity to request a hearing by May 17, 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

and final no significant hazards consideration determination is contained in a Safety Evaluation dated May 19, 1993.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

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: May 17, 1993

Brief description of amendments: The amendments revise the description of fuel types and control rod assemblies contained in Section 5.2 of the Browns Ferry Nuclear Plant Technical Specifications in accordance with the guidance of Generic Letter 90-02, Supplement 1.

Date of issuance: May 21, 1993

Effective date: May 21, 1993

Amendment Nos.: 198-Unit 1; 215-Unit 2; 171-Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration, are contained in a Safety Evaluation dated May 21, 1993. Public comments requested as to proposed no significant hazards consideration: No

No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Dated at Rockville, Maryland, this 2nd day of June 1993.

For the Nuclear Regulatory Commission

John Hannon,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 93-13436; Filed 6-8-93; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 030-23425, License No. 53-17839-01 Ea No. 92-259]

Wahiawa General Hospital Wahiawa, HI; Order Imposing Civil Monetary Penalty

I

Wahiawa General Hospital (Licensee) is the holder of Materials License No. 53-17839-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on August 10, 1992. The license authorizes the Licensee to use radioactive materials for medical purposes, as described in 10 CFR 35.100, 35.200, and 35.300, in accordance with the conditions specified in the license.

II

An inspection of the Licensee's activities was conducted on December 3, 18, and 28, 1992. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 19, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated March 17, 1993. In its response, the Licensee agreed with the violations, but requested remission of the civil penalty based on: (1) the alleged unacceptability of an NRC Information Notice as the basis for escalation for prior opportunity to have identified and prevented the violations, (2) the alleged improper placement of responsibility on the Licensee for actions taken by an individual who delivered radioactive materials for a centralized radiopharmacy, and (3) the alleged promptness of the Licensee's corrective actions.

III

After consideration of the Licensee's response and the statement of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated, but that mitigation of the proposed civil penalty is appropriate, and that a penalty in the amount of $750 should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is Hereby Ordered* That:

The Licensee pay a civil penalty in the amount of $750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region V, 1450 Maria Lane, Walnut Creek, California 94596-5368.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 2nd day of June 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusion

On February 19, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection conducted on December 3, 18 and 28, 1992. Wahiawa General Hospital responded to the Notice on March 17, 1993, admitting the violations

but requesting remission of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's request as follows:

Restatement of Violations

A. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR parts 170 through 189.

49 CFR 172.200(a) requires, with exceptions not applicable here, that each person who offers a hazardous material for transportation describe the hazardous material on the shipping paper in the manner required by subpart C of 49 CFR part 172. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, on September 24, 1992, the licensee offered a molbdenum-99/technetium-99m generator containing 27 millicuries of molybdenum-99 to a carrier for transport and did not include with the shipment a shipping paper describing the material.

B. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR parts 170 through 189.

49 CFR 172.403 requires, in part, with exceptions not applicable here, that each package of radioactive material be labeled, as appropriate, with a RADIOACTIVE WHITE–I, a RADIOACTIVE YELLOW–II, or a RADIOACTIVE YELLOW–III label. The contents, activity, and transport index must be entered in the blank spaces on the label; and each package must have two labels, affixed to opposite sides of the package.

Contrary to the above, on September 24, 1992, the licensee delivered to a carrier for transport a molybdenum-99/technetium-99m generator containing 27 millicuries of molybdenum-99, without the appropriate RADIOACTIVE WHITE–I label.

C. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR parts 170 through 189.

49 CFR 173.475 requires, in part, that before each shipment of any radioactive materials package, the shipper ensure by examination or appropriate test that the external radiation and contamination levels are within the allowable limits specified in 49 CFR parts 171–177.

Contrary to the above, on September 24, 1992, and November 23, 1992, the licensee delivered to a carrier for transport packages of radioactive material without ensuring by examination or appropriate test that removable surface contamination levels were within allowable limits.

D. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR parts 170 through 189.

49 CFR 173.421 excepts radioactive materials in certain limited quantities, defined therein, from the specification packaging, shipping paper and certification, marking, and labeling requirements of subpart H, 49 CFR part 173.

49 CFR 173.421–1(a) requires, in part, that a "limited quantity" of radioactive material, shipped as excepted from specification packaging, shipping paper and certification, marking, and labeling requirements, be certified as being acceptable for transportation by having a notice enclosed in or on the package, included with the package list, or otherwise forwarded with the package. This notice must include the name of the consignor or consignee and the statement: "This package conforms to the conditions and limitations specified in 49 CFR 173.421 for excepted radioactive material, limited quantity, n.o.s., UN 2910."

Contrary to the above, on November 23, 1992, the licensee delivered to a carrier for transport a package which contained a molybdenum-99/technetium-99m generator with 10 millicuries of molybdenum-99, as a "limited quantity", excepted from specification packaging, shipping paper and certification, marking, and labeling requirements, and did not have a notice enclosed in or on the package, included with the package list, or otherwise forwarded with the package, with the required statement concerning the consignor conformance of the package.

Summary of Licensee's Request for Mitigation

Prior Opportunity to Identify

Licensee Response

The licensee argued that the NRC's escalation of the civil penalty based on NRC Information Notice (IN) 81–32, "Transfer and/or Disposal of Spent Generators" was improper because previous NRC guidance on records retention has never mentioned Information Notices, and the cited IN did not state that it was to be retained in a permanent file.

NRC Evaluation

The NRC Enforcement Policy, section VI.B.2.d, specifically includes the information in an NRC notification as an example of an opportunity to identify a potential violation. The Policy states that escalation by as much as 100% of the base civil penalty may be applied for cases where the licensee should have identified the violation sooner as a result of such opportunity. In this case, however, given the age of this IN, personnel responsible for compliance with NRC regulatory requirements were not aware of the information in it. Therefore, based on the specific facts of this case, the NRC staff is withdrawing the proposed escalation based on prior opportunity to identify.

Corrective Action

Licensee Response

The licensee challenges the NRC's 50% escalation for corrective action on two grounds. First, the licensee states that it took prompt corrective action, instructing its technologist not to send spent generators to the centralized radiopharmacy immediately after it was learned that a Wahiawa generator column contributed to the H-Power incident. Second, in response to the NRC's escalation of the civil penalty based on the licensee's failure to modify its procedures, the licensee states that it interpreted the statements in the NRC's January 14, 1993 letter that an Enforcement Conference would "* * * provide an opportunity for you to present your proposed corrective actions * * *" to mean that the licensee should not finalize modified procedures until after the conference, in case changes were suggested by the NRC.

NRC Evaluation

The NRC did not intend that the licensee delay the implementation of its corrective actions until the enforcement conference. However, since immediate corrective actions were taken, NRC is

withdrawing the proposed escalation based on corrective action.

Additional Considerations

Licensee Response

The licensee challenges the civil penalty as the improper placement of responsibility on Wahiawa General Hospital for the actions taken by an individual who delivered radioactive materials for a centralized radiopharmacy, arguing that the pharmacy was fully aware of the potential source of radiation exposure from undecayed columns, and that the presence of shipping papers or a shipping container would not have altered the actions of the pharmacy employee.

NRC Evaluation

The licensee is responsible for ensuring that radioactive materials are properly transported in accordance with NRC and DOT regulations. The generators that the Licensee delivered to the radiopharmacy employee for transport on September 24 and November 23, 1992 contained 27 millciuries of Mo–99 and 10.1 millicuries of Mo–99 respectively. The pharmacy employee dismantled both generators in order to salvage the lead shielding for his own use and threw one generator column in the non-radioactive trash, which led to the H-Power Facility alarm incident. The pharmacy employee stated that, based on discussions with the Licensee's nuclear medicine technologist, the pharmacy employee was under the impression that he was collecting non-radioactive generators which had decayed to background.

Had the Licensee properly packaged and labeled the generators in accordance with NRC and DOT regulations, there could have been no confusion on the part of the pharmacy employee as to the radioactive content of the generators. Based on the facts of this case, the violations on the part of the Licensee could or did result in a significant failure on the part of the pharmacy employee to identify the radioactive content of the shipment. Therefore, in accordance with the NRC Enforcement Policy, Supplement V.C.3, the failures on the part of the Licensee were classified as a Severity Level III problem, and the civil penalty was assessed accordingly.

NRC Conclusion

The NRC staff has concluded that the violations did occur as stated, but that escalation of the base civil penalty should be reduced from 150% to 50%. Consequently, a civil penalty in the amount of $750 should be imposed.

[FR Doc. 93–3518 Filed 6–8–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Revised Clearance of Form DPRS 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for revised clearance of an information collection. Form DPRS 2809, Request to Change FEHB Enrollment or to Receive Plan Brochures, is used by former spouses who are eligible to elect, cancel, or change health benefits enrollment during open season.

Approximately 15,000 forms are completed annually. The form takes approximately 10 minutes to complete. The total burden is 2,500 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received by July 9, 1993.

ADDRESSES: Send or deliver comments to—

Maurice O. Duckett, Chief, Fiscal Management Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street NW., room 3451, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0616.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–13459 Filed 6–8–93; 8:45 am]

BILLING CODE 6325–01–M

Request for Clearance of a New Information Collection Form RI 25–49

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a new information collection. Form RI 25–49, Verification of Adult Student Enrollment Status, is used to verify that adult student annuitants are entitled to payments, because OPM needs to know that a full-time enrollment has been maintained.

Approximately 3,000 RI 25–49 forms will be completed per year. The form requires approximately 60 minutes to complete. The annual burden is 3,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received by July 9, 1993.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0616.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–13460 Filed 6–8–93; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; RRB Records Used in Computer Matching Programs

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs notification to individuals who are receiving or have received benefits under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing a public notice of its use and intent to use, in ongoing computer matching programs, certain information obtained from the Health Care Financing Administration (HCFA).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by the RRB of this

information obtained from HCFA by means of a computer match.

DATES: Comments should be received within 30 days from the date of this publication (July 9, 1993).

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Marz, Acting Chief of Adjudicative Services, Office of Retirement and Survivor Programs, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4715.

SUPPLEMENTARY INFORMATION: Under certain circumstances, the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** regarding the establishment of that matching program. Such a notice must include information in the following first five categories:

Name of participating agencies

The Railroad Retirement Board and the Health Care Financing Administration (HCFA).

Purpose of the match

To identify RRB annuitants who are age 75 or over and who have not had any Medicare utilization during the past calendar year. The general purposes of the match are (1) to verify that these RRB annuitants are still alive and if alive, to determine whether the RRB should appoint a representative payee for them; (2) to identify instances when payments are being made to persons who because they are deceased are no longer entitled to receive them; (3) to recover any payments erroneously made; and (4) to identify instances of fraud, and where established and warranted, to initiate prosecution.

Authority for conducting the match, 45 U.S.C. 231f(b)(7)

This section requires that the Secretary of Health and Human Services provide information pertinent to the administration of the Railroad Retirement Act. The death of an annuitant under that Act is a terminating event.

Categories of records and individuals covered

All annuitants under the Railroad Retirement Act who are age 75 or over and who have had no Medicare utilization during the previous calendar year. The RRB records used in this matching program are covered under Privacy Act system of records, RRB–22, Railroad Retirement, Survivor, and Pensioner Benefit System. The HCFA records used in this matching program are covered under Privacy Act system of records HHS/HCFA/BPO 09–70–0526, Common Working File.

Inclusive dates of the matching program

The life of this agreement is 18 months; the match will be conducted once during this period.

Procedure

HCFA will furnish the RRB with a computer tape of annuitants under the Railroad Retirement Act who, according to HCFA records, are age 75 or older and have had no Medicare utilization during the previous calendar year. After excluding certain categories of individuals for whom no follow-up action will be taken, the RRB will contact the remaining identified individuals to determine whether they are still alive and if so to determine whether the RRB needs to appoint a representative payee to ensure that the benefits to which they are entitled are properly expended on their behalf. If the RRB establishes that an individual so identified in the match is deceased it will terminate the annuity, and if there are any benefits that were improperly paid, it will take action to recover them. In addition, if there is any indication of fraud, the RRB will evaluate whether prosecution should be initiated against the person or persons who acted fraudulently. No action will be taken with respect to the individuals excluded from the monitoring program.

The public information collection represented by the follow-up action for the individuals identified by the matching program was previously approved by the Office of Management and Budget (OMB 3220–0178). A request for reapproval of the public information collection has been made.

Other information

The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: June 2, 1993.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–13591 Filed 6–8–93; 8:45 am]

BILLING CODE 7905–01

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.

Extension

Form ADV–S File No. 270–43

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 ("Commission") has submitted for extension of OMB approval Form ADV–S under the Investment Advisers Act of 1940.

Form ADV–S is an annual report required of registered investment advisers. Approximately 18,400 investment advisers each file Form ADV–S once a year. The form takes about 1 hour to prepare.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20459 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act No. 3235–0046), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13558 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32406; File No. SR–CBOE–93–17]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Requirements That Market Makers Fill Incoming Orders or Update Existing Markets

June 3, 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 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on March 30, 1993, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 CBOE proposes to amend Exchange Rule 8.51 to require members of the trading crowd in receipt of broker-dealer orders and public customer orders for more than ten contracts to either satisfy the orders at the disseminated price or update the existing market in the subject series.

The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 self-regulatory organization 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 self-regulatory organization 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 Exchange proposes to amend Exchange Rule 8.51 to clarify the obligations of members of a trading crowd with respect to (1) broker-dealer orders and (2) public customer orders for more then ten contracts. The proposed rule change, requires members of the trading crowd that receive these orders to either satisfy the orders at the disseminated price or update the existing market for the subject options series. The proposal further provides that it will be a violation of Exchange rules for a trading crowd that has updated its market as provided above, to re-display its original market upon cancellation of the unexecuted broker-dealer or public customer order, unless such action is warranted by a change in market conditions.

The proposed rule change also extends to Designated Primary Market-Makers ("DPM") the obligations, set forth in Exchange Rule 8.51, previously imposed only on Floor Brokers and Order Book Officials. Finally, the proposal provides that broker-dealer orders for less than ten contracts that are represented by the Floor Broker or DPM shall not be reflected in the market quote.

The Exchange states that the proposed rule change clarifies the obligations of members of a trading crowd with respect to broker-dealer orders, just as the remainder of Rule 8.51 governs such members' obligations with respect to public customer orders. The Exchange believes that the proposed rule change is consistent with Exchange Rule 8.7(b)(ii), which requires Market-Makers to honor their markets, to a reasonable number of contracts, absent a change in market conditions.

The Exchange also states that the proposed amendment facilitates orderly trading in multiply listed options by establishing a procedure designed to limit the incidence of actual or apparent trade-throughs. Where the Exchange disseminates a bid-ask disseminated by traders at competing exchanges, the competing dealers, to avoid an actual or apparent trade-through, would either trade at the price disseminated by the exchange, have the firm send the customer order to the Exchange for execution, or send an order to the Exchange of behalf of the competing dealer's own account. The current proposal requires members of the trading crowd in receipt of a broker-dealer order, including a competing dealer order, or an ineligible customer order to either fill the order or update their quote. By requiring members of the trading crowd to update their quote if they fail to fill the order, the proposed rule change will enable the competing exchange to execute the order at its disseminated price, without the appearance of a trade-through.

The proposal also provides that broker-dealer orders for less than ten contracts that are represented by a Floor Broker or DPM shall not be reflected in the market quote. The Exchange believes that because this restriction currently applies only to Exchange Market-Makers orders, it places Exchange Market-Makers in a less advantageous position than non-member broker-dealers, including competing dealers, whose orders for less than ten contracts currently are represented in a disseminated quote.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the 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 Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 30, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13554 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 3, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Battle Mountain Gold Co.
Conv. $3.25 Pfd. Stk., $1.00 Par Value (File No. 7–10711)
Blanch (E.W.) Holdings Inc.
Common Stock, $.01 Par Value (File No. 7–10712)
Boston Edison Co.
Depositary Shares (rep. ¼ sh. of Cum. Pfd. Stk., 7.75%) (File No. 7–10713)
Buenos Aires Embotelladora S.A.
Depositary Shares (rep. 2 Ord. Cl. B Shs., Par Value $0.01) (File No. 7–10714)
Cross Timbers Oil Co.
Common Stock, $.01 Par Value (File No. 7–10715)
Industrie Natuzzi SPA
American Depositary Shares (rep.1 Ord. Sh. of Par Value Lit. 250) (File No. 7–10716)
Interpool, Inc.
Common Stock, $.001 Par Value (File No. 7–10717)
Long Island Lighting Co.
Pfd. Stk. 7.05% Ser. QQ (File No. 7–10718)
MuniVest California Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10719)
MuniVest Florida Fund
Shares of Beneficial Interest, $.10 Par Value (File No. 7–10720)
MuniVest Michigan Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10721)
MuniVest New Jersey Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10722)
MuniVest New York Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10723)
Philips NV
Common Stock, $.10 Par Value (File No. 7–10724)
Reinsurance Group of America, Inc.
Common Stock, $.01 Par Value (File No. 7–10725)
Vornado Realty Trust
Common Shares of Beneficial Interest (File No. 7–10727)
Zurich Reinsurance Centre Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–10728)
Royal Oak Mines
Common Stock, No Par Value (File No. 7–10729)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 24, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13553 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 32385; File No. 600–23]

Securities Exchange Act of 1934: Order Granting Temporary Approval of Registration Until May 31, 1995

June 3, 1993.

In the Matter of: The Registration as a Clearing Agency of the Government Securities Clearing Corp.

On February 5, 1993, pursuant to sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") requested that the Commission grant GSCC full registration as a clearing agency or, in the alternative, extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.[2] On March 1, 1993, GSCC filed with the Commission an amended Form CA–1. The Commission published notice of GSCC's request of extension of its temporary registration in the **Federal Register** on May 12, 1993.[3] No comments were received. This order extend GSCC's temporary registration as a clearing agency until May 31, 1995.

GSCC provides clearance and settlement services for members in processing transactions in government securities.[4] One of the primary reasons for GSCC's registration was to provide comparison services for transactions in government securities.[4] Since GSCC's initial registration, GSCC has expanded its services and now offers its members netting and comparison services for next-day settling trades, the multilateral netting of trades, the novation of netted trades, and daily making-to-the-markets. GSCC also offers a netting service for forward-settling trades,[5] zero-coupon

[1] U.S.C. 78g–1 and 78s(a) (1988).

[2] Letter from Charles A. Moran, President, GSCC, to Brandon Becker, Deputy Director, Division of Market Regulation, Commission (February 5, 1993). On May 24, 1988, the Commission granted the application of GSCC registration as a clearing agency, pursuant to Sections 17A and 19(a) of the Act and Rule 17Ab2–1 thereunder, for a period of three years. 17 CFR 240.17Ab2–1 (1988). Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639 ("temporary registration order"). On May 24, 1991, the Commission extended GSCC's registration until May 31, 1993. Securities Exchange Act Release No. 29067 (April 11, 1991), 56 FR 15652.

[3] Securities Exchange Act Release No. 32252 (April 30, 1993), 58 FR 28075.

[4] "Government securities" means securities issued or guaranteed by the United States ("U.S."), U.S. government agencies and instrumentalities , and U.S. government-sponsored corporations. *See* 15 U.S.C. § 3(a)(42) (1990).

[5] Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066.

government securities,[6] yield-based trades,[7] and certain trades executed by non-members.[8] In connection with its clearance and settlement services, GSCC provides a centralized loss allocation procedure and maintains margin to offset netting and settlement risks.

In connection with GSCC's request for full clearing agency registration, GSCC requested that the Commission remove GSCC's exemption from the participation standards of sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act.[9] GSCC has established admission criteria for its three categories of membership[10] and has taken affirmative steps to encourage non-primary government securities dealers who are comparison-only members to become full netting members of GSCC. Recently, GSCC filed with the Commission a proposed rule change[11] that would establish new membership categories in GSCC's netting system and establish financial standards for those applicants and members.[12]

GSCC has made substantial progress toward satisfying the requirements enumerated in section 17A(b) of the Act. However, the Commission believes that GSCC's exemptions from the participation standards of sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act should be continued. The Commission believes GSCC's proposed rule change regarding new categories of membership, if implemented, will have a significant impact on GSCC's operations and its membership base. During the continued temporary approval period, GSCC will gain experience with its new procedures described above, and the Commission then will be able to evaluate better GSCC's compliance with section 17A of the Act in light of GSCC's then existing membership criteria.[13]

It is therefore ordered, That GSCC's temporary registration as a clearing agency be, and hereby is, extended until May 31, 1995, subject to the terms as set forth above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13557 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

[6] Securities Exchange Act Release No. 28842 (January 31, 1991), 56 FR 5032.

[7] Securities Exchange Act Release No. 31820 (February 4, 1993), 58 FR 8072.

[8] Securities Exchange Act Release No. 31651 (December 23, 1992), 57 FR 62586.

[9] Letter from Charles A. Moran, President, GSCC, to Brandon Becker, Deputy Director, Division of Market Regulation, Commission (February 5, 1993). At the time of GSCC's initial temporary registration, the Commission exempted GSCC from compliance with the participation standards of sections 17A(b)(3)(B) and 17A(b)(4)(B) and the fair representation requirements of section 17A(b)(3)(C) of the Act. The Commission determined that GSCC's rules did not enumerate the statutory categories of membership as required by section 17A(b)(3)(B) and the financial standards for applicants and members as contemplated by Section 17A(b)(4)(B) of the Act. Securities Exchange Act Release No. 25740, note 2 *supra*.

At that time, the Commission also determined that while the composition of GSCC's Board of Directors reasonably reflected GSCC's anticipated initial membership, it would be appropriate to reevaluate later whether GSCC's process for selecting its Board of Directors complied with the fair representation requirements of section 17A(b)(3)(C) of the Act before granting full registration as a clearing agency. *Id.*

[10] GSCC Rules enumerate three categories of membership: government securities brokers, dealers, and clearing agent banks. GSCC Rule 2.

[11] The proposed rule change was filed with the Commission on February 24, 1993. Securities Exchange Act Release No. 32208 (April 26, 1993), 58 FR 26367 (notice of filing of the proposed rule change) [File No. SR–GSCC–93–01].

[12] In addition, the Commission is reviewing a proposed rule change that will have a substantial impact on GSCC's risk reduction program including various aspects of GSCC's clearing fund and forward mark allocation payments. The proposal would: (1) Authorize GSCC to use its own price volatility data to determine margin requirements; (2) allow GSCC to include in the calculation of a netting member's required margin deposit the weighted average of the netting member's forward net settlement positions over the most recent twenty business days; (3) remove the 75% limitation on forward mark allocation payments; (4) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit clearing fund deposits and forward mark allocation payments; and (5) make certain other changes to the margin fund collection process. Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942 (notice of filing of the proposed rule change) [File No. SR–GSCC–91–04].

[13] The Commission also will continue GSCC's exemption from the fair representation standards of Section 17A(b)(3)(C) during the temporary registration period. Prior to granting permanent registration, the Commission will evaluate GSCC's criteria for selecting its Board of Directors to ensure that the selection criteria is sufficiently flexible and assures adequate representation among GSCC's membership consistent with section 17A(b)(3)(C) of the Act.

[14] 17 CFR 200.30–3(a)(12) (1992).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Midwest Stock Exchange, Incorporated

June 3, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Rust International, Inc.
Common Stock, $.01 Par Value (File No. 7–10769)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 24, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13552 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–1–M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

June 3, 1993.

On May 26, 1993, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–10709	SNLP	Snapple Beverage Corp. Common Stock, $.01 par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–10710	SCIXF	Scitex Corp, LTD, Ordinary Shares, $.0012 NIS par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before June 24, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13555 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Two Over-the-Counter Issues and To Withdraw Unlisted Trading Privileges in Two Over-the-Counter Issues

June 3, 1993.

On May 24, 1993, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–10705	CMAG	Casino Magic Corporation, Common Stock, $.01 par value.
7–10706	KOIL	Kelly Oil Corporation, Common Stock, $.01 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7–10707	EXBT	Exabyte Corporation, Common Stock, $.001 par value.
7–10708	XOMA	XOMA Corporation, Common Stock, $.0005 par value.

Replacement issues are being requested due to a lack of trading activity.

Comments

Interested persons are invited to submit, on or before June 24, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13556 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 3, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Rust International, Inc.

Common Stock, $.01 Par Value (File No, 7–10766)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 24, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13550 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

June 3, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Rust International

Common Stock, $.01 Par Value (File No. 7–10767)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 24, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13551 Filed 6–8–93: 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 3, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Rust International, Inc.
Common Stock, $.01 Par Value (File No. 7–10768)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 24, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13547 Filed 6–8–93: 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (ATC Environmental, Inc., Common Stock, $0.01 Par Value), File No. 1–10583

June 3, 1993.

ATC Environmental, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, the small volume of trading on the PSE does not justify continued listing; the financial cost of listing on the PSE outweighs the benefit; and the Company is currently listed on the National Market System of the National Association of Securities Dealers Automated Quotation System ("NASDAQ/NMS") as a small cap issue.

Any interested person may, on or before June 24, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13548 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

Security Benefit Life Insurance Co., et al.; Application for Exemption

[Rel. No. IC–19511; 812–8338]

June 3, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for an order for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Security Benefit Life Insurance Company ("SBL"), Parkstone Variable Annuity Account (the "Separate Account"), and Security Distributors, Inc. ("SDI") (collectively, "Applicants").

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) of the 1940 Act from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Separate Account and such other separate accounts as SBL shall establish in the future which at any time may offer contracts ("Other Contracts") on a basis which is similar in all material respects to those offered by the Separate Account, to deduct a mortality and expense risk charge with respect to certain individual flexible premium variable accumulation deferred annuity contracts (the "Contracts").

FILING DATE: The Application was filed on April 6, 1993 and amended on May 28, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 28, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Roger K. Viola, Esq., Security Benefit Life Insurance Company, 700 Harrison Street, Topeka, Kansas 66636 and Amy J. Lee, Security Distributors, Inc., 700 Harrison Street, Topeka, Kansas 66636. Copies to Jeffrey S. Puretz, Esq., Dechert Price & Rhoads,

1500 K Street NW., suite 500, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Staff Accountant, or Wendell M. Faria, Deputy Chief, on 202–272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. SBL is a mutual life insurance company organized under the laws of the State of Kansas. It was originally organized in 1892, as a fraternal benefit society and became a mutual life insurance company under its present name on January 2, 1950.

2. A Form N–8A has been filed with the Commission registering the Separate Account as unit investment trust under the 1940 Act. The Separate Account is currently divided into five accounts (the "Variable Accounts"). Each Variable Account of the Separate Account will invest exclusively in shares of a corresponding Series of the Parkstone Advantage Fund (the "Fund"), an open-end management investment company.

3. SDI will be the principal underwriter of the Contracts. SDI is a wholly-owned subsidiary of Security Management Company, which is a wholly-owned subsidiary of Security Benefit Group, Inc., a financial services holding company wholly-owned by SBL. SDI is a broker/dealer registered under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. ("NASD"). SBL and SDI will enter into an agreement with First of America Brokerage Service, Inc. ("First of America Brokerage"), a broker/dealer affiliate of First of America Bank Corporation, under which First of America Brokerage will be authorized to accept applications for the Contracts on behalf of SBL. First of America Brokerage is registered with the Commission and is a member of the NASD.

4. The Contracts are available for purchase as non-tax qualified retirement plans. The Contracts are also eligible for use in connection with tax qualified retirement plans that meet the requirements of sections 401 and 408 of the Internal Revenue Code of 1986, as amended (the "Code").

5. The Contracts provide for the accumulation of values on either a variable basis, fixed basis, or both, during the Accumulation Period.

6. The Contracts will be made available to customers of First of America Bank Corporation's subsidiary financial institutions and other affiliated companies. Two types of Contracts will be made available: One for individuals (the "Individual Contracts") and one for trusts and for customers of the financial institutions' trust departments (the "Trust Contracts").

7. The minimum initial premium is $5,000 to purchase an Individual Contract in connection with a non-tax qualified retirement plan, $2,000 ($50 if made pursuant to an automatic investment program) to purchase an Individual Contract in connection with a qualified plan, and $50,000 to purchase a Trust Contract. Subsequent premium payments are flexible, though they must be for at least $2,000 ($50 if made pursuant to an automatic investment program) for an Individual Contract or $5,000 for a Trust Contract. SBL may reduce the minimum premium requirements under certain circumstances, such as for group or sponsored arrangements.

8. If the Owner dies during the Accumulation Period, SBL will pay death benefit proceeds to the Beneficiary upon receipt of due proof of the Owner's death and instructions regarding payment to the Beneficiary. The death benefit proceeds will be the death benefit reduced by any outstanding Contract debt. If the Owner dies during the Accumulation Period and the issue age of each Owner was 75 or younger on the date the Contract was issued, the amount of the death benefit will be the greater of (1) the Contract's value as of the date that due proof of death and instructions regarding payment are received by SBL at its Home Office, or (2) the aggregate premium payments received less any reductions caused by previous withdrawals. If the Owner dies during the Accumulation Period and the Contract was issued after age 75, the amount of the death benefit will be the Contract's value as of the date due proof of death and instructions regarding payment are received by SBL at its Home Office, less any applicable contingent deferred sales charge.

On the death of any Owner on or after the annuity start date, any guaranteed payments remaining unpaid will continue to be paid to the Annuitant pursuant to the Annuity Option in force at the date of death. No death benefit will be paid if the Owner dies after the annuity start date.

9. SBL does not make any deduction for sales charges from premium payments paid for a Contract before allocating them under an Individual Contract. However, except as set forth below, a contingent deferred sales charge (which may also be referred to as a withdrawal charge), may be assessed by SBL on a full or partial withdrawal, depending upon the amount of time such withdrawn amounts have been held under the Individual Contract. During the first Contract Year, the withdrawal charge applies against the total amount withdrawn attributable to total premium payments made. Each Contract Year thereafter, a withdrawal charge will not be assessed upon the first withdrawal in the Contract Year of up to 10% of the Contract's value as of the date of the withdrawal ("Free-Withdrawal Privilege"). If a full or partial withdrawal in excess of this 10% allowable amount is made, a withdrawal charge may be assessed on the amount withdrawn in excess of the 10% allowable amount. If a second or subsequent withdrawal in the same Contract Year is made, a withdrawal charge may be assessed on the entire amount withdrawn. For purposes of the charge, the withdrawal will be attributed to premium payments in the order they were received by SBL even if the Contract Owner elects to redeem amounts allocated to an Account (including the Fixed Account) other than an Account to which premium payments were allocated. The amount of the charge will depend upon the number of Contract Years that the premiums to which the withdrawal is attributed have remained credited under the Contract, as follows:

Age of premium in years	Withdrawal charge (percent)
1	5
2	5
3	5
4	5
5	4
6	3
7	2
8	0

For the purposes of determining the age of the premium, the premium is considered age one in the year beginning on the date the premium is received by SBL and increases in age each year thereafter.

In no event will the amount of any withdrawal charge, when added to any such charges previously assessed against any amount withdrawn from the Contract, exceed 5% of the premiums paid under an Individual Contract. In addition, no charge will be imposed: (1) Upon payment of death benefit proceeds under the Contract (except Contracts for which the issue age of any Owner is

after age 75), (2) upon total and permanent disability prior to age 65, or (3) upon annuitization if an Annuity Option offered under the Contract is elected or proceeds are applied to purchase any other Annuity Option then offered by SBL, and, in each instance, the Annuity Period is at least seven years. In addition, certain systematic withdrawals from the Individual Contracts may be made without the imposition of the withdrawal charge, provided that such withdrawals during any Contract year do not exceed 10% of the Contract's value on the date of the first such withdrawal in that Contract year. The withdrawal charge will be assessed against the Variable Accounts and Fixed Account in the same proportion as the withdrawal proceeds are allocated.

10. The contingent deferred sales charge will be used to recover certain expenses relating to acceptance of applications for Individual Contracts, including commissions and other promotional costs. The amount derived by SBL from the contingent deferred sales charge is not expected to be sufficient to cover the promotional expenses in connection with the Contracts. To the extent that all promotional expenses are not recovered from the charge, such expenses may be recovered from other charges, including amounts derived indirectly from the charge for mortality and expense risks.

11. SBL does not make any deduction for sales charges from premium payments paid for a Trust Contract before allocating them under such a Contract, and no contingent deferred sales charge is assessed by SBL on a full or partial withdrawal from a Trust Contract.

12. SBL will deduct a daily charge from the assets of each Variable Account for mortality and expense risks assumed by SBL under the Contracts. SBL will maintain for each Variable Account two subaccounts for the purpose of accounting for the different mortality and expense risk charges deducted under the Individual and Trust Contracts. The mortality and expense risk charge under the Individual Contracts is equal to an annual rate of 1.25% of the average daily net assets of each Variable Account that funds the Individual Contracts. This amount is intended to compensate SBL for certain mortality and expense risks SBL assumes in offering and administering the Individual Contracts and in operating the Separate Account. The 1.25% charge consists of approximately .65% for expense risk and .60% for mortality risk. The mortality and expense risk charge under the Trust Contracts is equal to an annual rate of .65% of the average daily net assets of each Variable Account that funds the Trust Contracts. This amount is intended to compensate SBL for certain mortality and expense risks SBL assumes in offering and administering the Trust Contracts and in operating the Separate Account. The .65% charge consists of approximately .05% for expense risk and .60% for mortality risk.

13. The expense risk is the risk that SBL's actual expenses in issuing and administering the Contracts and operating the Separate Account will be more than the charges assessed for such expenses. The mortality risk borne by SBL is the risk that the persons on whose life annuity payments depend (each an "Annuitant"), as a group, will live longer than SBL's actuarial tables predict. In this event, SBL guarantees that annuity payments will not be affected by a change in mortality experience that results in the payment of greater annuity income than assumed under the Annuity Options in the Contract. SBL also assumes a mortality risk in connection with the death benefit under the Contract.

14. SBL may ultimately realize a profit from this charge to the extent it is not needed to cover mortality and administrative expenses, but SBL may realize a loss to the extent the charge is not sufficient. SBL may use any profit derived from this charge for any lawful purpose, including any distribution expenses not covered by the contingent deferred sales charge.

15. SBL deducts a daily administrative charge from the assets of the Separate Account For the Individual Contracts, this charge is equal to an annual rate of .15% of the average daily net assets of the Variable Accounts that fund the Individual Contracts. For the Trust Contracts, the charge is equal to an annual rate of .05% of the average daily net assets of the Variable Accounts that fund the Trust Contracts. The purpose of this charge is to reimburse SBL for the expenses associated with administration of the Contracts and operation of the Separate Account. SBL does not expect to profit from this charge.

16. During the Accumulation Period, an annual maintenance fee of $30 will be deducted on each Contract Anniversary to cover the costs of maintaining records for the Individual Contracts. The fee will be deducted from an Owner's Contract value in the Variable Accounts according to a preset sequence beginning with the Parkstone Prime Obligations Series and if sufficient values are not available then from the next Variable Account in the sequence. Upon annuitization or a full withdrawal, the charge will be prorated for the portion of the Contract Year the Contract was in force. No annual fee will be charged in connection with the Trust Contracts. SBL does not expect to profit from this charge.

17. SBL guarantees that the charge for mortality and expense risk charges and the administrative charge will not increase, and that the maintenance fee shall not exceed $30.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to permit Applicants' assessment of the daily charge for mortality and expense risks under the Contracts. Applicants state that the terms of the relief requested with respect to any future Contracts funded by the Other Accounts are consistent with the standards set forth in section 6(c) of the 1940 Act. Applicants state that without the requested relief, the Company would have to request and obtain exemptive relief for each new Other Account to fund future Contracts. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. Applicants state that if the Company were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit and could be disadvantaged by increased overhead of the Company. Applicants argue that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Company to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Both the delay and the expense of repeatedly seeking exemptive relief would, Applicants opine, impair the Company's ability to effectively take advantage of business opportunities as such opportunities arise.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under

arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. SBL submits that it is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the level of the mortality and expense risk charge imposed is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information regarding comparable contracts of other companies, taking into consideration the particular annuity features of the comparable contracts, including such factors as: Annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by the companies with respect to the contracts, the means of promotion, the market for the contracts, investment options under the contracts, and the tax status of the contracts.

4. Applicants represent that they will maintain at their Home Office, and make available to the Commission, a memorandum setting forth in detail the comparable variable annuity products analyzed and the methodology, and results of, Applicants' comparative review.

5. Applicants acknowledge that if the revenues generated by the contingent deferred sales charge are insufficient to cover SBL's actual costs related to the promotion of the Contracts, such costs will be paid from SBL's General Account assets, which may include any ultimate profit derived from the mortality and expense risk charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to promotion of the Contracts.

6. Notwithstanding the foregoing, SBL has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract Owners. The basis for SBL's conclusion is set forth in a memorandum which will be maintained by SBL at its Home Office and will be available to the Commission.

7. Moreover, SBL represents that if the Separate Account invests in any open-end management investment companies that have adopted a plan under Rule 12b–1 under the 1940 Act, the Separate Account will invest only in such companies that have undertaken to have such plans formulated and approved by the particular company's board of directors, a majority of the members of which will not be "interested persons" of such company within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit, for all the reasons stated herein, that their request for exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and that an Order of the Commission, should, therefore, be granted. Accordingly, Applicants request exemption pursuant to section 6(c) of the 1940 Act from sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the assessment of the mortality and expense risk charge, described above, with respect to the Contracts.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13546 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Sport Supply Group, Inc., Common Stock, $.01 Par Value) File No. 1–10704

June 3, 1993.

Sport Supply Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on May 28, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before June 24, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13549 Filed 6–8–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–034]

Chemical Transportation Advisory Committee Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of Renewal.

SUMMARY: The Secretary of Transportation has approved the renewal of the Chemical Transportation Advisory Committee. The purpose of the Committee is to provide expertise on regulatory requirements for promoting safety in the transportation of hazardous materials on vessels and the transfer of these materials between vessels and waterfront activities. The Committee shall act solely in an advisory capacity to the Coast Guard.

FOR FURTHER INFORMATION CONTACT: CDR Kevin J. Eldridge or Mr. Frank K. Thompson at U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001 or telephone (202) 267–6227.

This notice is issued under the authority of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. app. 1.

Dated: June 3, 1993.

W. J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–13565 Filed 6–8–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–93–25]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 29, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 2, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26870.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.61(c)(1).

Description of Relief Sought: For reconsideration of Denial of Exemption No. 5625 to allow Federal Express to continue operating its Air Operations Division with the organizational structure which has been in place since 1990.

Docket No.: 27251.

Petitioner: American Bonansa Society/Air Safety Foundation.

Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).

Description of Relief Sought: To allow American Bonanza Society/Air Safety Foundation instructors to provide recurrent flight training and simulated instrument flight training in Beech Baron and Travel Air type aircraft, equipped with a functioning throwover control wheel, for the purpose of meeting recency requirements.

Docket No.: 27261.

Petitioner: Air Transport International.

Sections of the FAR Affected: 14 CFR 121.358.

Description of Relief Sought: To extend the deadline for the installation of the Sundstrand Mark VII Windshear Warning System on its fleet of DC–8–60 and –70 series aircraft.

Docket No.: 27267.

Petitioner: AMR Combs, Inc.

Sections of the FAR Affected: 14 CFR 135.303, 135.337(a)(2), 135.337(a)(3) and 135.339(c).

Description of Relief Sought: To permit specifically approved check airmen to conduct the checks required by §§ 135.293(a)(1) and 135.299 without completing the appropriate training for the aircraft, or without completing the appropriate proficiency or competency checks required to serve as a pilot in command in operations under Part 135.

Docket No.: 27280.

Petitioner: Henson Aviation, Inc.

Sections of the FAR Affected: 14 CFR 61.57(e)(1)(i); 121.433(c)(1)(iii); 121.440(a); 121.441(a) and Part 121, Appendix F.

Description of Relief Sought: To allow Henson Aviation, Inc., doing business as USAir Express, to restructure its recurrent training program, including its annual and semi-annual simulator/aircraft proficiency check program, by administering the required line checks for pilots in command 6 months subsequent to the annual proficiency check session instead of administering the recurrent 6-month proficiency check in the manner currently required.

Dispositions of Petitions

Docket No.: 107CE

Petitioner: Raisbeck Engineering.

Sections of the FAR Affected: 14 CFR 23.473(c).

Description of Relief Sought/Disposition: To allow supplemental type certification of various Beech Aircraft Corporation airplanes having a landing weight less than 95 percent of the Maximum takeoff weight without installing a fuel jettisoning system.

Grant, May 25, 1993, Exemption No. 5654

Docket No.: 25103.

Petitioner: Air Wisconsin Inc.

Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.

Description of Relief Sought/Disposition: To extend Exemption No. 4803 to allow Air Wisconsin Inc. to use certain foreign original equipment manufacturers (OEM) and those oem's designated repair and overhaul facilities that do not hold appropriate U.S. foreign repair station certification to perform maintenance, preventive maintenance, and alterations outside the United States on the components and parts used on Air Wisconsin, Inc foreign-manufactured aircraft.

Grant, May 27, 1993, Exemption No. 4803C

Docket No.: 25120

Petitioner: Singapore Airlines Limited.

Sections of the FAR Affected: 14 CFR 21.197(c).

Description of Relief Sought/Disposition: To renew Extension No. 4792 which permits the issuance of a special flight permit to Singapore Air Lines Limited, with a continuing authorization for nine specific Boeing 747–312 aircraft as delineated.

Grant, May 28, 1993, Exemption No. 4792D

Docket No.: 26237.

Petitioner: MCI Communications.

Sections of the FAR Affected: 14 CFR 91.611.

Description of Relief Sought/Disposition: To allow MCI Communications to conduct certain ferry flights with one engine inoperative on its Falcon Trijet aircraft without obtaining a special flight permit for each flight.

Grant, May 25, 1993, Exemption No. 5332A

Docket No.: 26297.
Petitioner: Fairchild Aircraft.
Sections of the FAR Affected: 14 CFR 91.531(a)(3).
Description of Relief Sought/ Disposition: To extend Exemption No. 5637 to allow Fairchild Aircraft's type rated company pilots to conduct airplane production test flights and experimental test flights in SA–227 computer category airplanes without a second in command.

Grant, May 27, 1993, Exemption No. 5367A

Docket No.: 26847.
Petitioner: Flight Safety International.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To amend Exemption No. 5528 to allow Flight Safety International (FSI) to hold examining authority for the certified flight instructor (CFI) written tests and examining authority for the CFI practical tests.

Grant, May 13, 1993, Exemption No. 5652

Docket No.: 26997.
Petitioner: Department of the Air Force.
Sections of the FAR Affected: 14 CFR 45.29(a).
Description of Relief Sought/ Disposition: To allow for the use of smaller aircraft nationality and registration markings in place of the 12-inch high markings required.

Grant, May 28, 1993, Exemption No. 5655

Docket No.: 27008.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 135.153 and 135.180.
Description of Relief Sought/ Disposition: To permit affected member airlines to delay installation of an approved Ground Proximity Warning System (GPWS) beyond April 20, 1994, and an approved Traffic Alert and Collision Avoidance System (TCAS I) beyond February 9, 1995.

Denial, May 27, 1993, Exemption No. 5603

[FR Doc. 93–13522 Filed 6–8–93; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 176, Fourth Meeting; Loran-C Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 176 meeting to be held June 22–23, 1993, at the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036 commencing at 8:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Summary of the Third Meeting; (3) Review Draft Change No. 1 to RTCA/DO–194. Please review the Draft carefully and be prepared to make written changes as necessary; (4) Review ways to improve Loran coverage and accuracy; (5) Assignment of tasks; (6) Other Business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 2, 1993.
Joyce J. Gillen,
Designated Officer.
[FR Doc. 93–13523 Filed 6–8–93; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc.; RTCA Task Force 2; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for RTCA TASK Force 2 meeting to be held June 16, 1993, at the Software Productivity Consortium (SPC), 2214 Rock Hill Road, Herndon Virginia. Registration will be at 8:30 a.m. and the meeting will commence at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Presentation by Co-chairman from each working group (a) Operational Requirements (b) Institutional Issues (c) Technology Choices and Opportunities; (3) Break; (4) Recommendation regarding selection of an Initial Differential GPS Data Link; (5) No host lunch; (6) Separate but Concurrent Working Group Deliberations; (7) Break; (8) Task Force 2 Plenary Discussion; (9) Meeting Summary.

Attendance is open to the interested public but limited to space available. with the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 2, 1993.
Joyce J. Gillen,
Designated Officer.
[FR Doc. 93–13524 Filed 6–18–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group

AGENCY: Internal Revenue Service, Treasury.
ACTION: Notice of Commissioner's Advisory Group Meeting.

SUMMARY: There will be a meeting of the Commissioner's Advisory Group on June 23 & 24, 1993. The meeting will be held in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8 a.m. on Wednesday, June 23 and Thursday, June 24. The agenda will include the following topics:

Wednesday, June 23, 1993

Non-Filer Program
Circular 230
Home Office Deduction
Interest Netting
Ethics Awareness Seminars
Extensions to File
Employee/Independent Contractor
Wage Reporting Simplification
IRS University
Filing Season Wrap-up
Servicewide Electronic Research Project (SERP)
Market Segment Specialization Program

Thursday, June 24, 1993

Third Party Transfer Price Information
National Research Council Report on Tax Systems Modernization

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Page Richardson, Program Analyst no later than June 16, 1993. Ms. Richardson can be reached on (202) 622–3074 (6440) [not toll-free].

If you would like to have the committee consider a written statement, please call or write: Ms. Page Richardson, Executive Secretariat, C:ES, room 3308, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Page Richardson, Program Analyst, [202] 622–3074 (6440) [Not toll-free].

Margaret Milner Richardson,

Commissioner.

[FR Doc. 93–13732 Filed 6–7–93; 2:51 pm]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice for the **Federal Register.**

The United States Advisory Commission on Public Diplomacy will meet in room 600, 301 4th Street, SW., on June 9, 1993, from 10:30 a.m. to 12 p.m.

The meeting will be closed to the public from 10:30 a.m.–11:15 a.m. because it will involve discussion of classified information relating to U.S. international broadcasting policies and plans. (5 U.S.C. 552b(c)(1))

From 11:15 a.m. to 12 p.m., the Commission will meet in open session with Mr. Kent Obee, Director of USIA's Office of North African, near East and South Asian Affairs to discuss public diplomacy programs in the Middle East and South Asia.

Please call Gloria Kalamet, (202) 619–4468, for further information.

Dated: June 3, 1993.

Joseph Duffey,

Director.

[FR Doc. 93–13588 Filed 6–8–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 109
Wednesday, June 9, 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).

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 15, 1993.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Request from State for Exemption under Section 701.21(h), NCUA's Rules and Regulations. Closed pursuant to exemptions (9)(A)(ii) and (9)(B).
3. Request from Credit Union to make Reserve Transfers under Section 704.11(k), NCUA's Rules and Regulations. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Delegations of Authority. Closed pursuant to exemption (2).
5. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Midsession Budget Review. Closed pursuant to exemptions (2) and (9)(B).
7. Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–13696 Filed 6–7–93; 12:21 pm]

BILLING CODE 7535–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 4:00 p.m., Thursday, June 17, 1993.

PLACE: Sheration New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana 70130, (504) 525–2500.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.
3. Legislative Update.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Final Rule: Amendment to Part 703, NCUA's Rules and Regulations, Investment and Deposit Activities.
3. Final Rule: Amendment to Part 710, NCUA's Rules and Regulations, Voluntary Liquidation.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–13697 Filed 6–7–93; 12:21 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 7, 1993.

A closed meeting will be held on Tuesday, June 8, 1993, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 8, 1993, at 2:30 p.m., will be:

Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2300.

Dated: June 4, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13704 Filed 6–7–93; 1:00 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 109
Wednesday, June 9, 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.

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 206, 207, 209, 215, 217, 219, 222, 223, 225, 227, 228, 231, 233, 235, 237, 239, 252, and 253

[Defense Acquisition Circular (DAC) 91-5]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

Correction

In rule document 93-10967 beginning on page 28458 in the issue of Thursday, May 13, 1993, make the following corrections:

1. On page 28460, in the first column, under the heading **Item XIII—Small Business Subcontracting Plan**, in the second line, "section 902" should read "section 802".

2. On the same page, in the second column, in the seventh line, "sections 831" should read "section 831".

3. On page 28461, in the first column, under the heading **Item XXVIII—Anti-friction Bearings**, in the ninth line, "approval" should read "Approval".

4. On page 28462, in the third column, in the first and second lines, "252.15-7004" should read "252.215-7004".

5. On the same page, in the same column, in the first full paragraph, in the seventh line, insert "directly" after "handled".

219.702 [Corrected]

6. On page 28465, in the third column, section 219.702 (a)(c)*(1)*(A) should be designated as section 219.702 (a)(i)(A)*(1)*.

225.7019-3 [Corrected]

7. On page 28468, in the 2d column, in section 225.7019-3 (a)(2), in the 14th line, insert "bearing" after "domestic"

235.006 [Corrected]

8. On page 28471, in the first column, section 235.006 (b)(i)(c)*(1)(iii)* should be designated as section 235.006 (b)(i)(C)*(1)(iii)*.

239.7501-2 [Corrected]

9. On the same page, in the second column, in amendatory instruction 59., in the first line, "Section 239.70501-2" should read "Section 239.7501-2".

252.219-7007 [Corrected]

10. On page 28472, in the second column, in section 252.219-7007, under the heading **Alternate B (Apr 1993)**, in subparagraph (7), in the ninth line, "acknowledgement" should read "acknowledgements".

11. On the same page, in the third column, in section 252.219-7007, under the heading **Alternate C (Apr 1993)**, in subparagraph (b)(2)(i), in the first line, "payment" should read "payments".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-030-03-4210-04: GP-3-184]

Realty Action; Exchange of Public Lands; Malheur County, Oregon

Correction

In notice document 93-10326 beginning on page 26342 in the issue of Monday, May 3, 1993 make the following correction:

1. On page 26343, in the first column, in land description T. 31 S., R. 42 E., in Sec. 10, "NW¼NE½, S½NE¼, and S½;" should read "NW¼NE¼, S½NE¼, NW¼, and S½;".

2. On the same page, in the same column, in land description T. 31 S., R. 42 E., in Sec. 19, in the fifth line, "N 00° 55″ W" should read "N 00° 37′ 55″ W".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-942-03-4730-02]

Arizona; Notice of Filing of Plats of Survey

Correction

In notice document 93-10019 beginning on page 26001 in the issue of Thursday, April 29, 1993, make the following correction:

On page 26002, in the first column, in the tenth full paragraph, in the fifth line "Range 20" should read "Range 19".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 164

[CGD 84-068]

RIN 2115-AB70

Personal Flotation Device (PFD) Components

Correction

In rule document 93-11860 beginning on page 29488 in the issue of Thursday, May 20, 1993, make the following corrections:

§ 164.019-7 [Corrected]

1. On page 29495, in the third column, in § 164.019-7, paragraph (e) introductory text should read :

* * * * *

(e) *Alternate requirements.* A component that does not meet the requirements of this subchapter is eligible for acceptance if it —

* * * * *

§ 164.019-13 [Corrected]

2. On page 29496, in the first column, in § 164.019-13(b), in the second line, "on" should read "of".

BILLING CODE 1505-01-D

federal register

Wednesday
June 9, 1993

Part II

Department of Transportation

Research and Special Programs Administration

Petitions by Massachusetts and Pennsylvania for Reconsideration of Determination; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA–1(R); Preemption Determination No. PD–1]

Petitions by Massachusetts and Pennsylvania for Reconsideration of Determination That State Bonding Requirements for Vehicles Carrying Hazardous Wastes Are Preempted by Hazardous Materials Transportation Act; Decision on Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Decision on petitions for reconsideration of RSPA's administration determination that Maryland, Massachusetts and Pennsylvania bonding requirements for vehicles carrying hazardous wastes are preempted by the Hazardous Materials Transportation Act.

PETITIONERS: Massachusetts Department of Environmental Protection (Mass-DEP) and Pennsylvania Department of Environmental Resources (Pa-DER).

STATE LAWS AFFECTED: Annotated Code of Maryland (Md. Code Ann.) Environment § 7–252(a) and Code of Maryland Regulations (COMAR) 26.13.04.04; 310 Code of Massachusetts Regulations (CMR) 30.411; 35 Pennsylvania Statutes Annotated (Pa. Stat. Ann.) § 6018.505(e) and 25 Pennsylvania Code § 263.32.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

MODE AFFECTED: Highway.

SUMMARY: RSPA's Associate Administrator for Hazardous Materials Safety is denying the Mass-DEP and Pa-DER petitions for reconsideration of the determination that the HMTA preempts the following State statutes and regulations which require the posting of a monetary bond as a condition for the issuance of a State permit to transport hazardous wastes:

Maryland: Md. Code Ann., Environment § 7–252(a), COMAR 26.13.04.04;
Massachusetts: 310 CMR 30.411; and
Pennsylvania: 35 Pa. Stat. Ann. § 6018.505(e), 25 Pa. Code § 263.32.

This decision constitutes RSPA's final action on the July 17, 1991 application for a preemption determination submitted by the National Solid Wastes Management Association, on behalf of its Chemical Waste Transportation Institute (collectively "CWTI").

Any party who submitted comments in Docket No. PDA–1(R) (including the applicant) may seek judicial review in Federal district court within 60 days of this decision.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001, telephone number (202) 366–4400.

I. Background

On December 11, 1992, RSPA published in the **Federal Register** the determination that the bonding requirements of Maryland, Massachusetts, and Pennsylvania, applicable to transporters of hazardous waste picked up or delivered in those States, are preempted by the HMTA. RSPA found that these requirements "create an obstacle to the accomplishment and execution of the HMTA and the HMR, and they are not 'otherwise authorized by Federal law.' " PD–1, Maryland, Massachusetts, and Pennsylvania Bonding Requirements for Vehicles Carrying Hazardous Wastes, 57 FR 58848, 58853. Part II of that decision set forth the standards for making determinations of preemption under the HMTA and the specific statutory provisions under which non-Federal requirements governing the transportation of hazardous materials are preempted. 57 FR at 58849–51. That discussion is not repeated here.

Within the 20-day time period provided in 49 CFR 107.211(a), Mass-DEP and Pa-DER filed petitions for reconsideration of the decision in PD–1. They certified that they had mailed copies of those petitions to CWTI and all others who had submitted comments, in accordance with 49 CFR 107.211(c).

The third State whose bonding requirement was considered in PD–1, Maryland, has not sought reconsideration, nor has it commented on the two petitions filed, notwithstanding the statement by Pa-DER that "Maryland's bond is intended to cover environmental remediation costs * * * and thus "is fundamentally different from the bonding requirements of Pennsylvania and Massachusetts, * * *."

II. Petitions for Reconsideration

The main thrust of Pa-DER's petition is that "the Pennsylvania and Massachusetts bonds are compliance bonds that may be forfeited by the State for non-compliance with law, regardless of the presence of environmental damage" or other injury typically covered by insurance. Pa-DER argues that the bond required for transporters picking up or delivering hazardous wastes within Pennsylvania, "bears no relation to the Federal financial assurances required under 49 CFR part 387." Rather, this is an "enforcement tool selected by the Pennsylvania Legislature to encourage compliance with [Pennsylvania's] Solid Waste Management Act."

According to Pa-DER, RSPA misconstrued the "goals and purposes" of Congress, because "Congress intended that the States would administer hazardous waste transportation programs under the Resource Conservation and Recovery Act [RCRA], 42 U.S.C.A. § 6923." The Solid Waste Management Act constitutes Pennsylvania's "EPA-authorized RCRA program[], * * *" and "[n]either Congress nor EPA under RCRA attempts to limit the States' sovereign authority to determine how the State will design and implement an enforcement program." Pa-DER contends that "the ruling [in PD–1] cripples the State enforcement programs," and "[a]n unenforced program, or a poorly enforced program, would clearly defeat the Congressional goals and purposes of RCRA and HMTA, regardless of perfect consistency of State standards with Federal law." Pa-DER further asserts that RSPA lacked authority to even consider whether a "State enforcement mechanism" was preempted:

> RSPA's preemption determination, however, exceeds the authority of Congress under the Commerce Clause and the authority delegated to DOT by Congress to the extent that it imposes a Federal dictate on the means that a State chooses to employ to administer a valid program to protect the public health and safety under State law. By this determination, RSPA is attempting to regulate the State itself rather than commerce among the States.

Mass-DEP similarly argues at the very end of its petition that its "bond requirement serves as a performance bond for compliance with state law, * * * the state law regarding transportation of hazardous waste picked up or delivered in Massachusetts," including the "payment of hazardous waste transportation related fees." It reasons that, because a "private entity" could require the posting of "a performance bond in connection with transportation of hazardous waste, it is unreasonable to preempt a state from requiring a performance bond for compliance with state law." Mass-DEP refers to

Congress's specific permission for a State to implement its own hazardous waste program, when authorized by EPA, as support for its contention that "a performance bond is not intended to be preempted under the HMTA obstacle test."

Both Pa-DER and Mass-DEP argue that RSPA has incorrectly interpreted the "obstacle" test in 49 App. U.S.C. 1811(a) to prohibit "any state regulation which is different than Federal agency requirements" (Mass-DEP), or "any and all differences between State and Federal standards" (Pa-DER). Supposedly RSPA has applied a "stricter" standard, such as that in the Federal Railway Safety Act, 42 U.S.C. 434, according to Mass-DEP; or the "substantively the same" provisions in 49 App. U.S.C. 1904(a)(4)(A), according to Pa-DER, which contends that RSPA has made the "term 'obstacle' essentially * * * synonymous with 'inconvenience.'".

Additional arguments advanced only by Mass-DEP are that RSPA:

(1) Disregarded the "procedural requirement" in 49 CFR 107.203(b) that an applicant for a preemption determination "'must * * * specify each requirement of the [HMTA] or the [HMR] * * *' with which the petitioner seeks the state requirement to be compared";

(2) Improperly looked to the "goals and purposes of HMTA," rather than the specific language of that statute and the HMR; and

(3) Failed to make a "fact-based analysis and decision" purportedly required by the obstacle test and the Administrative Procedure Act, or any "finding of fact, with regard to any safety problem posed by the Massachusetts bond requirement," but rather relied "unreasonably" on RSPA's prior inconsistency rulings discussed at 57 FR 58853–54.

III. Comments Responding to the Petitions for Reconsideration

Two parties submitted comments opposing the arguments of Pa-DER and Mass-DEP: The applicant, CWTI, and another party who submitted comments on the application, the Hazardous Materials Advisory Council (HMAC).

CWTI asserts that Pa-DER has injected a completely new issue into this proceeding, the nature of the bonding requirement as one to secure compliance or performance rather than financial responsibility. However, CWTI does not object to RSPA considering this issue. It cites Mass-DEP's original comment to characterize the Massachusetts requirement "as a 'cost of doing business,'" and states that "it is immaterial what a state calls a bonding requirement, if in the end the result is the same." CWTI continues:

> Many non-federal regulations arguably are for enforcement purposes. The "obstacle" test would be meaningless if states were permitted to avoid preemption simply by claiming that any particular requirement was necessary for enforcement.

Citing statistics purporting to show Pa-DER enforcement of bond forfeitures, plus figures on roadside inspections of trucks transporting hazardous materials and reports of hazardous materials incidents, CWTI argues that (1) bonds are not necessary to obtain compliance with substantive State hazardous waste requirements, (2) compliance with State laws is not really the issue, because these State hazardous waste programs cover through-traffic, but the bonding requirements apply only to transporters picking up or delivering hazardous wastes within the State, and (3) States have adequate enforcement mechanisms in civil and criminal penalties. CWTI contends that any State-perceived inadequacy in the Federal civil and criminal penalties under the HMTA does to justify the bonding requirements applied uniquely to transporters of hazardous wastes.

CWTI further argues that costs of doing business imposed by States can be obstacles to the accomplishment and execution of the HMTA and the HMR when those costs "frustrate the transportation of hazardous materials, [to the extent that] efficiency and safety are undermined." CWTI asserts that it had, in fact, alleged "substantial safety concerns," pointing to the statement in its application concerning the potential that "'other states will surely adopt similar provisions'" which will hinder the "'accomplishment of the (safety) objectives of the HMTA.'" Thus, it argues that potential obstacles are "sufficient to justify preemption."

CWTI notes that Mass-DEP had failed to address the earlier comments submitted by CWTI as to whether the Massachusetts bonding requirement satisfied the requirements in 49 App. U.S.C. 1811(b). That section requires that any fee imposed in connection with the transportation of hazardous materials must be "equitable" and only "used for purposes related to the transportation of hazardous materials." CWTI comments that both Mass-DEP and Pa-DER appeared to have abandoned any claim that their bonding requirements were authorized by RCRA. It also attached a copy of an October 29, 1992 letter from the EPA which it characterized as "clarifying and reaffirming the position * * * that preemption issues arising from state hazardous waste management programs are appropriately resolved pursuant to the HMTA." CWTI contends that Mass-DEP should have raised any concerns about RSPA's procedures in the rulemaking process, rather than in its petition for reconsideration of this decision.

In its comments, HMAC asserts that the decision in PD–1 appropriately relied on the "reasoning" in earlier inconsistency rulings, and not just the "result." It considers that reliance proper on the ground that both the "obstacle" and "dual compliance" tests use in these rulings were statutorily adopted in the 1990 amendments to the HMTA. HMAC also states it found no requirement in the HMTA "to apply formal Administrative Procedure Act (APA) methodology to preemption determinations * * *." It concludes with "its belief that uniform national standards consistently applied and enforced are a key to the safe transportation of hazardous materials."

IV. Discussion

In their petitions Mass-DEP and Pa-DER question what was not previously disputed: The nature of the bonding requirements in these two States. In its initial comments on CWTI's application, Mass-DEP described its bonding regulation as "a financial assurance requirement to cover contingencies for transporters of hazardous waste who pick up or drop off such waste in Massachusetts." According to Mass-DEP, the bonds posted by these transporters "provide funds for contingencies, including events which insurance does not cover, such as willful conduct and acts of God or nature; * * *." The heading to Mass-DEP's first argument in these comments asserted that the HMTA could not preempt a RCRA-authorized State law "concerning financial assurance protection for hazardous waste transporters."

Addressing those comments, RSPA discussed: (1) The background of the Federal financial responsibility rules in 49 CFR part 387; (2) the analysis in RSPA's prior inconsistency rulings which held that States could not impose additional insurance, bonding or indemnification requirements as a precondition to the transportation of hazardous materials, and (3) Mass-DEP's attempt to distinguish these prior inconsistency rulings on the ground that they involved "vastly different facts." Nowhere did Mass-DEP argue that its bonding requirement was an entirely different kind of requirement than the Federal financial responsibility

regulations in 49 CFR part 387. Pa-DER submitted no comments on CWTI's application; its petition for reconsideration represents its first participation in this matter.

Even accepting this late characterization of the Massachusetts and Pennsylvania bonding requirements as an "enforcement tool," however, there is no basis to change RSPA's conclusion. Preemption under the HMTA comes from the effect of non-Federal requirements, not their purpose. Here, the State-mandated bond is a precondition to the transportation of hazardous materials, a substantive requirement beyond the detailed and explicit provisions of the HMR. A transporter may not pick up or deliver hazardous wastes in these States without posting this bond.

In past inconsistency rulings, RSPA has expressed clearly its conclusion that "inconsistent prior restraints on [the] transportation" of hazardous materials are preempted by the HMTA and the HMR. IR–8(A), Decision on Appeal of State of Michigan Rules and Regulations Affecting Radioactive Materials Transportation, 52 FR 13000, 13005 (April 20, 1987). See also, IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24404 (June 30, 1987), *upheld in Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352 (9th Cir. 1990). As discussed in IR–8(A):

> Transportation carried out within the framework of the HMTA and the HMR is presumptively safe, and additional state or local requirements concerning matters covered by Federal law or regulation are inconsistent and thus preempted. Similarly, where the Department has examined an area otherwise within its authority to adopt regulations and has declined to regulate, state and local requirements in that area may be preempted where they have adverse effects on the Federal regulatory scheme and the transportation that occurs thereunder.

52 FR at 13005.

Throughout the years, RSPA and its predecessor agencies have examined and promulgated rules setting conditions on the transportation of hazardous materials. In PD–1, RSPA discussed at length the basis for its conclusion that bonding requirements beyond those which satisfy 49 CFR part 387 are unnecessary and an obstacle to the safe transportation of hazardous materials.

The Pa-DER and Mass-DEP petitions for reconsideration emphasize their RCRA-authorized State hazardous waste programs, but they do not address the two mandates in RCRA that (1) a State hazardous waste program must be "equivalent to the Federal program," 42 U.S.C. 6926(b), and (2) Federal regulations applicable to transporters of hazardous waste "shall be consistent with the requirements of [the HMTA] and the regulations thereunder." 42 U.S.C. 6923. Nor do they mention that the HMTA and the HMR apply to all hazardous materials, not just hazardous wastes.

Pa-DER considers its bonding requirement to be necessary as an enforcement mechanism, and asserts that "[a]n unenforced program, or a poorly enforced program, would clearly defeat the Congressional goals and purposes of RCRA and HMTA." However, imposition of this requirement violates Congress's provision that the regulation of hazardous waste transporters under RCRA be consistent with DOT's regulation of hazardous materials transportation under the HMTA. It also disregards RSPA's specific finding that there is no need for the prior posting of a bond to enforce the HMTA and the HMR. In similar fashion, neither Congress nor the EPA has provided any bonding requirement for enforcement of RCRA. See 42 U.S.C. 6928.

There is no substance to contentions that the decision misinterpreted the "obstacle test." These bonding requirements are not preempted because they are "different" from Federal standards, but because they impose a condition which RSPA has found to be an unnecessary impediment to the safe transportation of hazardous materials. The decision in PD–1 thoroughly discussed the nature of the "obstacle test." It also addressed Mass-DEP's argument that CWTI failed to satisfy the "procedural requirement" in 49 CFR 107.203(b) to specify each requirement of the HMTA or the HMR with which the Massachusetts and Pennsylvania bonding requirement should be compared. See 57 FR at 58853.

Mass-DEP's assertion that a "private entity" could require a performance bond in a contract with its transporter, even if true, provides no support for the theory that the State may demand that all transporters of hazardous waste post a bond. The Supremacy Clause of the Constitution and the preemption provisions of the HMTA are standards against which requirements of subordinate governmental bodies are measured; they do not directly govern private contractual affairs.

RSPA cannot accept the argument that the decision in PD–1 was deficient for lack of an adequate "fact-finding process or determination." The statutory test for whether a non-Federal requirement is an "obstacle" to the accomplishment and execution of the HMTA and the HMR includes consideration of how that requirement is "applied and enforced." As set forth above, in its initial comments Mass-DEP exercised its opportunity to fully explain its bonding requirement. It did not contradict the statements of two hazardous waste transporters as to the effect on their operations of complying with multiple State bonding requirements. Mass-DEP has now provided a different interpretation of its bonding requirement, and Pa-DEP has, for the first time, stated how its requirement is "applied and enforced." In the context of all these statements, RSPA has examined the potential effects of these States' requirements and has found an "obstacle."

Pursuant to 49 App. U.S.C. 1811 (c) and (e), each of these States has been afforded (1) notice and an opportunity to submit any comments it wished; (2) the opportunity to petition for reconsideration; and (3) the right to judicial review. Due process does not require more. Nor is the Administrative Procedure Act applicable here, since the HMTA does not require RSPA to make a determination of preemption "on the record after opportunity for an agency hearing." 5 U.S.C. 554(a). See *Wong Yang Sun* v. *McGrath*, 339 U.S. 33 (1950), and *Gardner* v. *United States*, 239 F.2d 234, 238 (5th Cir. 1956).

Most importantly, preemption under the HMTA does not require RSPA to find "a safety problem posed by" the non-Federal requirement, as Mass-DEP contends. There is no reason to dispute an assertion that these States promulgated their bonding requirements in an attempt "to enhance safety in the State." *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1583 (10th Cir. 1991). However, " '[t]he relative importance to the State of its own law is not material * * *' [citations omitted]." *Id.* Rather, as the Tenth Circuit explained:

> Congress enacted [the 1990 amendments to the HMTA] to enhance safety throughout the country. To accomplish this purpose, Congress concluded that uniform standards are necessary and desirable. Uniformity and safety are not at odds. We must not balance one against the other. Rather, Congress stated unequivocally that the "Federal standards for regulating the transportation of hazardous materials" were necessary "to achieve greater uniformity and to promote the public health, welfare, and safety at all levels."

Id. (citation and footnote omitted).

Should Maryland, Massachusetts or Pennsylvania believe that its bonding requirement "affords an equal or greater level of protection to the public" than the HMTA and the HMR, and "does not

reasonably burden commerce," it may apply for a waiver of preemption in accordance with 49 App. U.S.C. 1811(d).

V. Ruling

For the reasons stated above, the Mass-DEP and Pa-DER petitions for reconsideration are denied. This decision incorporates and reaffirms the determination set forth at 57 FR 58855 that:

To the extent that they impose bonding requirements on transporters of hazardous wastes regulated by the HMR, the following State laws and regulations are preempted by the HMTA, 49 App. U.S.C. 1811(a)(2), because they create an obstacle to the accomplishment and execution of the HMTA and the HMR, and they are not "otherwise authorized by Federal law":

Maryland: Md. Code Ann., Environment § 7–252(a) and COMAR 26.13.04.04;
Massachusetts: 310 CMR 30.411; and
Pennsylvania: 35 Pa. Stat. Ann. § 6018.505(e) and 25 Pa. Code § 263.32.

VI. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on CWTI's application for a determination of preemption as to the above-specified Maryland, Massachusetts and Pennsylvania bonding requirements for transporters of hazardous wastes. Any party to this proceeding may seek review of this determination "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

Issued in Washington, DC on June 2, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–13507 Filed 6–8–93; 8:45 am]

BILLING CODE 4910–60–M

federal register

Wednesday
June 9, 1993

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

NOFA for Capital Improvement Loans; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–93–3632; FR–3454–N–01]

NOFA for Capital Improvement Loans Under the Flexible Subsidy Program Awarded as Incentives Pursuant to Preservation Plans of Action

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for fiscal year 1993.

SUMMARY: This notice announces HUD's funding for that portion of the Capital Improvement Loan component of the Flexible Subsidy Program set aside for Fiscal Year 1993 to support approved plans of action under the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA). This document includes information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility, available amounts, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: Applications may be submitted beginning June 9, 1993. There is no deadline for an application. An application may be submitted as soon as a HUD Field Office has issued preliminary approval of a plan of action under ELIHPA and as long as funds remain available.

ADDRESSES: Applications are to be submitted to the HUD Field Office by which the owner has had a plan of action approved under ELIHPA.

FOR FURTHER INFORMATION, CONTACT: Kevin J. East, Director, Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, NW., Washington, DC 20410; telephone (202) 708–2300. To provide service for persons who are hearing or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or (202) 708–9300. (Except for the TDD number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Statement

The Office of Management and Budget has approved the use of the Flexible Subsidy forms under OMB control number 2502–0395, through September 30, 1993.

I. Purpose and Substantive Description

A. Statutory Background and Authority

Section 201 of the Housing and Community Development Amendments (HCDA) of 1978 created the Flexible Subsidy Program to provide Operating Assistance to eligible projects experiencing financial difficulty. Operating Assistance is provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects. The 1983 amendments to section 201 of the HCDA expanded the universe of eligible projects and clarified that a project need not have an FHA-insured mortgage to be eligible for Flexible Subsidy assistance (e.g., a non-insured section 236 project is eligible).

The Housing and Community Development Act of 1987 amended section 201 of HCDA to create a new category of assistance to be provided under the Flexible Subsidy Program for projects that needed capital improvements to achieve physical soundness that cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future.

The 1987 amendments to the Flexible Subsidy statute (sections 185 and 186 of the Housing and Community Development Act of 1987) also recognized the need to coordinate assistance under the Flexible Subsidy Program with the initiative to preserve low- and moderate-income housing, enacted in title II of that Act. (In its comprehensive revision of the 1987 Act, title VI of the 1990 Cranston-Gonzalez National Affordable Housing Act, at the new section 219, repeated the listing of incentives the Secretary could agree to provide an owner as part of a plan of action to prevent payment of a mortgage on a project serving low- and moderate-income tenants. A capital improvement loan was included as an incentive to owners.)

Section 405(d) of the Housing and Community Development Act of 1992 amended section 201 of the Housing and Community Development Amendments of 1978 by adding a provision stating that "[p]rojects receiving assistance under this section are not eligible for prepayment incentives under [ELIPHA] or [LIPHRHA]. Projects receiving financial assistance under such Acts are not eligible for assistance under this section." Section 405(b) of the Housing and Community Development Amendments of 1992 repealed section 201(k)(4) of the Housing and Community Development Amendments of 1978 and establish new selection criteria for awarding flexible subsidy capital improvement loans—including giving a priority to projects with HUD-insured mortgages over projects with HUD-held mortgages and those noninsured projects which are assisted by State agencies. (Section 201(k)(4) had earlier created a priority for projects receiving incentives under ELIHPA and Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA), but the 1992 amendement eliminates preservation projects from the list of selection criteria. On their face, these amendments would seem to preclude ELIHPA and LIHPRHA projects from receiving flexible subsidy assistance, and vice versa.

However, Congress did not amend section 224(b)(6) of ELIHPA or section 219(b)(4) of LIHPRHA which list flexible subsidy capital improvement loans as a permissible incentive. Nor did Congress repeal sections 201 (m)(1) and m(2) of the Housing and Community Development Amendments of 1978, which discuss rental payments for ELIHPA and LIHPRHA projects receiving flexible subsidy assistance. In addition, Congress enacted section 318 of title III, requiring the Department to present a report to Congress detailing the cost of providing preservation incentives to owners of projects deemed ineligible for incentives because the owners entered into agreements to maintain the projects' low income use in exchange for flexible subsidy assistance. This report is required because Congress "is concerned that many of these projects may not be preserved, even with flexible subsidy, for lack of necessary additional funding * * * the report [should] include any recommendation which the Committee can consider for ways to make these projects eligible for the preservation program * * *" *House Rpt.* No. 760, 102d Cong., 2d Sess., at 117 (the "House Report"). The failure of Congress to eliminate capital improvement loans as an incentive, or to repeal all flexible subsidy provisions pertaining to ELIHPA and LIHPRHA projects, and the fact that Congress is requesting a report to attempt to make projects with flexible

subsidy eligible for incentives, seem to imply that Congress intended to continue to permit capital improvement loans as an incentive.

While owners proceeding under ELIHPA or LIHPRHA may finance rehabilitation with a loan insured under section 241 of the National Housing Act, a capital improvement loan is preferred by nonprofit purchases, because (1) nonprofit mortgagors are not subject to the owner contribution requirements imposed on for-profit mortgagors; (2) the interest rate on capital improvement loans is generally lower than for section 241 loans; and (3) capital improvement loans are paid back from surplus cash. The amendment to section 241(f) made by section 316(a) of the Housing and Community Development Act of 1992 eliminates the need for a rehabilitation loan under LIHPRHA, because rehabilitation costs will not be included in the section 241(f) equity and acquisition loans. However, capital improvement loans would beneficial for nonprofit purchases under ELIHPA whose only other choice is to finance improvements with a section 241(a) loan.

In light of the foregoing, the Department will allow nonprofit purchasers to obtain a flexible subsidy capital improvement loan as an incentive under ELIHPA. Because nonprofit purchasers requesting capital improvement loans in their plans of action will not be "receiving financing assistance" under ELIHPA or LIHPRHA at the time they are determined eligible for flexible subsidy, this position will not violate section 405(d) of the Housing and Community Development Act of 1992.

This notice supports preservation efforts by announcing a set-aside of $18 million for Flexible Subsidy Capital Improvement funding to insured projects that are eligible to receive incentives in exchange for extending the low- to moderate-income use of the projects under plans of action approved in accordance with 24 CFR part 248.

B. Allocation Amounts

The Flexible Subsidy Fund is comprised of excess rental receipts paid to HUD from owners of section 236 projects, interest earned on the fund, repayment of Operating Assistance loans made by the Department in past fiscal years, and amounts appropriated by Congress, if any, to carry out the purposes of the Flexibility Subsidy Program.

The Capital Improvement Loan portion of the program is required by statute to be funded at a minimum level of $30 million or 40 percent of the amount in the Flexible Subsidy Fund, whichever is less. This year, $30 million is less than 40 percent of the fund, and therefore, is the amount designated for Capital Improvement Loans. Of the $30 million set aside for Capital Improvement funding, $18 million is available under this NOFA for preservation projects. The remaining $12 million will be available under a separate NOFA.

C. Eligibility

1. Types of Projects

The following types of rental or cooperative housing are eligible for Capital Improvement Loans:

a. A project which meets the definition of "eligible low-income housing" as set forth at 24 CFR 248.201; *and*

b. Whose mortgage is currently insured by the Department; *and*

c. Has received preliminary approval of a plan of action pursuant to 24 CFR 248.233 which provides for a sale to a nonprofit or a limited equity cooperative.

2. Conditions

Flexible Subsidy assistance will be made available in accordance with section 201 of the Housing and Community Development Amendments (HCDA) of 1978, as amended by Section 405 of the Housing and Community Development Act of 1992. Assistance can be provided only if the following conditions are determined to exist when a plan of action is approved:

a. The assistance is necessary, when considered with other resources available to the project; it will restore or maintain the financial or physical soundness of the project; and it will preserve the low- and moderate-income character of the project.

b. The owner has agreed to maintain the low- and moderate-income character of the project for a period of at least equal to the remaining term of the project mortgage.

c. The assistance will be less costly to the Federal Government over the useful life of the project than other reasonable alternatives of preserving the occupancy character of the project.

d. The purchaser has provided or agreed to provide the required owner contribution.

e. The project is or can reasonably be made structurally sound, as determined in accordance with an on-site inspection.

f. All reasonable attempts have been made to take all appropriate actions and provide suitable housing for project residents.

g. There is evidence of the existence of a feasible plan to involve the residents in project decisions.

h. The project will be operated competently, as determined by HUD in a management review.

i. Project management is in accordance with any management improvement and operating plan approved by HUD for the project.

j. The Affirmative Fair Housing Marketing plan meets applicable requirements.

k. The purchaser certifies that it will comply with all applicable equal opportunity statutes, including the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Orders 11063, 11246 and 11375, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act, section 3 of the Housing and Urban Development Act of 1968 and all regulations issued pursuant to these authorities.

l. The purchaser has funded the reserve of replacements account in accordance with HUD requirements, and yet the reserve account (and any other project funds available to fund the reserve account) is insufficient to finance both the capital improvements for which assistance is being requested and other capital improvements that are reasonably expected to be required within the next 24 months.

3. Owner Contribution

a. Nonprofits. The owner or sponsor of a nonprofit project, other than a cooperative association, seeking a capital improvement loan is exempt from providing a contribution.

b. Cooperatives. Owners of cooperative projects are not exempt and must contribute 25 percent of the total estimated cost of the capital improvements involved.

In addition to the required owner contribution, other non-federal sources of funding must be pursued aggressively. These include grants or loans from State or local governments, e.g., community development block grants. Note that the infusion of funding from non-Federal sources does not eliminate or reduce the requirement for an owner contribution of 25 percent.

D. Selection Criteria and Ranking Factors

Each application for a Capital Improvement Loan will be reviewed by the HUD Field Office having jurisdiction over the project in question. Field Offices will recommend applications for funding to HUD Headquarters.

The need for Capital Improvement Loans as incentives cannot be made subject to competitive deadlines and criteria. Submission and approval of notices of intent and plans of action are subject to the eligibility of the owner filing them. Such eligibility may not coincide with the normal ranking criteria for a competitive NOFA. Therefore, it is the intent of the Department that this NOFA remain open until funds are expended. Further, the Department will not conduct a competition among otherwise eligible projects by setting deadlines and ranking criteria. Thus, only insured projects, which must receive first consideration by law, are eligible to apply under this NOFA. To make other projects eligible, such as HUD-held or non-insured projects, would require the Department to set deadlines and ranking criteria which it seeks to avoid.

The Department will award a Capital Improvement Loan as an incentive to an approved plan of action if the property satisfies one or more of the following criteria:

1. The project presents an imminent threat to the life, health and safety of project residents;
2. The project is financially troubled;
3. Physical improvements are needed by the project as evidenced by a Capital Needs Assessment conducted in accordance with the review and approval of the plan of action;
4. There is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in management of the project; or
5. There is evidence that the project owner has provided competent management and complied with all regulatory and administrative instructions.

E. Other Loan Terms and Conditions

Repair items eligible for funding as a Capital Improvement Loan include any major repair or replacement of building components or other on-site improvements included in allowable costs when the project was built, e.g., sewer laterals, roof structures, ceilings, wall or floor structures, foundations, plumbing, heating, cooling, electrical systems and major equipment, as well as any major repair or replacement of any short-lived building equipment or component before the expiration of its useful life.

Improvements eligible for funding may also include limited supplements or enhancements to mechanical equipment, to the extent they are needed for health and safety of the residents (e.g., air conditioning, heating equipment, and building sprinkler systems), where they do not exist; improvements necessary to comply with HUD's standards in 24 CFR part 8 for accessibility to individuals with handicaps; cost-effective energy efficiency improvements. Improvements eligible for funding as a Capital Improvement Loan do not include maintenance of any building components or equipment.

Capital Improvement assistance may be provided in the form of an amortizing loan. The interest rate on the loan may not be less than three (3) percent (unless HUD determines that a lower rate is necessary to maintain reasonable rental rates, but in no case less than one percent) nor more than (six) 6 percent. The rate is determined taking into consideration the project's ability to absorb the rent increase and the percentage of the tenants receiving rental assistance. Interest on the Capital Improvement Loan starts to accrue and the loan amortization period begins immediately upon disbursement of loan proceeds.

A Capital Improvement Loan to a nonprofit organization may be in the form of a deferred note with a term coincident with the expiration of the project's insured mortgage note, accruing interest at a rate of one (1) percent. The deferred note will become due and payable upon a sale or refinancing of the project or at the expiration of the insured mortgage note.

II. Application and Funding Award Process

A. Obtaining and Preparing Applications

Applicants may obtain application packages from the local HUD Field Office.

An application must reflect the improvements required as a condition of approval of the plan of action. In addition, all other deficiencies, which are to be corrected with funds from sources other than Flexible Subsidy, must be identified on the work write-up and cost estimate and Management Improvement and Operation (MIO) Plan Part II (Forms HUD–9835, HUD–9835–A, and HUD–9835–B) as if Flexible Subsidy were being requested.

B. Submitting Applications

Complete applications for a Flexible Subsidy Capital Improvement Loan pursuant to plans of action receiving preliminary approval under ELIHPA must be received in the HUD field office not more than 30 days following the issuance of preliminary approval. Timeliness of submission will allow the Department to review the application within the 30-day mandatory review period and in time to issue final approval of the plan of action in the period required by 24 CFR 248.219.

After HUD receives the application, it will review it against the improvements agreed upon in the plan of action. HUD may also conduct a comprehensive management review to ensure that all management issues are addressed as part of the MIO plan requirements.

C. Funding Award Process: Compliance with HUD Reform Act

1. Section 103

In accordance with the requirements of section 103 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and HUD's implementing regulations at 24 CFR part 4, no selection information will be made available to applicants or other persons not authorized to receive this information during the period of HUD review and evaluation of the applications. However, applicants that are declared ineligible will be notified of their ineligibility at the time such determination is made.

Noncompetitive individual funding allocations and announcements will be made, as funding determinations are completed, through the HUD Regional or Field Offices after notification to the Congressional delegation. No information regarding any unfunded application will be made available to the public. All awards will be disclosed publicly at the conclusion of each selection.

2. Section 102

Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access, disclosures, and subsidy layering determinations are applicable to assistance awarded under this NOFA.

a. Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and

HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in a **Federal Register** notice of recipients of HUD assistance awarded. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

b. Disclosures. HUD will make available to the public for five years all applicant disclosure reports (Form HUD–2880) submitted in connection with this NOFA. Update reports (also Form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

c. Subsidy-layering determinations. 24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than is necessary to make the assisted activity feasible after taking into account other government assistance. HUD will make the decision with respect to each certification available to the public free of charge, for a three-year period. (See the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on requesting these decisions.) Additional requests for information about applications, HUD certifications, and assistance adjustments, either before assistance is provided or subsequently, are to be made under the Freedom of Information Act (24 CFR part 15).

III. Checklist of Application Submission Requirements

The following items are required as part of each application:

A. A work write-up and cost estimates listing the major project components that have failed, or are likely to fail or seriously deteriorate within the next 24 months; capital items that can be upgraded to meet cost-effective energy efficiency standards approved by HUD; supplements or enhancements to mechanical equipment and the extent they are needed for health or safety reasons; and amounts needed to comply with the Department's standards as set forth in 24 CFR part 8, dealing with accessibility to individuals with handicaps.

B. All documentation required by HUD Notice H–90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs, and by the Notice of Administrative Guidelines to be applied to assistance programs of the Office of Housing, published on April 9, 1991 (56 FR 14436).

C. Anti-lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements for grants exceeding $100,000; and, if warranted, Disclosure of Lobbying Activities (Standard Form-LLL) if other than federally appropriated funds will be or have been used to lobby the Executive or Legislative branches of the Federal Government regarding specific contracts, grants, loans or Cooperative agreements. Form SF–LLL, Byrd Amendment Disclosure and Certification Regarding Lobbying should be submitted only if the applicant determines it is applicable. The SF–LLL form may not need to be submitted with all applications.

D. Environmental Requirements. A comprehensive technical energy analysis which includes a review of all capital improvements for which assistance is requested, and related capital items whose improvement or upgrading will result in cost-effective energy efficiency improvements. The results of the analysis will be a list of specified improvements, their costs and evidence of their cost effectiveness. An energy analysis that is provided by a local utility company and that contains a measure of cost-effectiveness information may be acceptable in meeting this requirement. All applications will be reviewed for compliance with 24 CFR 219.125, Environmental requirements as applicable.

E. MIO Plan Part II, Management Objectives, Action Items, and Sources and Uses of Funds (Forms HUD–9835, 9835–A, and HUD–9835–B). Refer to Section 5–4 of HUD HANDBOOK 4355.1, Rev. 1, Flexible Subsidy, for further discussion of MIO Plan Part II. Management Objectives must be specific, measurable, and must address all management deficiencies including actions which will be performed to improve management and personnel and upgrade tenant services, as appropriate.

Action Items must address all project deficiencies, including those which are to be corrected using resources other than Flexible Subsidy assistance. Action Items must be written in a manner which specifically describes the scope of the work and provides an estimate of the cost of the work to be performed. In addition, they must be structured so as to be highly visible items for which expenditures and work progress can be easily monitored. For example, if boilers are to be replaced, the description should identify the malfunctioning unit, its age, and its location, e.g., building number, basement/roof. A further explanation should identify the replacement unit, the estimated cost per unit and the labor cost associated with the entire replacement.

F. A statement outlining the owner's contribution.

G. For HUD–2530, Previous Participation Certificate, for all principals requiring clearance under these procedures.

H. Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601–4655), and its implementing regulations at 49 CFR part 24, and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

I. Affirmative Fair Housing Marketing plan (Form HUD–935.2).

J. Certification that the applicant will comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Orders 11063, 11246 and 11375, the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, and all regulations issued pursuant to these authorities.

K. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

IV. Deficient Applications

A. Application Review

Within 30 days of receipt by HUD of the application from the owner, HUD will advise the owner, in writing, whether or not the application meets the submission requirements as stated in Part III above. Should HUD fail to inform the owner of its disapproval within the 30-day time frame, the application shall be considered to be approved. If HUD disapproves the application, an ELIHPA plan of action may not receive final approval.

B. Correction of Technical Deficiencies

HUD will notify an applicant, in writing, within five (5) days of receipt of the application of any technical deficiencies in the application. In order to receive further consideration for assistance, the applicant must submit corrections to the Loan Management

Branch within 15 calendar days from the postmark date of HUD's letter notifying the applicant of any such deficiencies. Corrections to technical deficiencies will be accepted within the 15 day time limit.

C. Submission of Substantive Changes

Substantive changes or supplements to the application may be submitted by the applicant at any time. These include changes to the work write up, cost estimates or Form HUD–9835. However, submission of substantive changes will cause HUD's 30-day mandatory review time to recommence upon resubmission and will delay consideration of approval of a plan of action.

V. Others Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). See 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read 24 CFR part 86, particularly the examples contained in Appendix A. Any questions concerning part 86 should be directed to Garry L. Phillips, Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award for assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). (See also Section II.C. of this NOFA.) In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.)

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations 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 during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this Notice of Fund Availability will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this Notice of Fund Availability will not have a significant impact on family formation, maintenance or well being, and therefore, is not subject to review under the order. The NOFA, insofar as it funds emergency repairs to multifamily housing projects, will assist in preserving decent housing stock for families residing there.

Catalog

The Catalog of Federal Domestic Assistance Program number is 14.164.

Authority: Sec. 201, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 26, 1993.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 93–13519 Filed 6–8–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–3377; FR–3153–N–02]

Announcement of Funding Awards for Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of Fiscal Year (FY) 1992 funding awards made under the Historically Black Colleges and

Universities (HBCU) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help HBCUs expand their role and effectiveness in addressing community development needs.

FOR FURTHER INFORMATION CONTACT:

Lyn Whitcomb, Director, Technical Assistance Division, Office of Technical Assistance, Department of Housing and Urban Development, room 7150, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 707–2090. A telecommunications device for hearing impaired persons (TDD) is available at (202) 708–2565. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act). The program is governed by regulations contained in 24 CFR 570.400, 570.404 and 24 CFR part 570, subparts A, C, J, K and O. Only HBCUs, as determined by the Department of Education (DOEd) under 34 CFR 608.2 and in accordance with DOEd's responsibilities under Executive Order 12677, are eligible to submit applications.

The objectives of this program are to help HBCUs expand their role and effectiveness in addressing community development needs, including neighborhood revitalization, housing and economic development in their localities, consistent with the purposes of the 1974 Act; and to held HBCUs address the priority needs of their localities in meeting HUD priorities.

In a Notice of Funding Availability (NOFA) published in the **Federal Register** on April 6, 1991 (57 FR 11666), the Department announced the availability of $4.5 million in funds for the HBCU program. The Department reviewed, evaluated and scored the applications received for funding, based on the criteria in the NOFA. As a result, HUD has awarded grants to 9 Historically Black Colleges and Universities.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of these awards, as follows:

Historically Black Colleges and Universities (HBCU) Fiscal Year 1992 Program Grants

1. Jackson State University—HUD Grant Award: $500,000

President	Contact person
Dr. James E. Lyons, Jackson State University, 1400 J.R. Lynch Street, Jackson, MS 39217, (601) 968–2323.	Dr. Gail Grass, (601) 968–2028 or 2795.

Proposal Description

The project will provide the opportunity for low- to moderate-income individuals to own homes by acquiring and rehabilitating forty vacant homes. The rehabilitated homes will be sold at affordable prices to low- and moderate-income individuals and families currently residing in the target area after they have successfully completed the Homeownership Project Education Program. The proceeds of the sales will be used to finance the Revolving Acquisition and Rehabilitation Fund to continue the project beyond the grant period.

Proposed Features

(1) Increase the supply of standard quality housing through the rehabilitation of existing vacant units;

(2) Provide an opportunity for low- to moderate-income residents of the West Jackson target area to own standard housing; and

(3) Plan and implement neighborhood infrastructure improvements.

2. Lincoln University—HUD Grant Award: $500,000

President	Contact person
Dr. Niara Sudarkasa, Lincoln University, Chester County, PA 19352, (215) 932–8300.	Dr. P.J. Kennedy, (215) 932–4898.

Proposal Description

Funding from HUD will be used to construct a Community Learning Center in the Cecil B. Moore Neighborhood to conduct various programs for neighborhood residents.

Proposed Features

Lincoln University faculty and students will be participating in programs offered at the Center such as courses in entrepreneurial training, job skills training, leadership training and family literacy training. This will serve to strengthen both the community, through provision of vital programs and the presence of role models and mentors.

3. University of Arkansas at Pine Bluff—HUD Grant Award: $499,999

Chancellor	Contact person
Dr. Lawrence A. Davis, Jr., University of Arkansas at Pine Bluff, Box 4146, 1200 North University, Pine Bluff, Arkansas 71601, (501) 541–6512.	Mr. James Mason (501) 543–8030.

Proposal Description

The University of Arkansas—Pine Bluff (UAPB) will enter into a joint venture with Pine Bluff's municipal government in carrying out community reinvestment activities. UAPB's major effort is to assist the City in improving the urban infrastructure, housing conditions and employment opportunities within the City of Pine Bluff. The primary physical area of concentration will be in the northern section of the City where the needs of low- to moderate-income (LMI) families and UAPB are to be addressed in an efficient, economic, and coordinated manner.

Proposed Features

(1) Revitalize the neighborhood housing surrounding the university and improve the general landscape;

(2) Help increase the quality of living standards for LMI households;

(3) Create a stronger economic base by encouraging commercial growth and expansion along a heavily traveled street in front of the University;

(4) Establish two effective vehicles for social and economic empowerment for LMI residents' community development corporation and small industrial transfer unit within a potential enterprise zone on Rhinehart Road between Pollen Street and the Missouri Pacific Road Tracks; and

(5) Implement special programs in coordination with other organizations to reduce drug abuse.

4. Coppin State College—HUD Grant Award: $500,000

President	Contact person
Dr. Calvin W. Burnett, Coppin State College, 2500 West North Avenue, Baltimore, MD 21216–3698, (410) 383–5910.	Mr. Melvin A. Bilal (301) 290–0280.

Proposal Description

This project will allow Coppin State College to expand its sphere of influence beyond the boundaries of the current campus and to spur redevelopment and economic recovery for the Coppin Heights Community.

Proposed Features

(1) Provide preventative intervention such that those with low, very low, and moderate incomes are offered housing alternatives so that their housing situation does not worsen;

(2) Provision of services to those with severe housing needs who, as a group, have not been offered services under previous or current programs; or are the most unlikely, due to physical, mental, or economic conditions to be capable of personally effecting change in their housing condition;

(3) Provide assistance to enhance neighborhood stability in areas not excessively deteriorated;

(4) Provide assistance to families not owning a home to save for a down-payment for the purchase of a home;

(5) Expand partnerships with all levels of government and the private sector, including for-profit and nonprofit organizations in the production of affordable housing; and

(6) Increase the supply of supportive housing for persons with special needs.

5. Bennett College—HUD Grant Award: $500,000

President	Contact person
Dr. Gloria Scott, Bennett College, 900 East Washington Street, Greensboro, NC 27401–3239, Telephone: (919) 370–8626.	Mrs. Estella Johnson, (919) 691–0092.

Proposal Description

The Bennett College Community Development Corporation (CDC) has entered into a relationship with the City of Greensboro in an effort to meet the business needs within the community.

Proposed Features

(1) Through a cooperative effort with the City of Greensboro, the Greensboro Episcopal Housing Ministry, the Foundation for Greater Greensboro, and local lending institutions, the Bennett CDC proposes to increase homeownership by subsidizing the building of eight houses; and

(2) Renovate the Carnegie Building (designated as an Historic site) for the development of an entrepreneurial training center.

6. Norfolk State University—HUD Grant Funds: $500,000

President	Contact person
Dr. Harrison B. Wilson, Norfolk State University, 2401 Corprew Avenue, Norfolk, VA 23504.	Ms. Carolyn W. Bell, (804) 683–8236.

Proposal Description

Norfolk State University proposes to act as a catalyst for community development and neighborhood revitalization in the Brambleton community.

Proposed Features

(1) Expand homeownership for low-income residents by renovating eight Central Brambleton houses;

(2) Research and teach new technologies in the construction of affordable housing;

(3) Through GIS, the collection, compilation and analysis of data to address Norfolk's affordable housing needs and become a repository of demographic data on its minority and low-income population;

(4) Create jobs and opportunity by training and employing the unemployed;

(5) Spur economic development in South Brambleton, much of which is dormant, by providing a study of the relationship of the University to the area's economic potential;

(6) Educate the public regarding fair housing laws and home affordability; and

(7) In conjunction with Plumb Line Ministries (community development corporation), work to create a sense of community by sponsoring community-wide programs in the Brambleton community and make use of "green space."

7. Southern University and A&M College—HUD Grant Award: $500,000

President	Contact person
Dr. Dolores R. Spikes, Southern University and A&M College, P.O. Box 12596, Baton Rouge, LA 70813, (504) 771–5020.	Dr. Alma T. Page, (504) 771–5095.

Proposal Description

The Southern University Community Development Partnership will conduct four major activities under this proposed effort.

Proposed Features

(1) Provide first time home buyer assistance in purchasing standard quality housing;

(2) Acquire and rehabilitate five properties in the mid-city community which have been defined as substandard by the City of Baton Rouge;

(3) Provide cases management to assist potential home buyers in developing personal economic development plans; and

(4) Develop a Community Housing Development Organization.

8. Central State University—HUD Grant Award: $499,593

President	Contact person
Dr. Arthur E. Thomas, Central State University Wilberforce, OB 45384, (513) 376–6332.	Dr. Laxley W. Rodney, (513) 376–6630 or 6180.

Proposal Description

Central State University will utilize the HUD funds as seed money to initiate a two-year program to stimulate economic development through neighborhood revitalization, affordable and fair housing initiatives in Greene County, Ohio.

Proposal Features

(1) Rehabilitate twelve owner-occupied single-family houses under the supervision of the City's building inspector;

(2) Conduct an affordable housing program in Xenia's North End in collaboration with Greene Metropolitan Housing Authority; and

(3) In collaboration with the Greene County Community Housing Resources Board and the Greene Metropolitan Housing Authority develop a comprehensive Fair Housing Plan to implement Federal fair housing law.

9. LeMoyne Owen College—HUD Grant Award: $500,000

President	Contact person
Dr. Burnett Joiner, LeMoyne Owen College, 807 Walker Avenue, Memphis, TN 38126, (901) 942–7301.	Dr. McKinley Martin, (901) 942–6202.

Proposal Description

The project will promote enhancement of economic development in localities of Memphis and Shelby County, Tennessee through an incubator.

Proposed Features

(1) Provide assistance in the development of business plans;

(2) Provide assistance in the development of a purchase order under short-term loan system and loan packages;

(3) Develop a variety of share services as a means for creating new business and servicing incubating businesses, and

(4) Develop a revolving loan fund.

Dated: May 26, 1993.

Mark C. Gordon,

Deputy Assistant Secretary for Operations/ Chief of Staff.

[FR Doc. 93–13520 Filed 6–8–93; 8:45 am]

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Federal Register

Vol. 58, No. 109

Wednesday, June 9, 1993

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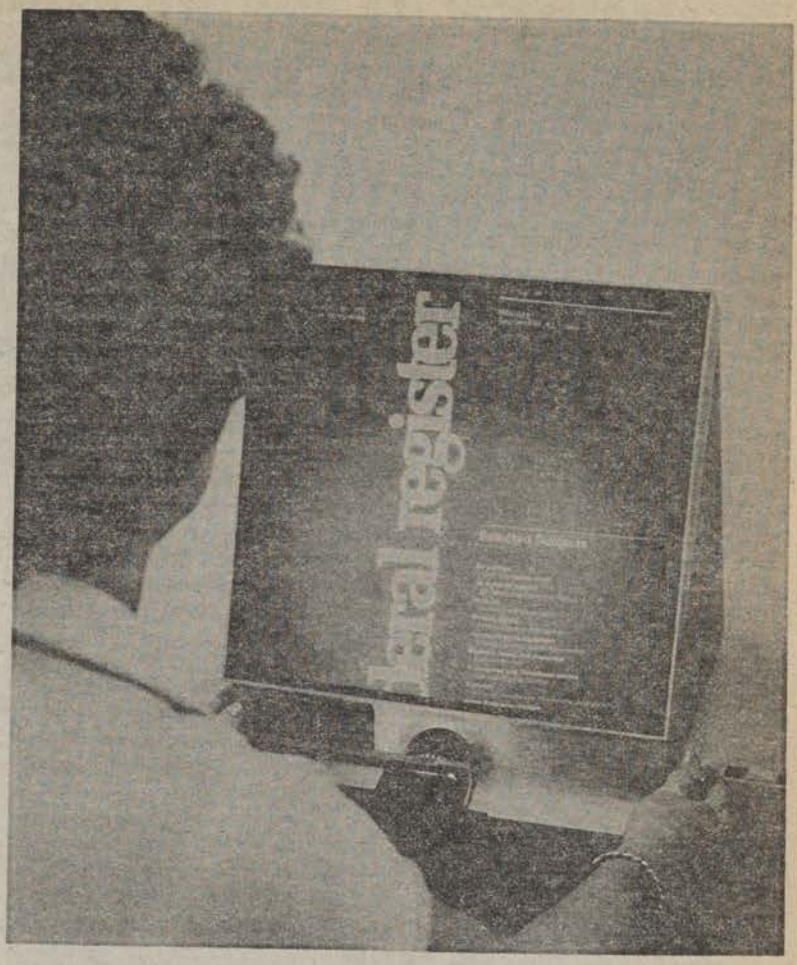

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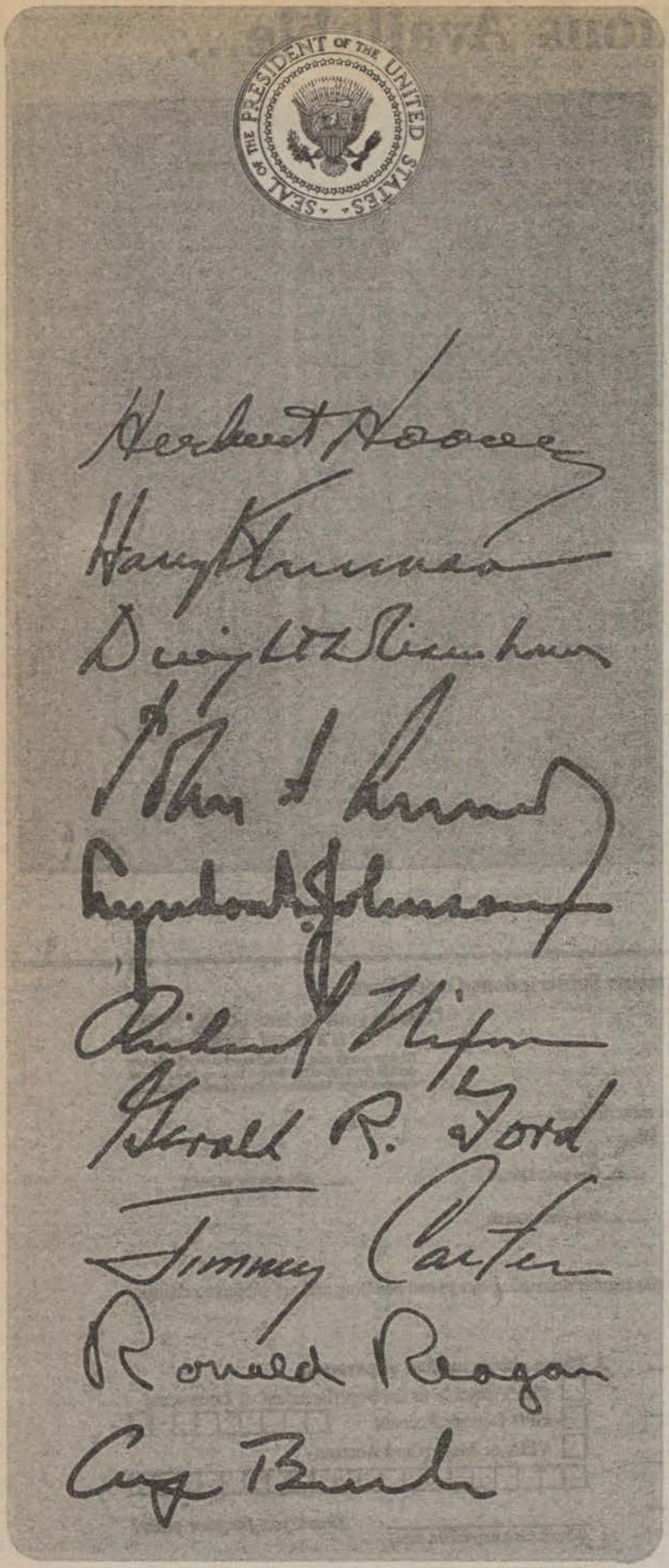

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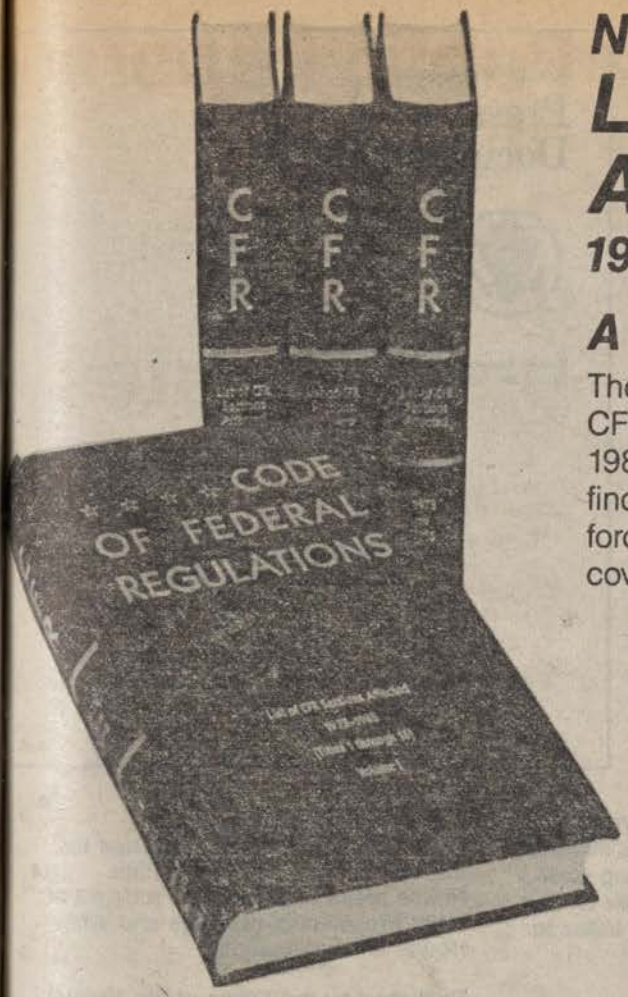

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