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

Rules and Regulations

Federal Register
Vol. 54, No. 123
Wednesday, June 28, 1989

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 225 and 226

[Amdt. No. 1 and 21, Respectively]

Summer Food Service Program and Child Care Food Program; Meat Alternates Used in the Supplement (Snack)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends 7 CFR Parts 225 and 226 to allow the crediting of yogurt as a meat alternate component in the supplement (snack) meal patterns of the Summer Food Service Program (SFSP) and Child Care Food Program (CCFP) regulations. It applies to commercially prepared products covered by the Standard of Identity as established by the Food and Drug Administration (FDA) in the Code of Federal Regulations (CFR) for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively. It does not apply to noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products thereof. While commercial flavorings may be added, such as fruit, fruit juice, nuts, seeds, granola, etc., they shall not be credited towards meeting the second food component requirement in the supplement (snack). This rule is intended to maintain the nutritional integrity of the supplement (snack), while increasing local flexibility in menu planning to meet regional and ethnic food preferences. In addition, this rule amends the meal pattern charts for the Child Care Food Program to clarify the age categories and be consistent with previously distributed guidance.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Cynthia Ford, Chief, Technical Assistance Branch, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 607, 3101 Park Center Drive, Alexandria, Virginia 22302, telephone (703) 756–3556.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and has been classified nonmajor because it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Acting Administrator of the Food and Nutrition Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.559 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule-related notice published in 48 FR 29114, June 24, 1983).

No new reporting or recordkeeping requirements are included which require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Sections 13(f) and 17(g) of the National School Lunch Act (42 U.S.C. 1761(f), 1766(g)) require that the Secretary of Agriculture set minimum nutritional requirements for meals including supplements (snacks) served in the Summer Food Service and Child Care Food Programs. Meal pattern requirements have been established for specific types and amounts of food for each component of the meal service in the Child Nutrition Programs administered by the Department. These meal patterns are designed to provide a flexible framework for food service managers to use in planning nutritious meals from a wide variety of foods and within a diversity of regional, cultural, and ethnic food preferences. From time to time, the Department has reviewed and revised these meal patterns to reflect new knowledge about food consumption habits and the food preferences, as well as nutritional needs, of children.

In accordance with this legislative responsibility, the Department published a proposed rule in the Federal Register on September 8, 1988 (53 FR 34761) to amend the Summer Food Service Program and Child Care Food Program regulations to allow the crediting of yogurt as a meat alternate in the supplement (snack). The proposed rule would allow up to four (4) ounces (weight) of plain or sweetened and flavored yogurt to fulfill the meat/meat alternate component of the supplement (snack). The Department proposed that four (4) ounces (weight) or ½ cup (volume) of yogurt be the equivalent of one (1) ounce of meat/meat alternate. This proposed rule applied only to products covered by the Standard of Identity as established by the FDA for yogurt (21 CFR 131.200), lowfat yogurt (21 CFR 131.203), and nonfat yogurt (21 CFR 131.206).

In current regulations, requirements for the supplement (snack) in the Summer Food Service Program and Child Care Food Program specify a choice of any two (2) of the following four (4) components: fluid milk; meat or meat alternate; vegetable or fruit or juice; and bread or bread alternate. The meat/meat alternate component currently includes lean meat, poultry, fish, egg, cheese, cooked dry beans or peas, peanut butter and other nut or seed butters, and nuts and seeds.

Commenter Reaction

During the 60-day comment period on the proposed rule, the Department received 171 comment letters. The majority of these letters (128) were from child care sponsors and providers. Twelve letters were received from State agencies. Seven letters were received from various food industries and associations and one from a university.

The remaining 23 letters were from the general public.

The overwhelming majority of commenters (170) expressed support for the proposal while one (1) expressed opposition. In general, comments in support of the proposed rule reaffirmed the widespread acceptability of yogurt by children, the nutritional benefits yogurt has in protein and calcium, and the variety it adds for menu planning in the supplemental (snack) meal. The one commenter in opposition to the proposed rule would not support yogurt as a meat alternate and preferred that it be offered as a milk alternate only. In the preamble of the proposed regulation, the Department pointed out the protein comparability of yogurt to other meat alternates such as cheese and cottage cheese and, therefore, offered it as a nutritious addition to the list of approved meat alternates. However, while the calcium contribution of yogurt is recognized, the Department prefers to maintain the nutritional integrity of meals served to children by offering only fluid milk as a beverage, to meet the milk requirement.

Of the total number of commenters, approximately 12 percent requested that the Department consider yogurt as a meat/meat alternate in other meals such as breakfast or lunch or supper. As indicated in the proposal, the Department's position was that yogurt is most appropriately served as one of the two components of a supplement (snack). The Department continues to believe that yogurt is less appropriate as a meat alternate in other meals, based on the sugar content of the majority of yogurt products, the likelihood of decreased fluid milk consumption when yogurt is served in meals which require milk as a beverage, and yogurt's inherently low iron content. These objections to yogurt as a meat alternate in breakfasts, lunches, and suppers are not necessarily relevant for supplements (snacks) where a choice of two out of four components may be served. The Department believes that foods served in the supplement (snack) should make a positive contribution to children's diets by providing additional food energy (calories) and other nutrients needed at mid-morning and mid-afternoon. From time to time, additional appropriate foods have been allowed to be credited in the supplement (snack) that cannot be credited in other meals. An example of such a policy is the crediting of cookies made from whole-grain or enriched flour or meal. While cookies are not creditable as bread alternates at breakfast, lunch, or supper, cookies can be considered an acceptable and appropriate item for the supplement (snack), if served in reasonable serving sizes and on an infrequent basis.

About 8 percent of the commenters in support of the rule also made a further recommendation that yogurt be considered as a milk alternate. Some claimed that serving yogurt as a milk alternate would respond to the needs of children who are lactose intolerant. The Department reminds those commenters and other program managers that if children are unable to drink milk because of a sound medical condition, such as lactose intolerance, the regulations permit documentation to be provided from a recognized medical authority and a recommended substitution may be made.

About tbe same number of favorable commenters (8 percent) requested that additional information be provided either in guidance or in the final rule as to the types of yogurt products that are acceptable and not acceptable under the Standard of Identity. In the preamble of this final rule, the Department has identified the types of yogurt products which are creditable and not creditable as meat alternates for supplements (snacks) in the Summer Food Service and Child Care Food Programs.

Approximately 6 percent of the commenters who are child care providers misinterpreted the proposed rule. Some had interpreted the proposal to mean that yogurt could be credited in all meals while others thought that yogurt could be used interchangeably as a milk alternate. The Department wishes, therefore, to clarify that this final rule applies only to the meat alternate component of the supplement (snack) meal pattern of the Summer Food Service Program and Child Care Food Program.

Some commenters were concerned about the added sweeteners in yogurt; two percent recommended that only plain yogurt be allowed. The Department is sensitive to commenter concerns on this issue, which is the primary reason yogurt was limited to the supplement (snack) only. And since both sweetened and unsweetened yogurts are available in the commercial market, the Department does not find it necessary to regulate the amounts or types of sweeteners and flavorings in the yogurts that meet the Standard of Identity.

Several commenters inquired whether yogurt can be used in the supplemental meal of the infant meal pattern. The Department's intent in publishing this rule is to affect the meat/meat alternate component of the supplement (snack) meal pattern for children ages 1 through 12 participating in the Summer Food Service Program and/or Child Care Food Program. The Department reminds providers that the infant meal pattern within the Child Care Food Program regulations does not require a meat/meat alternate component in the supplement (snack); therefore, the infant meal pattern is unaffected by the proposal.

A minimum number of commenters were concerned about the cost of yogurt; however, cost factors were apparently insignificant according to the majority of respondents in support of the proposed rule.

Several commenters expressed concern about the possibility of selecting both milk and yogurt as the two (2) components used in a supplement (snack). The Department discourages this practice and recommends the serving of a variety of food items from the vegetable or fruit component or bread or bread alternate component to complement the serving of yogurt. Milk and yogurt are too similar in nutritional value, texture, and color, and their simultaneous use would constitute poor menu planning practices.

Several commenters interpreted the proposed rule to allow the service of "homemade" yogurt prepared in an institutional setting. The intent of the proposed rule was to allow only commercially prepared yogurt products, which meet the Standard of Identity established in the CFR. The Department's rationale was based primarily on public health issues concerning safety and sanitation, all of which center on the probable lack of adequate controls. However, in order to be as responsive as possible to program providers, the Department seriously reconsidered the issue of "homemade" yogurt and sought the consultation of the FDA. After careful consideration, the exclusion of serving "homemade" yogurt is being retained in the final rule. The Department believes that, overall, this decision is in the best interest of the children being served under the Summer Food Service and Child Care Food Programs.

Of those who submitted comments, several inquired about the use of frozen yogurt. The Department reminds providers that frozen yogurt products are not covered under this final rule and are not acceptable as yogurt as they are not covered by a Standard of Identity, and are too dissimilar from yogurt in physical and nutritional characteristics. Currently, the Department does not credit nonstandardized foods for reimbursement in any of the Child Nutrition Programs.

Finally, about 3 percent of the total number of commenters took the opportunity to request that the Department consider tofu as a creditable meat/meat alternate, citing its high protein and low fat content. The Department solicited comments on tofu in a former proposed rule, and reminds these commenters that, in the final rule dated May 7, 1986 (51 FR 16807), the Department stated that "the comments did not provide any new nutritional research data on tofu * * * nor any sanitation information regarding the control of bacteria in tofu." Tofu, like frozen yogurt, is not a standardized food. Without such standards, there is no process within FNS that can assure the nutritional consistency of these products.

The Department would like to express its appreciation to all commenters who took the time to respond.

List of Subjects

7 CFR Part 225

Food assistance programs; Grant programs—health, infants and children, Reporting and Recordkeeping requirements.

7 CFR Part 226

Daycare; Food assistance programs. Grant programs—health, infants and children, Reporting and recordkeeping requirements.

Accordingly, Parts 225 and 226 are amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 311, 323 and 336 of the School Lunch and Child Nutrition Amendments of 1986, Pub. L. 99–500 and 99–591, 100 Stat. 1783, 1783–359 to 362, 3341–363 to 365; Pub. L. 97–35, secs. 803, 809, 816, and 817(a)–(b), 95 Stat. 357, 524, 527 and 531 (42 U.S.C. 1759a, 1761, 1785, and 1759); Pub. L. 98–499, secs. 203 and 206, 94 Stat. 2599, 2600, and 2601 (42 U.S.C. 1759a and 1761); Pub. L. 95–627, secs. 5(c)–(d), 7(b), and 10(c)(2), 92 Stat. 3603, 3620, 3622, and 3624 (42 U.S.C. 1759a and 1761); Pub. L. 95–166, sec. 2, 91 Stat. 1325 (42 U.S.C. 1761); Pub. L. 91–248, sec. 7, 84 Stat. 207, 211 (42 U.S.C. 1759a); unless otherwise noted.

2. In Section 225.2 a new definition for yogurt is added in alphabetical order to read as follows:

§ 225.2 Definitions

* * * * *

"Yogurt" means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively.

3. In § 225.16, the table in paragraph (d)(3) is amended by adding a new entry for yogurt after the entry for "Peanuts or soynuts * * *" to read as follows:

§ 225.16 Meal service requirements.

* * * * *

(d) * * *

Supplemental Food

(3) * * *

Food components	Minimum amount
Meat and Meat Alternates	
* * * * *	
or	
Yogurt, plain, or sweetened and flavored.	4 oz. or ½ cup
* * * * *	

* * * * *

PART 226—CHILD CARE FOOD PROGRAM

1. Authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16 and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1782a, 1765 and 1766).

2. In § 226.2 a new definition for yogurt is added in alphabetical order to read as follows:

§ 226.2 Definitions.

* * * * *

"Yogurt" means commercially coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively.

3. In § 226.20

a. the tables in paragraphs (c)(1), (c)(2), and (c)(3) are amended by revising the age category column headings.

b. the table in paragraph (c)(3) is amended by adding a new entry for yogurt after the entry for "Peanuts or soynuts * * *".

The revisions and addition read as follows:

§ 226.20 Requirements for meals.

* * * * *

(c) * * *

Breakfast

(1) * * *

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12
* * * * *			

Lunch or Supper

(2) * * *

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12
* * * * *			

Supplemental Food

(3) * * *

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12
* * * * *			
Meat and Meat Alternates			
* * * * *			
or			
Yogurt, plain, or sweetened and flavored.	2 oz or ¼ cup.	2 oz or ¼ cup.	4 oz or ½ cup.
* * * * *			

* * * * *

George A. Braley,

Acting Administrator.

Date: June 22, 1989.

[FR Doc. 89–15248 Filed 6–27–89; 8:45 am]

BILLING CODE 3410–30–M

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1989–8]

Trade Association Solicitation

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On March 15, 1989, the Commission published the text of a revision to 11 CFR 114.8(f), a regulation governing the solicitation of parent and subsidiary corporations by a trade association or a trade association's separate segregated fund. 54 FR 10622. This regulation applies the basic rule permitting trade associations to solicit the executive or administrative personnel, stockholders, and families of such personnel and stockholders (the "restricted class") of the trade

association's member corporations, subject to certain exceptions, established by the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. 441b(b)(4)(D). Section 114.8(f) governs situations where a parent corporation is a member of a trade association but its subsidiary is not, or vice versa. The Commission announces that this rule is effective as of June 28, 1989.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION: 2 U.S.C. 438(d) requires that regulations prescribed by the Commission to implement Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The revision to 11 CFR 114.8(f) was transmitted to Congress on March 10, 1989. Thirty legislative days expired in the Senate on June 2, 1989 and in the House of Representatives on May 15, 1989.

Announcement of Effective Date: 11 CFR 114.8(f), as published at 54 FR 10622, is effective as of June 28, 1989.

Dated: June 22, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-15295 Filed 6-27-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

RIN 3064-AA78

Foreign Banks

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is publishing an addendum to its previously published (April 7, 1989) final regulation dealing with the International Banking Act ("IBA") which is to become effective on July 6, 1989. In regard to exemptions from deposit insurance for branches of foreign banks, the exemption for initial deposits of less than $100,000 by depositors who are neither citizens nor residents of the U.S. at the time of the initial deposit will be included in the final regulation. No other changes to the regulation will be made at this time.

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, or Joseph Duffy, Senior Financial Analyst, Division of Bank Supervision, (202) 898-6850 or (202) 898-6821, respectively, or Katharine H. Haygood, Senior Attorney, (202) 898-3732, 550 17th Street NW., Washington, DC 20429.

EFFECTIVE DATE: July 6, 1989.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The portions of the regulation affected by this publication contain no collections of information.

Discussion

On April 7, 1989 (at 54 FR 14064), the FDIC published a revision of its regulation dealing with foreign banks, 12 CFR Part 346. Although the regulation was published in final form with an effective date 90 days after publication (July 6), the FDIC requested comments on several points for a 60-day period (until June 6). Comment was specifically invited on the concept of the "initial deposit" as a means of measuring retail deposit activity (§ 346.6), on the exemptions from the deposit insurance requirement (§ 346.6(a)), and on the application of the waiver of offset to notes included by regulation within the term deposit (see § 346.19(d)(1)).

Eleven comments were received; and one of these comments concerned a matter not at issue, the denomination in U.S. dollars of assets pledged to the FDIC. The overwhelming majority of the comments related to the exemptions from deposit insurance, specifically to the deletion of the exemption currently embodied at § 346.6(a)(7). These comments argued that the exemption for initial deposits of a depositor who is neither a U.S. citizen nor resident at the time of the initial deposit should be retained, primarily because branches rely heavily on the exemption and its elimination would require substantial costs either to remain uninsured or to obtain insurance. Some argued that the International Banking Act was intended to cover only domestic deposits, the implication being that these deposits are not domestic, and that other entities accept such deposits without having to obtain deposit insurance. Commenters also maintained that the exemption has worked well as it currently exists and that the volume of these deposits is in excess of the "catchall" de minimis exemption, even at the 5% level included in the final regulation.

After considering all of the comments, the FDIC has decided to retain both the 5% de minimis provision (§ 346.6(a)(5)) and the current "noncitizen, nonresident" exemption (current § 346.6(a)(7), adopted here as § 346.6(a)(6)). (Although one comment related to computation of the de minimis provision using a base other than deposits, we believe that the basis for computation should be "deposits" pursuant to the definition in the Federal Deposit Insurance Act.) Although deposits of persons who remain noncitizens and nonresidents after the initial deposit are not domestic deposits and are not covered by the IBA, the FDIC does have concerns about depositors who become domestic depositors by either residence or citizenship in the United States. In this vein, it is crucial that proper notification of uninsured status be given to depositors. Each uninsured branch should verify that it is in compliance with § 346.7, which requires such notification. If a branch is not in compliance, that branch should notify the FDIC's Office of Analysis and Special Activities, Division of Bank Supervision, 550 17th Street NW., Washington, DC 20429, to determine what steps should be taken to attain compliance. In addition, it is recommended that uninsured branches consider notifying each depositor periodically (perhaps annually) of the uninsured status of the branch's deposits.

Comment also was sought on the use of the "initial deposit" as the tool for measuring retail activity. Two comments argued that the initial deposit does not reflect the true nature of the activity as retail or wholesale. Another comment believed the tool is acceptable. The FDIC continues to have concerns but believes that changes would require long-term study, so changes will not be made at this time. We continue to believe that many branches are not adequately monitoring initial deposits, and branches are once again cautioned to maintain records of initial deposits for the purposes of complying with this regulation.

The FDIC's proposed regulation on the extension of deposit liabilities has not been finalized, and the FDIC has decided to defer the question of the application of the waiver of offset to notes included as deposits. Only one comment referred to this matter, and it opposed the application of the waiver of offset.

This amendment will become effective on July 6, at the time the previously published regulation becomes effective. The amendment is restoring an exemption, so no delayed effective date is necessary.

Regulatory Flexibility Analysis

As stated in the final rule published on April 7, 1989 and in the proposed rule, the Board of Directors certified that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are presently 24 foreign banks which have insured branches, and they are world-wide institutions with assets ranging from approximately $2 to $240 billion. The Regulatory Flexibility Act requirement of 5 U.S.C. 604 that a final regulatory flexibility analysis be prepared does not apply.

In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 346

Bank deposit insurance, Foreign banks, banking, Banks, banking, Reporting and recordkeeping requirements.

For the reasons stated in this notice, and pursuant to the FDIC's authority under the Federal Deposit Insurance Act and the International Banking Act, FDIC hereby amends Part 346 of title 12 of the *Code of Federal Regulations* as follows:

PART 346—FOREIGN BANKS

1. The authority citation for Part 346 reads as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3108.

2. In § 346.6, the introductory text to paragraph (a) is being republished, and a new paragraph (a)(6) is being added as follows:

§ 346.6 Exemptions from the insurance requirement.

(a) *Deposit activities not requiring insurance.* A State branch will not be deemed to be engaged in a domestic retail deposit activity which requires the branch to be an insured branch under § 346.4, if initial deposits in an amount of less than $100,000 are derived solely from the following:

* * * * *

(6) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit.

* * * * *

By Order of the Board of Directors pursuant to a unanimous notational vote.

Dated at Washington, DC, this 20th day of June, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-15236 Filed 6-27-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-91-AD; Amdt. 39-6244]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR42 series airplanes, which requires lockwiring of the engine oil pressure transmitter manifold drain plug. This amendment is prompted by reports of the plug working loose. This condition, if not corrected, could result in loss of oil and engine shutdown.

EFFECTIVE DATE: July 5, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Aerospatiale Model ATR42 series airplanes. There have been reports of the engine oil pressure transmitter manifold drain plug becoming loose. This condition, if not corrected, could result in loss of oil and engine shutdown.

Aerospatiale has issued Service Bulletin ATR42-79-0006, Revision 1, dated April 18, 1989, which describes replacing and lockwiring the drain plug to an adjacent locknut. DGAC France has classified this service bulletin as mandatory, and has issued French Airworthiness Directive 89-042-018(B)R1 to address this subject.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires replacement and lockwiring of the engine oil pressure transmitter manifold drain plug, in accordance with the service bulletin previously described.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Aerospatiale: Applies to Model ATR42 series airplanes, Serial Numbers 003 through 138, certificated in any category. Compliance required within 10 days after the effective date of this AD, unless previously accomplished.

To prevent loss of engine oil and engine shutdown, accomplish the following:

A. Replace and lockwire the drain plug and adjacent locknut on the engine oil pressure manifold, in accordance with Aerospatiale Service Bulletin ATR42-79-0006, Revision 1, dated April 18, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 5, 1989.

Issued in Seattle, Washington, on June 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14905 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-85-AD; Amdt. 39-6245]

Airworthiness Directives; McDonnell Douglas Model DC-8, DC-9, and C-9 (Military) Series Airplanes, Including Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain McDonnell Douglas Model DC-8, DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series airplanes and Model MD-88 airplanes, which requires an initial visual or dye penetrant inspection, repetitive dye penetrant inspections, and replacement, as necessary, of the rudder pedal bracket. This amendment is prompted by several reports of fatigue failures in the captain's rudder pedal bracket assembly on Model DC-9 series airplanes. This condition, if not corrected, could result in loss of rudder and braking control at either the captain's or first officer's position.

EFFECTIVE DATE: July 5, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-LOO (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, DC9/MD80 Program Manager, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5321.

SUPPLEMENTARY INFORMATION: One operator recently reported that a captain of a Model DC-9-31 series airplane tried to set the parking brakes, when a snap was heard, and the rudder pedals on the captain's side went to a horizontal position. Subsequent investigation revealed that the captain's pedal bracket assembly, P/N 5616067, had failed at all four points, where the bracket assembly attaches to the aircraft structure. The total accumulated time on the airplane was 50,426 hours and 66,765 total cycles.

In 1984, McDonnell Douglas received a report of a similar failure on a Model DC-9, which was attributed to fatigue. This part had accumulated 42,648 flight hours and 51,498 cycles. In this case, the captain was trying to set the parking brakes, but was unable to do so due to "mushy" rudder/brake pedals. The operator then accomplished a fleet-wide inspection campaign, but obtained negative results.

Metallurgical analysis by Douglas revealed that the bracket, which is a magnesium casting, had failed due to fatigue, initiating at the four attach points. Several other fatigue origins were observed in areas that had not failed. The consequence of such a failure is the loss of rudder and braking controls at the captain's position.

No failures of the rudder pedal bracket have been reported on Model DC-8 series airplanes; however, the bracket design on the Model DC-8 is similar to that of the Model DC-9. Therefore, the FAA has determined that Model DC-8 series airplanes would be subject to the same unsafe condition as described above.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletins A27-273 (DC-8) and A27-307 (DC-9/DC-9-80/MD-88), both dated May 16, 1989, which describe procedures for accomplishing an initial visual or dye penetrant inspection of the rudder pedal bracket assembly, followed by repetitive dye penetrant inspections to ensure that no cracks exist.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections for cracks in the first officer's rudder pedal bracket, and replacement of the bracket assembly if cracks are found, in accordance with the service bulletins previously described. Inspections are to continue after replacement is accomplished.

Due to the multiple-site nature of the reported cracking, the accumulated fatigue within the bracket, and the unpredictable nature of the crack propagation in the castings, there currently is no practical rework procedure or modification of the bracket which would preclude the necessity of the continual inspections required by this AD action. Accordingly, this AD does not permit "interim repairs." McDonnell Douglas is developing a design improvement which, when installed, would terminate the need for further inspections. When this design is developed and approved, the FAA may consider revising this AD to require its installation.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to Model DC–8, DC–9 and C–9 (Military) series airplanes, including Model DC–9–80 series airplanes and Model MD–88 airplanes. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the rudder pedal bracket assembly, which could result in the loss of rudder and braking control at either the captains' or first officer's positions, accomplish the following:

A. Prior to the accumulation of 40,000 landings or within 30 days after the effective date of this AD, whichever occurs later, perform either a visual or dye penetrant inspection for cracks of the captain's and first officer's rudder pedal bracket, part numbers (P/N) 5616067 and 5616068, respectively, in accordance with McDonnell Douglas Alert Service Bulletins A27–273 (for Model DC–8 series) or A27–307 (for Model DC–9 and DC–9–80 series and Model MD–88), as applicable, both dated May 16, 1989.

Note: McDonnell Douglas Alert Service Bulletins A27–273 (DC–8) and A27–307, both dated May 16, 1989, are hereinafter referred to as ASB A27–273 and ASB A27–307, respectively.

1. If an initial visual inspection is accomplished, and no cracks are found, perform a dye penetrant inspection of the rudder pedal bracket assembly within 180 days after the visual inspection, and thereafter accomplish dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier.

2. If an initial dye penetrant inspection is accomplished, and no cracks are found, accomplish repetitive dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier.

B. If cracks are detected, prior to further flight, remove and replace the rudder pedal bracket assembly in accordance with ASB A27–273 or A27–307, as applicable. Prior to the accumulation of 40,000 landings after replacement with the new part, resume the repetitive inspections in accordance with paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective July 5, 1989.

Issued in Seattle, Washington, on June 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–14906 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–88–AD; Amdt. 39–6246]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, which requires replacement of electrical wiring to the fuel shutoff valve for each engine. This amendment is prompted by reports of the fuel shutoff valve wiring shorting to the surrounding electrical conduit, which resulted in circuit breaker tripping and inability to operate the associated fuel shutoff valve. This condition, if not corrected, could result in the inability to shutoff the supply of fuel in the event of an engine fire.

EFFECTIVE DATE: July 7, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Michael E. Dostert, Propulsion Branch, ANM–140S; telephone (206) 431–1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD applicable to certain Boeing Model 747–400 series airplanes, which requires replacement of electrical wiring to the fuel shutoff valve for each engine. This amendment is prompted by three reported cases of engine fuel shutoff valve circuit breakers tripping, which resulted in the inability

to operate the associated fuel shutoff valve. The tripping of circuit breakers was caused by chafed wires shorting against surrounding conduit in the engine nacelle strut. This condition, if not corrected, could result in the inability to shutoff the supply of fuel to an engine. Replacing the length of wire in the conduit with new wire sleeved with teflon will reduce the possibility of chafing of the wire and subsequent shorting of the fuel shutoff valve wiring.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–28A2130, dated April 18, 1989, which describes procedures for replacement of a 15-foot section of engine fuel shutoff valve wiring in each engine nacelle strut with new wire in teflon sleeving.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires replacement of the wire in accordance with the service bulletin previously described.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–28A2130, dated April 18, 1989, certificated in any category. Compliance required within 15 days after the effective date of this AD, unless previously accomplished.

To prevent inability to close the engine fuel shutoff valve, accomplish the following:

A. Modify the engine fuel shutoff valve wiring in accordance with the procedures described in Boeing Alert Service Bulletin 747–28A2130, dated April 18, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 7, 1989.

Issued in Seattle, Washington, on June 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–14894 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AWP–3]

Establishment of Transition Area, Lovelock, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area at Lovelock, Nevada, to provide controlled airspace for instrument approaches to be conducted at Derby Field.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

SUPPLEMENTARY INFORMATION:

History

On March 17, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Lovelock, NV, to provide controlled airspace for instrument approaches to be conducted at Derby Field (54 FR 11232). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment of Part 71 of the Federal Aviation Regulations establishes a transition area at Derby Field, Lovelock, NV. This action will establish controlled airspace for aircraft executing instrument approach procedures at Derby Field.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and 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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), is amended, as followed:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lovelock, NV [NEW]

The airspace extending upward from 700 feet above the surface within a 5-mile radius of Derby Field, Lovelock, NV, lat. 40°04'05" N., long. 118°33'42" W. and within 4 miles each side of the 333° radial (317T) of Lovelock VORTAC extending to 12 miles north Lovelock VORTAC, and that airspace extending upward from 1,200 feet above the surface beginning at lat. 40°37'00" N., long. 118°36'30" W., to lat. 40°12'00" N., long. 118°55'00" W., to lat. 40°03'00" N., long. 118°52'00" W., to lat. 40°18'00" N., long. 118°22'00" W., to lat. 40°27'00" N., long. 118°34'00" W., to point of beginning and beginning at lat. 40°05'30" N., long. 118°27'00" W., to lat. 40°06'00" N., long. 118°23'00" W., lat 40°03'00" N., long. 118°22'00" W., to lat. 40°01'00" N., long. 118°28'00" W., thence via a 5-mile radius of Derby Field to point of beginning.

Issued in Los Angeles, California, on June 13, 1989.

Merle D. Clure,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-15209 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 771

[Docket No. 90402-9102]

General License GATS

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: General License GATS authorizes the departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. registry civil aircraft for temporary sojourn abroad. The Bureau of Export Administration (BXA) is amending this General License by replacing the requirement for a letter requesting export authorization for non-returned U.S. registry aircraft, equipment, parts, accessories or components with a Form BXA-699P, Request to Dispose of Commodities or Technical Data Previously Exported.

EFFECTIVE DATE: This rule is effective June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The requirement for submitting a Form BXA-699P as set forth in § 771.19 supersedes the requirement for a letter request for export authorization for non-returned aircraft (approved by the Office of Management and Budget under Control Number 0694-0039). The Form BXA-699P is approved by the Office of Management and Budget under Control Number 0694-0010. Public reporting for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0694-0010, Washington, DC 20503.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

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

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require this rule to be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 771 of the Export Administration Regulations is amended as follows:

PART 771—[AMENDED]

1. The authority citation for 15 CFR Part 771 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of Dec. 29, 1981, Pub. L. 98-64 of July 12, 1985 and Pub. L. 100-418 of Aug. 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of Dec. 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of Sept. 9, 1985 (50 FR 36861, Sept. 10, 1985) as affected by

notice of Sept. 4, 1986 (51 FR 31925, Sept. 8, 1986); Pub. L. 99-440 of Oct. 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of Oct. 27, 1986 (51 FR 39505, Oct. 29, 1986).

2. Section 771.19(c) is revised to read as follows:

§ 771.19 General license GATS; aircraft on temporary sojourn.

* * * * *

(c) *Request for authorization of non-return; use of form BXA-699P.* Where it is decided that a U.S. registered aircraft that departed the United States under authority of this General License GATS, or any of its equipment, parts, accessories, or components, will be sold or leased abroad, or will not be returned to the United States for any other reason, a request for authorization shall be submitted on a Form BXA-699P, Request to Dispose of Commodities or Technical Data Previously Exported, to the Office of Export Licensing at the address in § 771.2(h). (*See* § 774.3 for more information on reexport authorizations.) Such requests shall comply with all applicable provisions of the Export Administration Regulations covering exports directly from the United States to the proposed destination, and shall be accompanied by any documents that would be required in support of an application for export license for shipment of the same commodities directly from the United States to the proposed destination.

Dated: June 22, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-15300 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 87N-0113]

Cutaneous Carbon Dioxide ($PcCO_2$) Monitor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued orders in the form of letters to manufacturers to reclassify the cutaneous carbon dioxide ($PcCO_2$) monitor from class III to class II. The order is being codified in the Code of Federal Regulations as specified herein.

EFFECTIVE DATES: The reclassification was effective December 9, 1988. This regulation becomes effective July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: FDA conducted an extensive literature review on cutaneous carbon dioxide ($PcCO_2$) monitors and sent this information to the Anesthesiology and Respiratory Therapy Devices Panel (the Panel) on January 17, 1986, requesting their comments on FDA's initiated reclassification of the cutaneous carbon dioxide ($PcCO_2$) monitor from class III to class II. The Panel members supported FDA's reclassification proposal. FDA announced in the notice in the **Federal Register** of May 16, 1986 (51 FR 18042), that a meeting of the Panel would be held to discuss and obtain a Panel recommendation on the proposed reclassification. During the open public meeting on June 5 and 6, 1986, the Panel considered FDA's reclassification proposal and its analysis of the data supporting the reclassification. The Panel recommended that the cutaneous carbon dioxide ($PcCO_2$) monitor be reclassified from class III (premarket approval) into class II (performance standards).

On July 25, 1988 (53 FR 27878), FDA published a notice of proposed reclassification. Interested persons were invited to submit comments by September 23, 1988. Two comments were submitted. The comments are addressed in the reclassification order.

On December 9, 1988, FDA sent to all known manufacturers of the device a letter (order) which reclassified the cutaneous carbon dioxide ($PcCO_2$) monitor, and substantially equivalent devices of this generic type, from class III to class II. Accordingly, as required by 21 CFR 860.134(b)(7) of the regulations, FDA is announcing the reclassification of the generic type of device from class III to class II. In addition, FDA is issuing a final regulation that codifies the reclassification of the device by adding new § 868.2480 *Cutaneous carbon dioxide ($PcCO_2$) monitor.*

After considering the economic consequences of approving this reclassification, FDA certifies that this final rule requires neither a regulatory impact analysis as specified in Executive Order 12291 nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354). This reclassification will not have a significant economic impact on a substantial number of small entities.

All manufacturers of cutaneous carbon dioxide ($PcCO_2$) monitor devices will be relieved of the costs of complying with the premarket approval requirement in section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e).

There are no offsetting costs that manufacturers would incur from reclassification into class II other than those associated with meeting a standard, once established. The magnitude of the economic savings attributable to this reclassification is dependent upon the number of premarket approval studies that would have been required of the manufacturers had reclassification not occurred. This savings may not be reliably calculated to permit an accurate quantification of the economic savings.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 868 is amended to read as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR Part 868 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. New § 868.2480 is added to Subpart C to read as follows:

§ 868.2480 Cutaneous carbon dioxide ($PcCO_2$) monitor.

(a) *Identification.* A cutaneous carbon dioxide ($PcCO_2$) monitor is a noninvasive heated sensor and a pH-sensitive glass electrode placed on a patient's skin, which is intended to monitor relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunct to arterial carbon dioxide tension measurement.

(b) *Classification.* Class II (performance standards).

Dated: June 8, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15194 Filed 6-27-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 222, 251, 300, and 600

OMB Control Numbers; Correction

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: This action corrects final regulations regarding display of valid OMB Control Numbers published on December 6, 1988 (53 FR 49141).

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Telephone: (202) 732-2887.

SUPPLEMENTARY INFORMATION: In the December 6, 1988 **Federal Register**:

1. On page 49143, column one, the title of Part 74 is corrected to read "ADMINISTRATION OF GRANTS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND NONPROFIT ORGANIZATIONS".

2. On page 49143, column three, item 13., the authority citation for Part 222 is corrected to read "Authority: 20 U.S.C. 236-241-1, and 242-244, unless otherwise noted.".

3. On page 49144, column three, item 36., "300.150" is removed from the list of sections amended.

4. On page 49146, column two, item 80., §§ 600.4, 600.5, 600.6, and 600.7 are added to the list of sections amended.

(44 U.S.C. 3501-/3520; 5 CFR Part 1320)

Dated: June 22, 1989.

Steven Y. Winnick,

Acting General Counsel.

[FR Doc. 89-15341 Filed 6-28-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AD90

Combined Ratings Table; Procedural Usage

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulation for procedural usage of the Combined Ratings Table. This change facilitates a uniform method of calculating the combined degree of disability where multiple disabilities arising from a single disease entity are combined with other disabilities. This change will eliminate an ambiguity regarding the stage at which disability evaluations are to be rounded in determining the combined degree of disability.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Veterans' Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 7067-68 of the **Federal Register** of February 16, 1989 (54 FR 7067), the VA published a proposed regulatory amendment on usage of the Combined Ratings Table.

Interested persons were invited to submit comments, suggestions, or objections by March 20, 1989. Since no comments, suggestions, or objections were received, the proposed amendment is adopted as final.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is nonmajor for the following reasons.

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

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

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

(The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109)

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: June 5, 1989.

Edward J. Derwinski,

Secretary.

PART 4—[AMENDED]

38 CFR Part 4 SCHEDULE OF RATING DISABILITIES, is amended by revising the introductory text, paragraphs (a) and (b) of § 4.25 as set forth below:

§ 4.25 Combined ratings table.

Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent.

(a) To use table I, the disabilities will first be arranged in the exact order of their severity, beginning with the greatest disability and then combined with use of table I as hereinafter indicated. For example, if there are two disabilities, the degree of one disability will be read in the left column and the degree of the other in the top row, whichever is appropriate. The figures appearing in the space where the column and row intersect will represent the combined value of the two. This combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. Thus, with a 50 percent disability and a 30 percent disability, the combined value will be found to be 65 percent, but the 65 percent must be converted to 70 percent to represent the final degree of disability. Similarly, with a disability of 40 percent, and another disability of 20 percent, the combined value is found to be 52 percent, but the 52 percent must be converted to the nearest degree divisible by 10, which is 50 percent. If there are more than two disabilities, the disabilities will also be arranged in the exact order of their severity and the combined value for the first two will be found as previously described for two disabilities. The combined value, exactly as found in table I, will be combined with the degree of the third disability (in order of severity). The combined value for the three disabilities will be found in the space where the column and row intersect, and if there are only three disabilities will be converted to the nearest degree divisible by 10, adjusting final 5's upward. Thus, if there are three disabilities ratable at 60 percent, 40 percent, and 20 percent, respectively, the combined value for the

first two will be found opposite 60 and under 40 and is 76 percent. This 76 will be combined with 20 and the combined value for the three is 81 percent. This combined value will be converted to the nearest degree divisible by 10 which is 80 percent. The same procedure will be employed when there are four or more disabilities. (See table I).

(b) Except as otherwise provided in this schedule, the disabilities arising from a single disease entity, e.g., arthritis, multiple sclerosis, cerebrovascular accident, etc., are to be rated separately as are all other disabiling conditions, if any. All disabilities are then to be combined as described in paragraph (a) of this section. The conversion to the nearest degree divisible by 10 will be done only once per rating decision, will follow the combining of all disabilities, and will be the last procedure in determining the combined degree of disability.

* * * * *

(Authority: 38 U.S.C. 355)

[FR Doc. 89-15238 Filed 6-27-89; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 36

RIN 2900-AD39

Loan Guaranty; Payment of Loan Guaranty Claims

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations to implement the provisions of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987. The law prescribes different dates for use in computation of the loan indebtedness in connection with the determination of net value and payment of the claim under loan guaranty in cases involving VA requested forbearance, voluntary bankruptcy or excessive delay, caused by VA, in the liquidation sale.

DATES: These regulations are effective July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-6376.

SUPPLEMENTARY INFORMATION: Under section 1810 of Title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home which is treated as real estate under State law, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

On March 31, 1989, VA published in the **Federal Register** (54 FR 13321) proposed regulations to implement changes in the formulas used in paying loan guaranty claims which were prescribed by Pub. L. 100-198. Two public comments were received. Both commentators favored the proposed amendment. One, however, suggested that in cases where the liquidation sale is delayed by more than 30 days as a result of forbearance extended at the request of the Secretary or a voluntary case commenced under Title 11, United States Code (relating to bankruptcy), the cutoff date used for computation of the indebtedness should be the date the Secretary determines a foreclosure sale would have taken place if there had been no such delay. The proposed amendment to 38 CFR 36.4321 establishes a cutoff date 30 days after the date the Secretary determines a foreclosure sale would have taken place under these circumstances.

Although the commentator did not provide a justification for this suggestion, we understand that there will be situations in which the loan holder would have had the right to convey a property to the Secretary after foreclosure if the foreclosure sale had not been delayed but, based on the account indebtedness as of the cutoff date which would be applicable pursuant to this amendment, the holder would have no such right (i.e., the case would become and remain a no-bid). Such cases would not qualify for the no-bid relief intended by the statute.

Under 38 U.S.C 1832(c)(10)(C) provisions for no-bid relief are only applicable in cases where there is an "excessive" delay in foreclosure due to the extension of forbearance or a voluntary bankruptcy. The definition of "excessive" was left to administrative discretion and, in our opinion, a delay of 30 days constitutes a minimum period of delay to consider "excessive" in the context of foreclosure proceedings. The decision as to whether to establish a cutoff date prior to the 30 day point, at 30 days or after 30 days involved further discretion because there are advantages and disadvantages to all parties which will vary with the specific date adopted.

Use of the earliest possible cutoff date, which would be the date the sale would have taken place if there had been no delay, will avoid the maximum number of no-bids; use of later dates will progressively reduce the number of no-bids avoided. At the same time, however, it is important to remember that once a cutoff date is established no interest which accrues thereafter is allowable in the final accounting between the holder and the Secretary.

Only a small number of the cases which are subject to this paragraph will become no-bids on the 30th day after a foreclosure sale would have occurred had there been no delay; the others will be more or less evenly spaced over the five to nine month period during which foreclosure is typically delayed through bankruptcy (we anticipate few cases in which it would be appropriate for the Secretary to request forbearance under the circumstances addressed by this regulation because there is little reason to expect a borrower to reinstate an account when the net value of the property approximates the unguaranteed portion of the indebtedness; moreover, the loan holder has no obligation to agree to extend such forbearance). However, the earlier a cutoff date is established, the greater the amount of interest which will be excluded from the indebtedness in the loan holder's accounting with VA. Thus, if a case would become a no-bid 35 days after the original sale date, adoption of the suggestion would cost the loan holder 35 days worth of interest in its claim under the guaranty; in the same situation, applying the cutoff date specified in the amendment would only cost the loan holder 5 days worth of interest.

The determination to set a cutoff date 30 days after the date a foreclosure sale would have occurred involved balancing a reduction in the number of no-bids avoided with a reduction in the amount of interest loan holders would have to forego in their claims under loan guaranty in order to avoid no-bids. If the average delay in foreclosure due to a bankruptcy were seven months, and a loan holder had ten cases which would move from conveyance to no-bid status during each of those months, application of the amendment would result in ten of the cases remaining no-bids. Adoption of the suggestion would require VA to accept conveyance in all 70 cases, but would cost that loan holder one month's accrued interest in each case as a result of the earlier cutoff date. Assuming an average monthly interest accrual of $600 per case, the holder would avoid ten no-bids at a cost of $42,000.

In view of the need to balance no-bid avoidance with the loss of accrued interest otherwise payable to loan holders in their claims, it is our opinion that the provisions of the amendment as written are reasonable and they are being adopted as originally proposed, with one minor change. In section 36.4319, the regulation previously required the holder to forward a copy of a notice of foreclosure sale to VA at or before the date of first publication, posting or other notice, but in any event not less than 10 days prior to the date of sale. It was proposed to change this section to provide that a copy of the notice of sale be delivered within 30 days prior to the scheduled liquidation sale or 5 days after the date of first publication of the notice, whichever is later. This was an imprecise choice of words. The final regulations have been clarified to provide that the holder must deliver a copy of the notice of sale to VA at least 30 days prior to the liquidation sale or within 5 days after the date of first publication of the notice, whichever is later.

The Secretary hereby certifies that these regulatory amendments will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These regulations simply implement new claims formulas in accordance with Pub. L. 100–198, for defaulted VA guaranteed loans, and will increase the number of cases on which lenders will have an option of conveying foreclosed properties to VA. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

These regulatory amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Number is 64.114.

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs-housing and community development, Veterans.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1803(c)(1), 1832 and 1820 of Title 38, United States Code, and the enabling legislation.

Approved: June 2, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 36, LOAN GUARANTY, is amended as follows:

1. In § 36.4319, paragraph (b), the last sentence of paragraph (d), paragraph (f), and their authority citations and the authority citation for paragraph (e) are revised to read as follows:

§ 36.4319 Legal proceedings.

* * * * *

(b) A copy of a notice of sale shall be similarly delivered by the holder, or the holder's agent or trustee, to the Secretary at the VA Regional Office of jurisdiction at least 30 days prior to the scheduled liquidation sale, or within 5 days after the date of first publication of the notice, whichever is later. A copy of any other notice of sale or acquisition of the property served on the holder or advice of any sale of which the holder has knowledge shall be similarly delivered to the Secretary, including any such notice of a tax sale or other superior lien or judicial sale. Such notice shall be accompanied by a statement of the account indebtedness and a copy of the liquidation appraisal request, if not previously delivered.

(Authority: 38 U.S.C. 1832)

* * * * *

(d) * * * Within the time required by applicable law, or rule of court, the Secretary will cause appropriate special or general appearance to be entered in the case by an authorized attorney.

(Authority: 38 U.S.C. 1832)

(e) * * *

(Authority: 38 U.S.C. 1832)

(f) If following a default, the holder does not bring appropriate action within 30 days after requested in writing by the Secretary to do so, or does not prosecute such action with reasonable diligence, the Secretary may at the Secretary's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting between the holder and the Secretary. The Secretary may also intervene in, or begin and prosecute to completion any action or proceeding, in the Secretary's name or in the name of the holder, which the Secretary deems necessary or appropriate. The Secretary shall pay, in advance if necessary, any court costs or other expenses incurred by the Secretary or properly taxed against the Secretary in any such action to which the Secretary is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4313 of this part), or otherwise collect from the holder any such expenses incurred by the Secretary because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Secretary.

(Authority: 38 U.S.C. 1832)

2. In § 36.4320, the introductory text and authority citation for the introductory text of paragraph (f) are revised to read as follows:

§ 36.4320 Sale of security.

* * * * *

(f) The holder in accounting to the Secretary in connection with the disposition of any property in accordance with paragraph (a), (b), or (d) of this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4313 of this part. In connection with the conveyance or transfer of property to the Secretary the holder may include in accounting to the Secretary the following expense items if actually paid by the holder, in addition to the consideration payable for the property under paragraph (g) of this section:

(Authority: 38 U.S.C. 1832)

* * * * *

3. Section 36.4321 is revised to read as follows:

§ 36.4321 Computation of guaranty claims; Subsequent accounting.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the earliest of the following dates:

(1) The date of the liquidation sale; or,

(2) The cutoff date established under paragraph (f) of § 36.4319 of this part; or,

(3) The cutoff date established under paragraph (b) of this section.

Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(b) In any case in which there is a delay in the liquidation sale caused by:

(1) The holder of the loan extending forbearance in excess of 30 days at the request of the Secretary, the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as ofthe cutoff date;

(2) The Secretary, including the Secretary's failure to provide the holder with advice as to the net value of the security within two working days prior to a scheduled liquidation sale but excluding forbearance exercised at the request of the Secretary, with respect to a holder which has complied with the provisions of § 36.4319(b) of this part, the cutoff date for computation of the indebtedness shall be the date the liquidation sale would have taken place if there had been no such delay;

(3) A voluntary case commenced under Title 11, United States Code (relating to bankruptcy), the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date.

(c) Adjustment of cutoff dates:

(1) Any cutoff date established under § 36.4319(f) of this part or paragraph (b) of this section will be adjusted by a period of months corresponding to the number of installment payments, if any, received by the holder and credited to the indebtedness after the cutoff date is established.

(2) When a cutoff date is established under paragraph (b)(2) of this section, the actual liquidation sale date will be used for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary; if an earlier cutoff date is in effect at the time delay in a liquidation sale is caused by the Secretary, such date will not be modified by application of the provisions of paragraph (b)(2) of this section, but will be extended by an interval corresponding to the delay in the liquidation sale caused by the Secretary for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary.

(3) Any cutoff date established under § 36.4319 of this part or paragraph (b) of this section will be considered to be the liquidation sale date. Such date will be modified in accordance with paragraph (b) of this section if the provisions of that paragraph are applicable after such date has been established.

(Authority: 38 U.S.C. 210(c))

(d) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of this claim, shall be reported to the Secretary incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(Authority: 38 U.S.C. 210(c))

(e) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Secretary to the extent of the debtor's liability to the Secretary as guarantor.

(Authority: 38 U.S.C. 210(c))

[FR Doc. 89-15237 Filed 6-27-89; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Tennessee: Source-Specific SIP Revisions for Fourteen Miscellaneous Metal Parts Coaters in Chattanooga

[TN-079; FRL-3608-9]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by the State of Tennessee that Tennessee Air Pollution Control Board Order 03-89 approving permits amended by agreed orders for fourteen miscellaneous metal parts coaters located within the city limits of Chattanooga, Tennessee (Hamilton County) be incorporated into the Tennessee State Implementation Plan (SIP). Volatile organic compound (VOC) emissions from miscellaneous metal parts coaters are governed by Tennessee Air Pollution Control Division (TAPCD) reasonably available control technology (RACT) regulation 1200-3-18-.21. Four of the permits amended by an agreed order contain VOC emission limits identical to the requirement of TAPCD regulation 1200-3-18-.21, which limits volatile organic compound (VOC) emissions to 3.5 pounds VOC per gallon of coating, excluding water. The remaining ten amended permits contain restrictions which limit the VOC emissions from each of the facilities below the 25 tons per year (tpy) applicability level for sources subject to VOC RACT regulations. The agreed orders contain provisions which are consistent with current Agency policy.

These agreed orders were submitted by the State of Tennessee to demonstrate full implementation of the ozone SIP in Chattanooga, Tennessee (Hamilton County). Such a demonstration is required in order for Hamilton County to be redesignated to attainment for ozone. EPA will act on Tennessee's redesignation request in a separate notice.

DATES: This action will become effective on August 28, 1989 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Chattanooga-Hamilton County Air, Pollution Control Bureau, 3511

Rossville Boulevard, Chattanooga, Tennessee 37407

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On July 7, 1986, the State of Tennessee requested that Hamilton County be redesignated from nonattainment to attainment for ozone. On April 1, 1987, sufficient monitoring data was received to demonstrate compliance with the National Ambient Air Quality Standard (NAAQS) for ozone and to meet the monitoring data requirements for Hamilton County to be redesignated to attainment for ozone. However, a demonstration that the ozone SIP has been completely implemented is also required for redesignation of a county from nonattainment to attainment. Because several miscellaneous metal parts coaters located in Hamilton County had neither installed a RACT level of control nor had their emissions appropriately limited below the applicability level of 25 tons of VOC emissions per year, the State of Tennessee was unable to demonstrate that the SIP had been fully implemented in Hamilton County.

Subsequently, on May 16, 1989, the State of Tennessee through the Tennessee Department of Health and Environment submitted to EPA a request that fourteen permits amended by agreed orders issued by the Chattanooga-Hamilton County Air Pollution Control Board be incorporated into the Tennessee SIP. Agreed orders were submitted for the following facilities located in Hamilton County:

(1) ASTEC Industries, Inc.
(2) Browning-Ferris Industries
(3) Chattanooga Armature Works
(4) Combustion Engineering, Inc.
(5) Cumberland Corporation
(6) Ekco/Glaco, Inc.
(7) Electrical Systems, Inc.
(8) The Landes Company, Inc. (formerly CFC Fabrication)
(9) McKee Baking Company
(10) Mueller Company
(11) Royal, Inc.
(12) Sherman & Reilly, Inc.
(13) Tuftco Corporation
(14) United States Stove Company

The permits amended by agreed orders for four of the facilities (ASTEC Industries, Inc., Combustion Engineering, Inc., The Landes Company, Inc., and Mueller Company) contain provisions which ensure compliance with the 3.5 lbs VOC per gallon of coating excluding water emission limitation in Tennessee regulation 1200–3–18–.21. Compliance with the emission limit is demonstrated using a 24-hour weighted average on a 1ine-by-line basis. Compliance on a 24-hour basis is consistent with Agency policy as stated in a January 20, 1984, memo from John R. O'Connor, Acting Director, Office of Air Quality Planning and Standards:

"Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible."

In addition, the permits include EPA-approved test methods and adequate recordkeeping requirements. Therefore, the provisions of these four permits as amended by the agreed orders meet current Agency policy.

The permits amended by the agreed orders for the remaining ten facilities contain daily and yearly restrictions on VOC content in the coatings and coating usage which ensure the yearly emissions for each facility will be less than 25 tons per year of VOCs. EPA-approved test methods and adequate recordkeeping requirements are also included in the provisions of the permits. Therefore, the provisions of these ten permits as amended meet current Agency policy.

The current combined VOC emissions from the ten facilities limited below the applicability level equal 121.36 tons of VOC per year. The amended permits would allow a total of 237.49 tons of VOC emissions per year, thus creating the possibility of an increase in VOC emissions of 116.13 tpy. Should all ten of the facilities operate at full potential, such an increase in VOC emissions would not adversely affect the maintenance of the NAAQS for ozone. The control strategy of the Tennessee SIP required a 7% reduction in the Hamilton County 1977 VOC emissions inventory of over 23,000 tpy. By 1988, full implementation of the Tennessee regulations in Hamilton County would have provided a reduction exceeding 50% of the 1977 VOC emissions inventory. Therefore, a potential increase of 116.13 tpy, which is less than ½ of 1% of the 1977 emissions inventory, would not invalidate the control strategy for attainment of the ozone standard in Hamilton County.

Therefore, the permits as amended by the agreed orders for the fourteen facilities are consistent with current Agency policy. For the specific limitations in each permit, see the technical support document available at the EPA Region IV office.

Final Action

EPA approves the SIP revision which incorporates the orders for the fourteen facilities listed above into the Tennessee SIP. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1989. This action may not be challenged later in proceedings to enforce its requirements. (*See* 307(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: The Director of the **Federal Register** approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: June 15, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

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

PART 52—[AMENDED]

Subpart RR—Tennessee

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(96) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(96) Tennessee Air Pollution Control Board Order 03–89 approving permits amended by agreed orders for fourteen sources was submitted to EPA on May 16, 1989, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference. (A) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.01, Astec Industries, Inc., effective March 20, 1989.

(B) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.02, Browning-Ferris Industries, effective March 20, 1989.

(C) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.03, The Landes Company Inc., effective March 20, 1989.

(D) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.04, Chattanooga Armature Works, effective March 20, 1989.

(E) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.05, Combustion Engineering, Inc., effective March 20, 1989.

(F) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.06, Cumberland Corporation, effective March 20, 1989.

(G) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.07, Ekco/Glaco, Inc., effective March 20, 1989.

(H) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.08, Electrical Systems, Inc., effective March 20, 1989.

(I) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.09, Mueller Company, effective March 20, 1989.

(J) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.10, McKee Baking Company, effective March 20, 1989.

(K) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.11, Royal, Incorporated, effective March 20, 1989.

(L) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.12, Tuftco Corporation, effective March 20, 1989.

(M) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.13, Sherman & Reilly, Inc., effective March 20, 1989.

(N) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.14, United States Stove Company, effective March 20, 1989.

(O) Board Order 03–89 of the Tennessee Air Pollution Control Board which adopts fourteen miscellaneous metal parts coaters' permits for Chattanooga-Hamilton County on May 10, 1989.

(ii) Other materials. (A) Letter of May 16, 1989, from the Tennessee Department of Health and Environment.

[FR Doc. 89–15299 Filed 6–27–89; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 60

[AD–FRL–3606–7]

Standards of Performance for New Stationary Sources; Portland Cement Plants

AGENCY: Environmental Protection Agency.

ACTION: Denial of petition for reconsideration.

SUMMARY: The Portland Cement Association, et al., have petitioned the Environmental Protection Agency for a stay and reconsideration of a final rule amending the New Source Performance Standards (NSPS) for Portland Cement Plants published December 14, 1988 (53 FR 50354). This notice responds to the portion of the petition that seeks reconsideration of the Agency's decision to require revisions to the monitoring, recordkeeping, and reporting requirements associated with the NSPS. After careful review of the petition, the Agency has decided to deny the petition in full. By failing to present the Agency with new information of central relevance, petitioners have not met the criteria for reconsideration under the Clean Air Act. Accordingly, the Agency is denying the petition for reconsideration.

EFFECTIVE DATE: June 28, 1989.

ADDRESSES: *Docket.* Material relevant to the Agency's review and revision of the NSPS for Portland cement plants can be found in Docket No. A–84–08. The docket is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday at the Agency's Air Docket Section (LE–131), Room M–1500, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Tabler, Standards Development Branch (MD–13), Emission Standards Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5256.

SUPPLEMENTARY INFORMATION:

I. Background

An NSPS for Portland cement plants was promulgated on December 23, 1971 (36 FR 24876) and revised on November 12, 1974 (39 FR 39872). The NSPS established emissions limitations for any Portland cement plant that commenced construction, modification, or reconstruction after the Agency originally proposed the NSPS on August 17, 1971 (36 FR 15704).

Following its first 4-year review of the NSPS for Portland cement plants in 1979, the Agency did not revise either the standard or the associated monitoring and recordkeeping requirements (44 FR 60761). Four years later, the Agency reviewed the NSPS and the monitoring and recordkeeping requirements a second time. As a result, although the Agency did not alter the emission limits for Portland cement plants, it did propose amendments to the monitoring, recordkeeping, and reporting requirements associated with the NSPS (September 10, 1985; 50 FR 36956).

After taking public comments on the proposed amendments, the Agency promulgated a final rule on December 14, 1988 (53 FR 50354). The revisions required monitoring, recordkeeping, and reporting for all sources subject to the NSPS, i.e., all kilns and clinker coolers that were constructed, modified or reconstructed after August 17, 1971. The amendments required that each owner or operator subject to the standards install, calibrate, maintain and operate a continuous opacity monitoring system (COMS) within 180 days of promulgation of the amendments, i.e., by June 12, 1989.

On February 10, 1989, the Portland Cement Association, et al., filed an administrative petition with the Agency requesting reconsideration of the final rule or stay of the rule's effective date pending judicial review. Finding that petitioners had failed to meet the criteria for granting an administrative stay, the Agency denied the request for a stay in a letter dated March 10, 1989. This notice addresses the petition for reconsideration.

II. Criteria for Reconsideration

Section 307(b)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), limits petitions for reconsideration in both time and scope. Specifically, it provides that the Agency shall convene a proceeding to reconsider a rule if a person raising an objection can demonstrate: (1) That it was impractical to raise the objection during the comment period, or that the grounds for such objection arose after the comment

period but within the time specified for judicial review; and (2) that the objection is of central relevance to the outcome of the rule. An objection is of central relevance only if it provides substantial support for the argument that the standards should be revised (see Denial of Petition to Reconsider National Ambient Air Quality Standards for Particulate Matter, December 29, 1988 (53 FR 52705, 52706); and Denial of Petition to Revise NSPS for Stationary Gas Turbines, December 11, 1980 (45 FR 81653–54), and decisions cited therein).

Congress sought to bring about a measure of finality in rulemakings under the Clean Air Act by requiring interested parties to raise all available objections during the rulemaking proceedings or not at all. The only exception provided is for objections based on "new information" of the type specified in section 307(d)(7)(B) (see id). Even if the petition were evaluated under section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(e), it would not affect the standard for reconsideration because the criteria for evaluating such petitions under the Administrative Procedure Act are essentially the same as those for section 307(d)(7)(B) petitions (see Denial of Petition to Reconsider National Ambient Air Quality Standards for Particulate Matter, December 29, 1988 (53 FR 52705, 52706); and Denial of Petition to Revise NSPS for Stationary Gas Turbines, December 11, 1980 (45 FR 81653–54)), and decisions cited therein.

III. Discussion

The notice of proposed rulemaking for Portland cement plants clearly indicated that the Agency was proposing to impose on existing Portland cement plants the COMS requirement and related amendments. The petitioners' argument that section 111 precludes the Agency from applying NSPS retroactively and that section 114 does not authorize the Agency to apply monitoring requirements to sources already subject to NSPS were addressed in the final rule, December 14, 1988 (53 FR 50354, 50360), and in a letter of March 10, 1989 denying the petitioners' request for a stay. The Agency explained that it had clear legal authority under section 114 to impose the requirements in question on existing sources. In asserting that compliance costs are expensive, petitioners are raising an issue that the Agency thoroughly addressed in the final rule in response to extensive comments (53 FR 50354, 50356–60). Furthermore, the cost estimates submitted during the comment period are generally similar to those submitted with the petition ((see e.g., figure of $128,000 for estimated installation costs for one plant submitted with petition compared to figures of $125,000–$130,000 submitted during comment period in a letter from the same company to the Central Docket Section, (Docket No. A–84–08, Item No. IV–D–6)). To the extent petitioners make new factual assertions regarding costs, petitioners have made no showing why these assertions could not have been raised during the rulemaking and in any event, these assertions do not rise to the level of "central relevance" to the outcome of the rule.

Moreover, the petitioners' arguments that the Agency was unjustified in applying the rule to the existing Portland cement plants is based on the mistaken premise that there were no environmental reasons to impose the requirements. The petitioners' arguments to the contrary are not supported by new information of central relevance. The petitioners' continuing disagreement with the Agency's conclusions does not establish grounds for reconsideration. The environmental justifications for the requirements were set forth in both the proposed and final rule of September 10, 1985 (50 FR 36956, 36961) and December 14, 1988 (53 FR 50353, 50361). Accordingly, petitioners have failed to present the Agency with new information that warrants reconsideration of its decision to impose COMS and other requirements on Portland cement plants. Hence, the petition for reconsideration is denied.

Docket

The docket is an organized and complete file of all the material relevant to EPA's review and revision of the promulgated rulemaking. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the docket, except for interagency review materials, serves as the record in case of judicial review ((see Clean Air Act, section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A)).

Paperwork Reduction Act

There are no information collection requirements associated with this action.

Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulatory action is "major," and, therefore, subject to the requirement of a regulatory impact analysis. This action is not major because it does not change the existing regulation and, therefore, results in none of the significant adverse economic effects described in the Order.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Portland cement plants.

Date: June 20, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89–15268 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[SW–FRL–3608–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is announcing its decision to grant a final exclusion to the EPA Combustion Research Facility (CRF), Jefferson, Arkansas, to exclude the scrubber water generated at its facility (during the incineration of still bottoms from the Vertac facility in Jacksonville, Arkansas) from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: June 28, 1989.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (Room M2427), Washington DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–89–CREF–FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine (1) That the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of the Rulemaking

The EPA Office of Research and Development submitted a petition to exclude, on a one-time basis, scrubber water generated from the incineration of dioxin-contaminated distillation bottoms at the Combustion Research Facility, located in Jefferson, Arkansas. The distillation bottoms referred to as the "Vertac waste", originated from the production of 2,4,5-trichlorophenol by the Vertac Chemical Company, located in Jacksonville, Arkansas. CRF incinerated this material as part of a research program to study the feasibility of incinerating hazardous waste. After evaluating the petition, EPA proposed, on April 14, 1989, to exclude CRF's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 FR 14971).

This rulemaking finalizes the proposed exclusion.

II. Disposition of Delisting Petition

EPA Combustion Research Facility, Jefferson, Arkansas.

1. Proposed Exclusion

CRF petitioned the Agency to exclude, on a one-time basis, scrubber water generated during the incineration of still bottoms from the Vertac facility in Jacksonville, Arkansas. CRF's waste is presently listed as EPA Hazardous Waste No. F020. CRF petitioned to exclude its waste based on the claim that the waste does not meet the criteria of the listing.

To support its claim that both the non-listed and listed constituents of concern are not present in the scrubber water above levels of concern, CRF submitted (1) A detailed description of its incinerator including schematic diagrams, an engineering description, and the incinerator operating conditions; (2) a description of the "Vertac waste" that was incinerated; (3) results from total constituent analyses of the scrubber water for the EP toxic metals and nickel; (4) results from total constituent analyses of the scrubber water for 40 CFR Part 261, Appendix VIII organics; and (5) analytical test results on chlorinated dioxin and furan (CDD/CDF) concentrations in the scrubber water. These analyses were performed on representative samples of CRF's scrubber water.

The Agency evaluated the information and analytical data provided by CRF in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. In order to evaluate the potential hazards of the petitioned waste, the Agency considered the various possible exposure scenarios for this type of waste, including: (1) Spillage on the ground which could impact ground water, (2) discharge through sewers to a publicly owned treatment works (POTW), subsequent discharge to surface waters, and exposure through ingestion of surface water, and (3) discharge to surface water under the National Pollutant Discharge Elimination System (NPDES), and exposure through ingestion of surface water. Specifically, the Agency used its vertical and horizontal spread (VHS) model to evaluate the scenario where the petitioned waste is spilled on the ground and introduced directly to the ground water (*i.e.*, no unsaturated zone). The Agency also conducted worst-case evaluations of potential exposure due to discharge to surface water via a POTW or a NPDES permit. Based on these evaluations, the Agency determined that the constituents in CRF's waste would not migrate at concentrations above the health-based levels used in delisting decision-making. See 54 FR 14971, April 14, 1989, for a more detailed explanation of why EPA proposed to grant CRF's petition for a one-time exclusion of scrubber water generated at its facility during the incineration of still bottoms from the Vertac facility in Jacksonville, Arkansas.

2. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to CRF for the petitioned scrubber water.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that CRF's scrubber water should be excluded from hazardous waste control. The Agency, therefore, is granting a one-time final exclusion to the EPA Combustion Research Facility, located in Jefferson, Arkansas, for its scrubber water described in its petition as EPA Hazardous Waste No. F020. The exclusion only applies to the stored waste covered by the original demonstration. Because this is a one-time exclusion for the volume of scrubber water covered in its petition and evaluation by the Agency, CRF may modify the operation of its incinerator in the future without altering the regulatory status of the scrubber water excluded by this rulemaking so long as the scrubber water is not combined with hazardous wastes. Any new scrubber waters generated by CRF from the incineration of hazardous wastes would remain hazardous unless and until a separate delisting petition were granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Final Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et. seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

June 19, 1989.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Table 1 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22.

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
U.S. EPA Combustion Research Facility.	Jefferson, Arkansas.	One-time exclusion for scrubber water (EPA Hazardous Waste No. F020) generated in 1985 from the incineration of Vertac still bottoms. This exclusion was published on June 28, 1989.
•	•	•

[FR Doc. 89–15269 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL–3608–1]

Minnesota: Final Authorization of State Hazardous Waste Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction and clarification.

SUMMARY: On April 24, 1989, the Environmental Protection Agency (EPA) published a **Federal Register** notice (54 FR 16361) indicating EPA's decision to grant final authorization to Minnesota for rules promulgated under the Resource Conservation and Recovery Act, and Hazardous and Solid Waste Amendments of 1984. No public comments adverse to EPA's decision were received by the end of the comment period on May 24, 1989. Therefore, final authorization for Minnesota will be effective on June 23, 1989.

The April 24, 1989, notice on page 16362, in the first column, inadvertently included a July 15, 1985, interim status rule amendment, "Permit Life," covering 40 Code of Federal Regulations §§ 270.10 (a), (c), (e); 270.30(j)(2); and 270.70 (a), (c), (d), (e), (f) (50 FR 28702–28755). While the State originally applied for authorization of this amendment, it has since determiend that additional rulemaking would be necessary. Therefore, this notice serves to correct the April 24, 1989, notice by omitting from final authorization the above interim status amendment. The State will seek authorization for this specific amendment in a future application.

EPA also wants to clarify that the State is receiving authorization for certain minor corrections to some of the rules listed in the April 24, 1989, **Federal Register** notice. Those corrections are as follows: Part B Information Requirements for Disposal Facilities, as amended September 9, 1987, (52 FR 33936); Liability Coverage, as amended November 18, 1987, (52 FR 44314–44321); Listing of Spent Solvents, as amended January 21, 1986, (51 FR 2702); Small Quantity Generators, as amended October 1, 1986, (51 FR 55190–55194); and, Liquids in Landfills, as amended May 28, 1986, (51 FR 19176).

EFFECTIVE DATE: Final authorization for Minnesota will be effective on June 23, 1989.

FOR FURTHER INFORMATION CONTACT: Christine Klemme, United States Environmental Protection Agency.

Waste Management Division, Region V, 230 South Dearborn, Chicago, Illinois 60604, (312) 886–3715.

Dated: May 30, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–15057 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 272

[FRL–3610–2]

Ohio; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Ohio for final authorization.

SUMMARY: The State of Ohio has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (EPA) has reviewed Ohio's initial and revision applications and has reached a final determination that Ohio's hazardous waste management program satisfies all of the requirements necessary to qualify for RCRA final authorization. Thus, EPA is granting final authorization to the State of Ohio to operate its program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984) (HSWA).

EFFECTIVE DATE: Final authorization for the State of Ohio shall be effective at 1 p.m. on June 30, 1989. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Greenberg, Regulatory Development Section (5HR–JCK–13), Office of RCRA, U.S. EPA Region 5, 230 South Dearborn Street, Chicago, Illinois 60604, Phone (312) 886–4179.

SUPPLEMENTARY INFORMATION: .

I. Background

Section 3006 of the RCRA allows EPA to authorize State hazardous waste management programs to operate in the States in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with HSWA.

On July 8, 1985, Ohio submitted an official application for final authorization. On March 29, 1989, EPA published a tentative decision announcing its intent to grant Ohio final authorization. Further background on the tentative decision to grant authorization appears at 54 FR 12931, March 29, 1989. Along with the tentative decision, EPA announced the availability of the application and other materials for public comment and the date of a public hearing on the tentative decision. A public hearing was held on April 28, 1989, in Columbus, Ohio, and the public comment period ended on May 5, 1989.

II. Comments/Responses

Four oral comments, some supplemented in writing, and ten letters containing written comments were received during the public comment period. Some of the commenters expressed support for EPA's tentative decision. The significant issues raised by the commenters and EPA's responses are summarized below.

1. *Comment:* Ohio's enforcement program is inadequate because it is understaffed and under funded. Also, regulated facilities are given too much time to correct violations.

Response: In the last three years, Ohio EPA has added 22 persons to its hazardous waste program staff. Also, based on a review of Ohio's application for final authorization and continuing periodic evaluations of its hazardous waste program, EPA has determined that Ohio operates a RCRA enforcement program which satisfactorily meets the requirements for compliance evaluation and enforcement authority of 40 CFR 271.15 and 271.16. Ohio's compliance and monitoring enforcement strategy contains enforcement timeframes which are at least equivalent to EPA's enforcement timeframes. EPA has evaluated Ohio's performance with respect to meeting those enforcement timeframes and has found that the State performance has been satisfactory.

2. *Comment:* Since it is important that Ohio's enforcement and permitting programs implement RCRA technical requirements in ways equivalent to and consistent with EPA interpretations, EPA must monitor and provide staff training for Ohio's RCRA program.

Response: EPA will continue to monitor the performance of Ohio's hazardous waste program through the Federal grant process which requires periodic evaluations of State performance. EPA will also continue to provide training and other technical support to the State.

3. *Comment:* Certain Ohio permit procedures are unnecessary and duplicative: (1) Ohio procedures for implementation of the Clean Air Act include a requirement for a "permit to install" for RCRA regulated facilities, and (2) Ohio requires RCRA-permitted facilities to obtain solid waste permits in order to dispose of non-hazardous wastes. Such unnecessary and duplicative requirements interfere with the treatment, storage or disposal of hazardous waste in Ohio.

Response: Ohio's Clean Air Act and solid waste permit provisions are not part of the State's RCRA program. When making authorization decisions, EPA may consider State provisions that are not part of the State's RCRA program only to the extent that such provisions may be inconsistent with the Federal and other authorized State RCRA programs (see 40 CFR 271.4) or otherwise affect the equivalence of the State's RCRA program. EPA has determined that Ohio's "permit to install" and solid waste permit provisions are not inconsistent with nor otherwise affect the equivalence of the State's RCRA program.

4. *Comment:* Under 40 CFR 271.4, two Ohio provisions are inconsistent with the Federal and authorized State RCRA programs. The inconsistent provisions are: (1) Ohio's new free structure (Ohio Revised Code 3734.18) which is inconsistent because fees for treatment or disposal of wastes are higher for wastes generated out-of-State than for wastes generated in-State, and (2) The Ohio consent-to-service provision (Ohio Revised Code 3734.131) which is inconsistent because it discourages the shipment of hazardous waste from out-of-state generators, brokers and transporters.

Response: Under section 3006(b) of RCRA, an authorized State's hazardous waste program must not be inconsistent with the Federal and other authorized State RCRA programs. EPA has defined consistency in 40 CFR 271.4. EPA reviewed Ohio's program and has determined, based on the available evidence, that the State's new fee structure and consent-to-service provisions are not inconsistent.

When reviewing Ohio's program under 40 CFR 271.4, EPA considered all relevant factors, but focused on objective evidence such as the quantities of wastes that are imported or exported into the State. If a provision has little or no impact on the flow of wastes, it is EPA's policy that the provision should not preclude authorization (50 *FR* 46439, November 8, 1985).

Ohio's new fee structure and consent-to-service provisions were enacted as parts of House Bill 592. The Ohio legislature passed House Bill 592 on June 2, 1988, the Governor of Ohio

approved it, and the Bill was effective on June 24, 1988. The new fee structure was immediately effective while the consent-to-service provision did not become effective until January 1, 1989.

According to data compiled by the Ohio EPA for the period of January through March 1988, Ohio collected fees on the treatment and disposal of 121,139 tons of waste. During the same period of 1989, the State collected fees on 166,313 tons of waste, an increase of 45,174 tons.

The data provided by Ohio EPA does not distinguish between wastes generated in-state and out-of-state. However, at this time it is the best, and probably only, available evidence. Based on this data, EPA has determined that Ohio's new fee structure and consent-to-service provisions have not had a significant impact, if any, on the interstate movement of waste. EPA expects more detailed data will be available no later than the summer of 1990. When that new data or other reliable data becomes available, EPA will review it and reconsider whether Ohio's new fee structure and consent-to-service provisions are inconsistent.

5. *Comment:* Ohio needs hazardous waste management standards that are more stringent than the Federal RCRA standards.

Response: The Federal RCRA statutory standard for final authorization requires that State programs impose requirements that are at least as stringent as the Federal requirements (Section 3009 of RCRA). States may impose more stringent standards, but are not required to do so in order to be granted final authorization.

6. *Comment:* The commenter expressed concern that Ohio is not required to issue an environmental impact statement (EIS) as part of its RCRA permit process.

Response: Neither RCRA nor EPA's regulations require that an authorized State permitting process must include issuance of an EIS. Therefore, Ohio may receive authorization without including issuance of an EIS in its permitting process.

7. *Comment:* Section 3734(E)(3) of the Ohio Revised Code preempts local zoning codes. This prevents local authorities from ensuring that hazardous waste facilities meet the same public safety requirements other facilities must meet.

Response: Section 3734.05(E)(3) of the Ohio Revised Code prohibits the imposition of zoning requirements that are unique to hazardous waste management facilities. Section 3734.05(E)(3) does not exempt hazardous waste facilities from compliance with zoning requirements concerning, for example, fire hydrants and set back distances provided those requirements are applicable to all owners of similar types of property irrespective of whether or not they manage hazardous waste.

8. *Comment:* The State has not adopted requirements equivalent to those in 40 CFR 270.14 (Contents of Part B: General requirements).

Response: Ohio has adopted Rule 3745–50–44 which is virtually a verbatim incorporation of 40 CFR 270.14. Therefore, EPA has determined that Rule 3745–50–44 of the Ohio Administrative Code is at least equivalent to 40 CFR 270.14.

9. *Comment:* Ohio's procedures for public noticing of proposed permit actions are not in compliance with 40 CFR 124.6 through 124.21. Although the draft permit prepared by Ohio EPA and transmitted to the Hazardous Waste Facility Board (HWFB) is public noticed and there is opportunity for public comment, no one makes a determination whether the draft permit is in compliance with 40 CFR 271.13 or any other standard. Also, the public is not given adequate opportunity to participate in the Board's adjudicatory process.

Response: A State is not required to adopt procedures indentical to the Federal procedures listed in 40 CFR 271.14. A State may commit to many of the procedural requirements in a Memorandum of Agreement (MOA) with EPA, provided the State has adequate authority to enter into an MOA.

The Ohio Attorney General certified on July 1, 1985, that the Ohio EPA and HWFB have the authority to enter into the MOA, and that the "State statute and regulations provide requirements for permits as indicated in Checklist V." Checklist V lists the provisions of 40 CFR 124 which the State must have authority to implement for public notice of permit actions, public comment periods, and responses to comments. Checklist V was included in Ohio's application and identifies the State's analogues to 40 CFR Part 124.

EPA has reviewed Checklist V and determined that Ohio's hazardous waste program meets the requirements for permitting under 40 CFR 271.14. Draft Permits prepared by Ohio EPA must comply with Ohio Administrative Code rule 3745–50–21(A) which contains provisions at least equivalent to 40 CFR 124.6(d) and (e). Draft permits prepared by Ohio EPA and transmitted to HWFB are therefore equivalent to draft permits prepared by EPA pursuant to 40 CFR 124.6 and public noticed pursuant to 40 CFR 124.10.

10. *Comment:* What measures will be taken by the Ohio EPA's hazardous waste management program to ensure that significant historic, architectural, and archaeological resources are taken into consideration before permits are issued? How will Ohio EPA meet the requirements of the National Historic Preservation Act of 1966?

Response: Authorized State programs are required by 40 CFR 271.14 to comply with the provisions of 40 CFR 124.10, which includes a requirement for public notices of permit actions to be mailed to the Advisory Council on Historic Preservation and State Historic Preservation Officers for comment. Ohio has complied with the requirement by committing to compliance with 40 CFR 124.10 in a Memorandum of Agreement signed by the Ohio EPA, the chairman of HWFB and the EPA Regional Administrator. The State is allowed to comply with 40 CFR 271.14 in this manner since many of the provisions found therein are primarily administrative in nature. Any further compliance with the National Historic Preservation Act is not an authorization issue, but is dictated by the provisions of the Act itself.

11. *Comment:* Ohio's permitting process is more-burdensome than the Federal program because of the current division of responsibilities between Ohio EPA and the HWFB. Specifically, this division of responsibilities causes delays in Ohio's permitting process.

Response: Neither RCRA nor EPA regulations require States seeking final authorization to adopt permitting or other procedures identical to Federal procedures. State programs must only be consistent with, equivalent to, and no less stringent than the Federal program. EPA's authorization regulations do not require States to issue permits within specified time frames or under specified procedures. Such requirements could, in certain circumstances, be environmentally counter-productive if they were to force a decision that did not receive sufficient attention (e.g., complicated permitting decisions). RCRA does require that State programs be consistent with the Federal program, however, and EPA's regulations at 40 CFR 271.22(a)(2)(i) provide as a criterion for withdrawal of an authorized State program the failure to exercise control over regulated activities, including failure to issue permits. With respect to Ohio's permitting process, the commenter has provided no information indicating that any alleged delays reflect a failure of control over required activities. In fact, the commenter stated that the "typical [Ohio] permit process

time periods for new major TSD [treatment, storage, or disposal] facilities are twenty-four to thirty-six months." This time frame is typical of many States and permits are, in fact, being isued under Ohio's procedures.

EPA will continue to monitor Ohio EPA's issuance of permits after authorization. EPA does not believe that Ohio's permitting regulations, which allow for extensive and stringent review of applications to develop hazardous waste managment facilities, currently operate in any manner that is inconsistent with the Federal program.

12. *Comment:* After authorization of Ohio, EPA will continue to administer and enforce RCRA permits it has issued to facilities in the State until the permits expire or are terminated. This appears to be counter to Section 3006(b) of RCRA which provides that once a State receives final authorization for administration of the RCRA program, such a State is authorized to carry out the RCRA program in lieu of EPA.

Response: EPA routinely continues to enforce and administer the permits it issued to facilities in States prior to authorization of those States if the States choose not to issue their own authorized permits for those facilities or to adopt or enforce the Federal permits. Although authorization of a State program does allow a State to carry out the RCRA program in lieu of EPA, EPA retains it enforcement and oversight authorities. Therefore, the EPA issued permit continues in effect in an authorized State until it expires or is terminated and EPA may enforce and administer that permit.

13. *Comment:* Ohio should be required to adopt the Federal regulations promulgated on September 28, 1988, which streamlined the RCRA permit modification procedures to promote more efficient processing of permit modifications, and changes.

Response: The Federal regulations that EPA promulgated on September 28, 1988, are considered not to be any more stringent than the previous RCRA permit modification procedures. As explained in the preamble to that Rule, authorized States are only required to modify their programs to adopt amendments to Federal regulations that are more stringent that existing regulations (see 53 FR 37933–37934). Ohio is therefore not required to adopt the September 28, 1988, permit modification regulations.

III. Decision

After reviewing the public comments and the administrative record, I conclude that Ohio's application meets all of the requirements necessary to qualify for final authorization for the Federal RCRA program in effect as of July 8, 1984, and for non-HSWA revision Clusters I, II, and III. Accordingly, Ohio is granted final authorization to operate its program as revised and approved herein in lieu of the Federal RCRA program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA).

Ohio now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. Ohio also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008 and 3013 and 7003 of RCRA.

IV. Effect of HSWA on Ohio's Authorization

As stated above, Ohio's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA to RCRA. Prior to that date, a State with final authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect immediately in all States regardless of their authorization status. EPA is directed to carry out those requirements and prohibitions. In authorized States, EPA implements the HSWA requirements or prohibitions, including the issuance of full or partial permits, until the State is granted authorization to do so. States must still adopt HSWA-related provisions as State law to retain final authorization.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Ohio. To the extent the authorized program is unaffected by HSWA, the State program will operate in lieu of the Federal program. (Please note that all permits issued by EPA prior to the State being granted final authorization will continue in force until the effective date of the State's issuance or denial of a State RCRA permit.) To the extent HSWA-related requirements are in effect, EPA will administer and enforce those portions of HSWA in Ohio until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once Ohio is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist EPA's implementation of HSWA under a Cooperative Agreement.

Today's final determination includes authorization of Ohio's program for a single requirement implementing HSWA, i.e., availability of information under Section 3006(f) of RCRA. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect under State law; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a Federal Register notice which explains in detail HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

V. Codification in Part 272

As part of its tentative decision published on March 29, 1989, EPA proposed to codify its approval of Ohio's program in Part 272 of Title 40, Code of Federal Regulations (CFR) and to incorporate by reference therein the State's statutes and regulations that EPA will enforce under section 3008 of RCRA. No comments were received concerning the proposed codification and it is being finalized today with only one change.

When the proposed rule was published, certain State regulations had not yet been published in the Ohio Monthly Record and were only available from the Ohio Secretary of State. Those regulations have now been published in the Ohio Monthly Record. The Ohio Monthly Record is a more readily available publication. Therefore, EPA has amended the proposed rule so that 40 CFR 272.1801 (a)(1) and (a)(2)(ii) now reference the pages of the Ohio Monthly Record where the State regulations can be found.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability

of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

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

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and EPA Delegation 8-7.

Dated: June 21, 1989.

Frank Covington,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR Part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for Part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart KK of Part 272 is revised to read as follows:

Subpart KK—Ohio

Sec.

Subpart KK—Ohio

§ 272.1800 State authorization.

(a) The State of Ohio is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921*et seq.*, subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA) (Pub. L. 98-616, Nov. 8, 1984), 42 U.S.C. 6926(c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR Part 271. The State's program, as administered by the Ohio Environmental Protection Agency, was approved by EPA pursuant to 42 U.S.C. 6926(b) and Part 271 of this Chapter. EPA's approval was effective on June 30, 1989. (See **Federal Register** of June 28, 1989.)

(b) Ohio is not authorized to implement any HSWA requirements in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a **Federal Register** notice granting Ohio authorization.

(c) Ohio has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under Section 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) Ohio must revise its approved program to adopt new changes to the Federal Subtitle C program, in accordance with section 3006(b) of RCRA and 40 CFR Part 271, Subpart A. Ohio must seek final authorization for all program revisions pursuant to section 3006(b) of RCRA but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(g). If Ohio obtains final authorization for the revised requirements pursuant to section 3006(b), the newly authorized provisions will be listed in 272.1801 of this Subpart. If Ohio in the future obtains interim authorization for the revised requirements pursuant to section 3006(g), the newly authorized provisions will be listed in § 272.1802.

§ 272.1801 State-administered program: final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b): Ohio has final authorization for the following elements submitted to EPA in Ohio's program application for final authorization and approved by EPA effective on June 30, 1989.

(a) State Statutes and Regulations.

(1) The following Ohio regulations are incorporated by reference and codified as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Ohio Administrative Code, Volume 4, Chapter 3745, Rules: 50-01; 50-03; 50-10; 50-11; 50-31 through 50-32; 50-40 through 50-44(C)(3)(j); 50-44(C)(4) through 50-44(C)(4)(k); 50-44(C)(5) through 50-44(C)(5)(h); 50-44(C)(6) through 50-44(C)(7)(i); 50-44(C)(8) through 51-03(C)(2)(b)(i); 51-03(D) through 51-03(E); 51-04 through 51-05(D)(2); 51-05(E) through 51-05(F)(2); 51-05(G) through 51-05(I); 51-06(A)(1) through 51-06(A)(3)(g); 51-06(B) through 52-20(E); 52-20 Appendix I through 52-34(C)(2); 52-40 through 52-43; 52-50 through 53-10; 53-11(D) through 53-20(G); 53-21 through 55-99; 56-20 through 56-31; 56-50 through 56-59; 56-70 through 56-82; 57-01 through 57-14(B); 57-15 through 57-17; 57-40 through 58-40; 58-43 through 58-44; 58-45(C); 58-46(C); 58-60 through 65-01(C); 65-10 through 68-14(C); 68-15 through 68-51; 68-70 through 68-82; 69-01 through 69-30 (OAC June 30, 1988, as supplemented by 1988-1989 Ohio Monthly Record, pages 430-495 (November 1988) and 848-868 (February 1989)). Copies of the Ohio regulations that are incorporated by reference in this paragraph are available from Banks-Baldwin Law Publishing Company, P.O. Box 1974, University Center, Cleveland, Ohio 44106-8697, Customer Service Department.

(2) The following statutory provisions and regulations concerning State enforcement, although not codified herein for enforcement purposes, are part of the authorized State program:

(i) Ohio Revised Code, Title 1, Chapter 119, Sections: 01 through 06.1, and 07 through 13; Ohio Revised Code, Title 1, Chapter 149, Sections 011, 43, and 44 (Page 1987); Ohio Revised Code, Title 37, Chapter 3734, Sections: 01 through 05, 07, 09 through 14.1, 16 through 17, 20 through 22, and 31 through 99 (Page, 1987).

(ii) Ohio Administrative Code, Volume 4, Chapter 3745, Rules: 49-031, 50-21 through 50-30; and 51-03(F) (OAC June 30, 1988, as supplemented by 1988-1989 Ohio Monthly Record, pages 430-495 (November 1988) and 848-868 (February 1989)).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not codified for enforcement purposes.

(i) Ohio Revised Code, Title 37, Chapter 3734, Sections: 06, 08, 18 through 19, and 23 through 30 (Page, 1987).

(ii) Ohio Administrative Code, Volume 4, Chapter 3745, Rules: 50-33 through 50-37, and 53-11(A) through 53-11(C) (OAC June 30, 1988).

(b) Memorandum of Agreement. The Memorandum of Agreement between EPA Region V and the Ohio Environmental Protection Agency signed by the EPA Regional Administrator on

March 6, 1989, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA. 42 U.S.C. 6921 *et seq.*

(c) Statement of Legal Authority. (1) "Attorney General's Statement for Final Authorization," signed by the Attorney General of Ohio on July 1, 1985, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(2) Supplemental "Attorney General's Statements for Final Authorization," and addenda to such Statements signed by the Attorney General of Ohio on December 30, 1988, and February 24, 1989, are codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(d) Program Description. The Program Description and any other materials submitted as part of the original application or as supplements thereto are codified as part of the authorized hazardous waste management program under Subtitle of RCRA, 42 U.S.C. 6921 et seq.

§§ 272.1802 through 272.1849 [Reserved]

[FR Doc. 89-15409 Filed 6-27-89; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 710 and 720

[OPTS-50039; FRL-3609-1]

Polymers Manufactured Using Free-Radical Initiators; Clarification of Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of rule.

SUMMARY: Under section 5 of the Toxic Substances Control Act (TSCA), any person who intends to manufacture or import a new chemical substance for non-exempt commercial purposes must notify EPA at least 90 days before manufacture or import begins. In this document, EPA is clarifying the section 5 premanufacture notification (PMN) requirements and section 8(b) Inventory reporting regulations for polymers manufactured using one or more free-radical initiators. To ensure that new chemical substances are properly reviewed before they are manufactured, EPA has concluded that free-radical initiators used at greater than two weight percent in the manufacture of a polymer must be included in the description of a polymer for the TSCA Inventory and for PMN purposes. However, EPA has decided to apply this policy only to polymers not listed on the Inventory as of the effective date of this document.

DATE: This document is effective July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202-554-1404), TDD: (202-554-0551).

SUPPLEMENTARY INFORMATION: This document clarifies the PMN requirements and Inventory reporting regulations for polymers manufactured using one or more free-radical initiators.

I. Background

Several polymer manufacturers have raised the issue of whether or not free-radical initiators used in the manufacture of a polymer are required to be included in the TSCA section 8(b) Inventory description of the polymer. In particular, one polymer manufacturer asked if EPA had changed its policy regarding the description of polymers on the Inventory based on the Inventory Reporting Regulations (40 CFR Part 710) published in the **Federal Register** of December 23, 1977 (42 FR 64572), and the final PMN rule (40 CFR Part 720) and subsequent clarifications published in the **Federal Register** of May 13, 1983 (48 FR 21722), and September 13, 1983 (48 FR 41132), respectively. EPA's policy on polymers has not changed. However, EPA has become increasingly aware of the confusion surrounding this issue and polymer manufacturers' concerns regarding compliance with the PMN requirements in this area. Therefore, EPA has carefully reviewed its prior policy statements regarding the Inventory and PMN descriptions of polymers, including polymers manufactured using free-radical initiators.

In the Inventory Reporting Regulations (40 CFR Part 710), EPA required the reporting of polymers in terms of constituent monomers used at greater than two weight percent. Section 710.5(c) set out the reporting requirements:

> *Reporting polymers.* (1) To report a polymer a person must list in the description of the polymer composition at least those monomers used at greater than two percent (by weight) in the manufacture of the polymer.
>
> (2) Those monomers used at two percent (by weight) or less in the manufacture of the polymer may be included as part of the description of the polymer composition.
>
> Note.—The "percent (by weight)" of a monomer is the weight of the monomer expressed as a percentage of the weight of the polymeric chemical substance manufactured.

The Inventory Rule did not define "monomer." However, also in December 1977, EPA published an instruction booklet, "Reporting for the Chemical Substance Inventory," which amplified the rule as follows:

> The polymer description should identify only monomers and other reactive ingredients such as chain-transfer or cross-linking substances. Other additives, such as emulsifiers and plasticizers, which are not chemically a part of the polymeric composition should not be identified in the description of the polymer, and their weight should not be included in estimating the 'dry' weight of the polymer.

The phrase "monomers and other reactive ingredients" identifies reactivity as the feature required for an ingredient to be a part of the polymer composition. Thus chain-transfer agents, often thought of as merely controlling the molecular weight of the polymer without adding any properties of their own, are explicitly identified as reportable.

For the most part, the May 13, 1983 PMN rule (40 CFR Part 720) adopted the information requirements of the Inventory Reporting Regulations and of the October 1979 proposed PMN rule. However, the reporting requirements for polymers (40 CFR 720.45(a)(3)) were modified slightly. They read as follows:

> For polymers, the notice must identify monomers and other reactants used in the manufacture of the polymer by chemical name and CAS Registry number (if available). The notice must indicate the typical percent of each monomer and other reactant in the polymer (by weight percent of total polymer); the maximum residual of each monomer present in the polymer; and a partial or incomplete structural diagram, if possible. The notice must provide estimates of the minimum number-average molecular weight of the polymer and the amount of low weight species below 500 and below 1,000 molecular weight and describe how the estimates were obtained.

In the PMN rule, monomers and other reactants were not distinguished. Although the phrase "maximum residual" was applied only to monomers, explanatory language (48 FR 21732) stated that: "[i]nstead of providing the range of composition of each monomer in the polymer, manufacturers need only estimate the typical composition of the monomers and other reactants, e.g., catalysts and initiators."

The purpose of the change from the October 1979 proposal was only to replace "range of composition" with "typical composition." Unfortunately, the juxtaposition of the terms

"catalysts" and "initiators" seems to have led to a misunderstanding. Free-radical initiators have often been loosely referred to in industrial parlance as "catalysts," because like catalysts they increase the rate of reactions. However, unlike true catalysts, they are not regenerated at the end of a cycle of the reaction sequence, but are consumed by the reactions they initiate. The explanatory language in the preamble of the PMN rule could be read to suggest that *both* initiators *and* catalysts should be included in the composition of the final polymer.

The September 13, 1983 (48 FR 41134), clarification stated that: "all monomers and other reactants used at greater than two percent are automatically included in the polymer name on the Inventory." There is also specific reference to initiators in the statement: "Reactants other than monomers include cross-linking agents, chain-terminating agents, free-radical initiators, and any other reactant which is intended to be incorporated into the structure of the polymer."

In response to comments on the October 1979 proposal and the May 1983 final rule, EPA indicated in the September 13, 1983 clarification that catalysts as such need not be included in the composition of a polymer:

> * * * [S]ubstances should be listed in Part I(B)(2)(b) of the form only if they are intended to become incorporated into the polymer structure. If the manufacturer does not intend for the starting material to be incorporated into the polymer, it does not have to be listed in this section. For example, a starting material should not be listed in this section if it serves only to influence polymer formation without becoming a part of the new chemical substance, or if it is not intended to become part of the substance but is inadvertently incorporated into the polymer's structure. These materials, however, must be identified in other sections of the form.
>
> Agents such as nonreactive surfactants, solvents, and catalysts and cocatalysts may be used during the manufacture of the polymer. If these agents are not intended to become chemically a part of the polymer, but if they remain in the polymer as impurities, they should be listed in Part I(B)(3) under impurities* * *. These agents must also be identified, whether or not they may occur as polymer impurities, in the Process Description (Part I(A)(1)] * * *.

EPA's clarification cannot be construed to extend the exemption of catalysts to the case of initiators. No general property of a catalyst requires it to become chemically incorporated in the polymer whose polymerization it is catalyzing (although such incorporation may in some cases occur). In contrast, fragments of free-radical initiators are almost always incorporated as end-groups of the polymers whose polymerization they initiate.

Some submitters have found the question of whether initiators should be included in the description of a polymer to be troublesome. Should an initiator be included if its presence in the polymer was unintentional? EPA addressed this question in a March 19, 1981 reply to a letter from a company. In its letter of reply, EPA stated that:

> . . . a free-radical initiator may or may not be intended to become chemically a part of the polymeric composition. For example it may become a substituent of the growing polymer. On the other hand, it may serve primarily to react with a chain-transfer agent, which then in turn starts the growth of each polymer chain. If [it] is a free-radical initiator intentionally added to become part of the polymeric composition, then it is subject to the two percent rule. . . .

In other words, EPA took the position that initiators are ordinarily intended to become part of the polymeric composition, by becoming substituents of the growing polymer, unless other special effects, such as the intervention of chain-transfer agents, prevent them from doing so.

EPA attempted further clarification of this question of "intent" in the Polymer Exemption Rule (40 CFR 723.250), which was published in the Federal Register of November 21, 1984 (49 FR 46066). Section 723.250 defined "reactant" as ". . . a chemical substance that is used intentionally in the manufacture of a polymer to become chemically a part of the polymer composition." Expanding on this point in the discussion of the rule, EPA stated that reactants "include monomers, chain-transfer and cross-linking agents, monofunctional groups that act as modifiers, and other end groups that are not also monomers if they are incorporated into the polymer molecule." (49 FR 46069) Initiators, as the letter quoted above makes clear, fall into the category of "other end groups that are not also monomers."

Finally, in a letter to a company dated February 3, 1987, EPA stated that "intent" plays an important role in a company's determination of whether or not to include a free-radical initiator in the polymer description. While recognizing this, EPA reserved the right to raise questions relating to a reactant role for an initiator when it is charged at greater than two weight percent if there is obvious indication of significant incorporation of initiator into the polymer composition.

EPA believes that the record of its statements on polymer description supports its policy that free-radical initiators used at greater than two weight percent must be included in the polymer descriptions. This is consistent with the Congressional mandate that EPA review new chemical substances under TSCA section 5. However, EPA recognizes that polymer manufacturers may have in good faith misinterpreted this policy. Therefore, EPA is issuing this policy statement to eliminate the confusion regarding the PMN requirements for polymers manufactured using free-radical initiators at greater than two weight percent. Further, EPA has decided to apply this policy only to polymers not listed on the Inventory as of the effective date of this document, rather than requiring alternative methods to correct the Inventory. This approach will reduce the reporting burden for polymer manufacturers and will not adversely affect the integrity of the Inventory.

II. Polymers That Are Considered To Be on the TSCA Inventory

The Inventory currently covers more than 65,000 chemical substances of which approximately 16,000 are identified as polymers. Very few of the polymers currently listed on the Inventory include the identity of a free-radical initiator in the polymer name. EPA does not know how many of the 16,000 polymers were actually manufactured using a free-radical initiator at greater than two weight percent at the time they were reported for the Inventory.

Further, persons who did not understand EPA's policy for treatment of free-radical initiators may have manufactured polymers on the Inventory, with the addition of a free-radical initiator not included in the Inventory description, without concluding that it would be a new chemical substance. Although EPA recognizes that some of these polymers might not be correctly represented on the Inventory, the Agency believes it is impractical to attempt to correct the existing Inventory entries by including the identity of each free-radical initiator in the name of a polymer which was actually manufactured using that initiator at greater than two weight percent. Therefore, the following policies are adopted as of the effective date of this document:

A polymer to be manufactured with one or more free-radical initiators, in which at least one initiator is used at greater than two weight percent, is considered to be included on the Inventory:

(1) *Category 1:* If the identical polymer description, without any initiator(s) is on the Inventory as of the effective date of this document. (Substances that are

considered to be on the Inventory include those that were reported for the original Inventory as well as those reported following PMN review via a Notice of Commencement of Manufacture or Import under 40 CFR 720.102 that was received by EPA on or before the effective date of this document.) or

(2) *Category 2:* If the identical polymer description, including the same initiator(s) in the name, is on the Inventory.

To help subsequent manufacturers of polymers with free-radical initiators who must comply with this policy determine whether a polymer falls in Category 1 or 2, EPA will flag those polymers that are on the Inventory as of the effective date of this document, which do not have free-radical initiators in the polymer name (i.e., Category 1).

Further, EPA recommends that persons submitting a bona fide Notice of Intent to Manufacture or Import for a polymer (under 40 CFR 710.7(g) or 720.25(b)) clearly indicate which monomers and other reactants will be used at greater than two weight percent, and those used at two weight percent or less, in order to expedite the Inventory search.

III. PMN Requirements for New Polymers

As of the effective date of this document, a polymer manufactured using greater than two weight percent of an initiator will be subject to the PMN requirements unless (1) it is on the Inventory under the policy criteria outlined in Unit II of this preamble, or (2) EPA agrees with the manufacturer's (or importer's) claim that an initiator used at greater than two weight percent is not a reactant incorporated into the polymer structure.

A free-radical initiator used in the manufacture of a polymer is considered incorporated into the polymer structure if it is known or can be reasonably ascertained that the use primarily involves chemical incorporation of one or more initiator fragments (other than a hydrogen atom) into the polymer. A manufacturer's claim that a free-radical initiator used to manufacture a polymer is not incorporated into the polymer structure, must be substantiated by adequate supporting information. EPA will not accept mere assertion by a manufacturer that a free-radical initiator is simply not incorporated. Information to support such an assertion could include, for example, a description of the activity of the initiator and the extent to which this activity will operate; an explanation of what is intended by this activity role; the extent of incorporation of initiator-derived fragments; any measures taken to prevent or limit incorporation; any product properties or performance factors that would make incorporation undesirable; and any other technical, economic, or utility considerations that would sustain the manufacturer's claims.

If a polymer is manufactured using a free-radical initiator at two weight percent or less, the initiator does not have to be included in the Inventory description of the polymer. However, if at some future point, the manufacturer wants to increase the percentage of that free-radical initiator above two weight percent, this could require a PMN unless the polymer with the initiator is on the Inventory under the policy discussed above. Further, a manufacturer may request in a PMN for a new polymer that an initiator used at two weight percent or less be included in the Inventory description of the polymer by marking the appropriate "Identity" column in the polymer identification section on page 4 of the PMN form. This long-standing policy applies to any reactant used at two weight percent or less. If a manufacturer decides to include an initiator used at two weight percent or less as part of the Inventory name of a new polymer, the initiator may be used at levels greater than two weight percent, but may not be eliminated completely unless the polymer without the initiator is on the Inventory or if the manufacturer also submits a PMN for the polymer without the initiator. In such situations, it may be appropriate for a manufacturer to request permission from the section 5 Prenotice Coordinator (TS-794), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 or (202) 382-3745, to submit a consolidated PMN. (See discussion on consolidated notices in the preamble to the May 13, 1983 PMN final rule (48 FR 21734).

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this document which clarifies a specific provision of the PMN rule is not "major" as that term is defined in section 1(b) because: The annual effect of the clarification of the rule on the economy will be less than $100 million; it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. This document was submitted to the Office of Management and Budget (OMB) for review prior to publication.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA certifies that this document which clarifies a specific provision of the PMN rule will not have a significant economic impact on a substantial number of small businesses.

C. Paperwork Reduction Act

This document clarifies information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2070-0012.

List of Subjects in 40 CFR Parts 710 and 720

Chemicals, Environmental protection, Premanufacture notification, Reporting and recordkeeping requirements.

Dated: June 19, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-15270 Filed 6-27-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6371

[CO-930-09-4214-10; C-45714]

Cancellation of Public Land Order No. 6730; Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order cancels Public Land Order No. 6730 and withdraws approximately 374 acres of National Forest System lands from mining for a period of 50 years for the protection of existing and planned recreational facilities near Aspen, Colorado. The lands have been and remain open to such other forms of disposition as may

by law be made of National Forest System Lands and to mineral leasing.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–236–1768.

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

1. Public Land Order No. 6730, signed June 13, 1989, FR Doc. 89–14513 appearing at pages 25855 and 25856 in the June 20, 1989, issue of the Federal Register is hereby canceled. The actions taken in said public land order are covered in the following paragraphs of this order.

2. Subject to valid existing rights, the following described National Forest System lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2) to protect existing and planned recreational values which are a part of the Aspen Mountain Ski Area:

Sixth Principal Meridian

White River National Forest

T. 10 S., R. 84 W.,
- Sec. 18, S½SE¼NW¼NW¼, SW¼NW¼, W½SW¼, and W½E½SW¼, excluding patented lands;
- Sec. 19, W½E½W½,W½W½,W½SE¼ NE¼NW¼,W½E½SE¼NW¼,E½E½ SW¼,W½SW¼NW¼SE¼,W½NW¼ SW¼SE¼, and SW¼SW¼SE¼, excluding patented lands;
- Sec. 30, W½W½NE¼,W½E½SW¼NE¼, NW¼,N½N½NE¼SW¼,SW¼NW¼ NE¼SW¼,SW¼NE¼NE¼SW¼, N½NE¼NW¼SW¼, and N½NW¼ NW¼SE¼, excluding patented lands.

T. 10 S., R. 85 W.,
- Sec. 13, SE¼NE¼,E½SW¼NE¼,E½W½ SE¼, and E½SE¼, excluding patended lands;
- Sec. 24, E½E½ and E½W½NE¼, excluding patented lands;
- Sec. 25, NE¼NE¼, NE¼SE¼NE¼, and NE¼SE¼SE¼NE¼, excluding patented lands.

The areas described aggregate approximately 374 acres in Pitkin County.

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

4. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

June 22, 1989.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 89–15294 Filed 6–27–89; 8:45 am]

BILLING CODE 4310–JB–M

Proposed Rules

Federal Register
Vol. 54, No. 123
Wednesday, June 28, 1989

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV-89-065]

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 945 for the 1989–90 fiscal period. Authorization of this budget would allow the Idaho-Eastern Oregon Potato Committee to incur expenses necessary to administer this program. Funds to administer this program would be derived from assessments on handlers.

DATE: Comments must be received by July 10, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 98 and Marketing Order No. 945 (7 CFR Part 945) both as amended, regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 3,650 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Idaho-Eastern Oregon Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on May 24, 1989, and unanimously recommended a budget for the 1989–90 fiscal period of $78,180 and an assessment rate of $0.0026 per hundredweight of potatoes handled. This compares to the 1988–89 budget of $82,200. The proposed assessment rate is the maximum permitted under the order and has remained the same for over two decades. The proposed budget is $4,020 less than last year, reflecting decreases of $2,320 for computer purchases and $5,400 for the purchase of an automobile for the manager's use. These decreases would be partially offset by a five percent increase in committee staff salaries as well as increases in rent, postage, telephone and gasoline. With the proposed assessment rate of $0.0026, anticipated fresh market shipments of 21 million hundredweight would yield $54,600 in assessment income. This, along with approximately $3,600 in fees, $1,000 in interest and $18,980 from the reserve, would be adequate for budgeted expenses. At the end of the fiscal period, the reserve fund is expected to approximate $22,000.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1989–90 fiscal period begins on August 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this

program needs to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, potatoes (Idaho and Oregon).

For the reasons set forth in the preamble, it is proposed that § 945.242 be added as follows:

PART 945—POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new section 945.242 is added to read as follows:

§ 945.242 Expenses and assessment rate.

Expenses of $78,180 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 22, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–15278 Filed 6–27–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1126 and 1106

[Docket Nos. AO–231–A56 and AO–210–A48; DA–88–110]

Milk in the Texas and Southwest Plains Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends the denial of proposals to amend the producer-handler definitions of the Texas and Southwest Plains Federal milk marketing orders. The decision concludes that there is insufficient evidence at this time to warrant the adoption of proposals intended to fully regulate any relatively large producer-handler unless such person limits his distribution of milk to home delivery routes and to sales from a store located on the same premises as his processing plant. The decision is based on the record of a public hearing held September 7–8, 1988, at Irving, Texas.

DATES: Comments are due on or before July 28, 1989.

ADDRESSES: Comments (five copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rulemaking proceeding will not have a significant economic impact on a substantial number of small entities since no changes in the rules are being adopted.

Prior documents in this proceeding:

Notice of Hearing: Issued June 10, 1988; published June 16, 1988 (53 FR 22499).

Notice of Rescheduled Hearing: Issued July 14, 1988; published July 19, 1988 (53 FR 27174).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Texas and Southwest Plains marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register.** Five copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The decision on the proposed amendments set forth below is based on the record of a public hearing held at Irving, Texas, on September 7–8, 1988, pursuant to notices of hearing issued on June 10, 1988 (53 FR 22499) and July 14, 1988 (53 FR 27174).

The material issues on the record of hearing relate to:

1. The producer-handler definition;
2. The producer definition; and
3. Whether emergency marketing conditions exist with respect to issue number one.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The Producer-Handler Definition

No changes should be made to the producer-handler definitions of the Texas and Southwest Plains orders. The record does not demonstrate the existence of disorderly marketing conditions that warrant the adoption of proposals intended to fully regulate any relatively large producer-handler unless such person limits his milk distribution to home delivery and sales from a store on the premises of his plant.

Currently, producer-handlers are exempt from the pricing and pooling provisions of the orders. Generally, both orders define a producer-handler as a person who operates both the milk production and plant processing facilities as one enterprise, and who has route disposition of fluid milk products in the marketing area. The Texas order permits a producer-handler to purchase the lesser of five percent of his Class I disposition or 10,000 pounds per month from pool plants. The Southwest Plains order does not provide a limit on the pounds of milk that a producer-handler can purchase from pool plants and other order plants. Both orders do not permit a producer-handler to purchase milk from dairy farmers or to dispose of other source milk as Class I milk, with limited exceptions. Also, both orders specify that a producer-handler is a person who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for own-farm production and the management and operation of the processing plant are the personal enterprise and risk of such person.

Three cooperative associations (Associated Milk Producers, Inc., Mid-America Dairymen, Inc., and Southern Milk Sales, Inc.) that represent a substantial proportion of the producers

who supply the markets proposed that the current producer-handler definitions be revised. The proposals for the two orders would establish additional requirements to qualify as a producer-handler for those fluid milk processors that sell more milk than is produced on an average size farm. Under the original proposal, any handler that had monthly route disposition of 150,000 pounds or less under the Texas order, or 100,000 pounds or less under the Southwest Plains order, would be exempt from the pricing and pooling provisions. At the hearing, the proposal was modified to provide under each order for a 300,000-pound per month limitation, which would apply only to producer-handlers rather than all handlers. As a result of the modification, there is some ambiguity as to the criteria that would apply in defining producer-handlers. However, the major emphasis of the proposal was to differentiate between producer-handlers on the basis of size with additional proposed requirements being applicable to relatively larger operations.

Under the proposal, larger operations that had both production and processing facilities would be limited to disposing of fluid milk products directly to consumers through home delivery retail routes or through a retail store located on the same property as the milk processing plant in order to qualify as a producer-handler. Any other type of distribution would result in a disqualification of producer-handler status, which proponents claimed would recognize those points in the marketing channel where a pricing advantage over regulated handlers contributes to disorderly marketing. In addition, the proposal would prohibit a producer-handler from having a financial interest in any other handler or dairy farm operation. It also would require that any producer-handler who loses such stetus meet all the conditions for such status for a period of one month before re-acquiring producer-handler status. The purpose of these conditions is to preclude a producer-handler from changing its regulatory status to fit sales conditions or change its organizational structure to gain benefits at the expense of others. Basically, the proposed conditions are a more specific statement of factors that would be reviewed by a market administrator in administering the "sole risk" criteria contained in the current producer-handler definitions of both orders.

The proposed definitions would limit a producer-handler's purchase of fluid milk products from pool plants to the lesser of five percent of Class I disposition or 5,000 pounds per month. In addition, the proposals would require that producer-handlers pay the administrative assessment that is applicable to handlers.

The proposals of the cooperative associations were supported by the Milk Industry Foundation, a national trade association of processors and distributors of fluid milk and fluid milk products. Also, three handlers who operate plants that are regulated under the orders supported the adoption of the proposals. Basically, all of the proponents contend that producer-handlers who are large enough to have a significant commercial impact on the market should be regulated to maintain orderly marketing conditions. They contend that producer-handlers, as a result of their exemption from the pricing and pooling provisions, have a substantial competitive advantage in the cost of milk over fully regulated handlers who are required to pay minimum order prices for milk on the basis of its use. They contend that full regulation of such operations would promote a greater degree of equity among all handlers as well as among all producers, who would be protected from a loss of Class I sales because of unfair competition.

One producer-handler under the Texas order and two producer-handlers under the Southwest Plains order opposed the restriction to the types of sales for larger producer-handlers. They also suggested increasing the size limitation for exemption to 500,000 or 700,000 pounds per month. One of these producer-handlers requested that the proposal for the Southwest Plains order be dismissed since there was no evidence offered to suggest that producer-handlers currently operating under that order were causing disorderly marketing conditions.

One other producer-handler who recently acquired such status under the Texas order, the Pure Milk and Ice Cream Company, presented testimony in opposition to the implementation of any part of the proposals. Basically, Pure Milk contends that the implementation of the proposals would be inconsistent with the longstanding policy of the Department and Congressional intent to exempt producer-handlers from full regulation. In addition, Pure Milk contends that it does not have a competitive advantage over fully regulated handlers and that there is no evidence of the existence of disorderly marketing conditions as a result of its acquiring producer-handler status.

A number of producer-handlers under other Federal orders filed briefs in opposition to the proposals. These producer-handlers contend that the adoption of the proposals would set a precedent to be followed under other Federal orders that would result in the full regulation of operations that are currently exempt from pricing and pooling provisions. These producer-handlers contend that adoption of the proposals would represent a deviation of policy, contrary to Congressional intent, to exempt producer-handlers who have no demonstrated advantage over regulated handlers as a result of the costs associated with maintaining the reserve supplies of milk that are necessary to balance fluid milk needs. They further contend that disorderly marketing conditions have not resulted in other markets where a relatively large number of producer-handlers compete with regulated handlers for fluid milk sales.

In their brief, the proponent cooperative associations indicated that they would not be opposed to a reliance on only a pound limitation as was suggested by various parties at the hearing, rather than their original proposal, as long as such limitation was low enough to fully regulate Pure Milk and other producer-handlers who are large enough to have a disruptive impact in the market. In its brief, one other handler also suggested that a pound limit should be adopted that would exempt smaller operations but regulate larger operations. The handler suggested that the limit should be related to the smallest size handler that could have an efficient and consistent supply relationship with producers or a cooperative association. The size limit, above which producer-handlers would be regulated without regard to any other criteria, would be equivalent to a handler who is large enough to receive a tanker load of milk every other day.

A significant proportion of proponent's testimony was centered on the legislative history of the Act as it relates to the authority to regulate handlers who sell fluid milk products derived solely from own-farm production. Proponents contend that it was the intent of Congress to fully regulate such type of handlers who are large enough to have an impact in the marketplace and that only relatively small operations were intended to be exempt from regulation. Proponents testified that the purpose of the Act, which they contend is to stabilize marketing conditions for producers, is primarily accomplished by establishing classified pricing and by the pooling of returns from the sale of milk among all producers. They further testified that, to

the extent that unpriced milk is free to enter the regulatory scheme, the objective of the Act—to promote orderly marketing—is frustrated. Furthermore, they contend that a failure to regulate large producer-handlers results in nonuniform prices to handlers, which they claim also is contrary to requirements of the Act. Thus, they conclude that inequities exist between fully regulated handlers and exempt producer-handlers, which they contend caused the very same market disruption that is intended to be rectified by Federal regulation.

Proponents maintain that the proposals are consistent with the intent of Congress in that relatively small operations would continue to be exempt from full regulation. Also, producer-handlers, however large they might be, would also be exempt from full regulation if their sales of fluid milk products were not in direct competition with those of regulated handlers. Proponents testified that disruptive competition would not result to the extent that sales of large producer-handlers are restricted to home delivery and to sales from a plant store on the same premises as the processing plant. Proponents contend, however, that to the extent that sales are made in the same commercial channels used by regulatad handlers, the same regulatory provisions should apply to producer-handlers as to handlers. Otherwise, proponents contend, producer-handlers who have a significant pricing advantage can disrupt the marketing of milk to the detriment of regulated handlers and to the producers who supply the milk requirements of the market.

Proponents testified that it is necessary, as a result of changes in marketing conditions, to alleviate the potential for market disorder that may result because of unfair competition between regulated handlers and exempt producer-handlers. Proponents contend that with the trend towards fewer and larger producers and handlers, there is an increasing potential for the vertical integration of production and processing operations of sufficient size to be disruptive factors in these Federal order markets. With respect to the Southwest Plains order, proponents testified that no such larger operations exist. In fact, proponents testified that it was not the intent of the proposals to regulate any of the currently existing producer-handlers because, in their view, no disorderly marketing conditions have resulted from competition between handlers and producer-handlers. However, proponents expressed major concerns over the existence of one relatively large handler (Braums Dairy) who has a substantial amount of own-farm production. In proponents' view, such handler has the potential to avoid full regulation by becoming a producer-handler. Thus, proponents contend that the proposal should be adopted to prevent such a possibility.

With respect to the Texas order, proponents directed their concern towards the Pure Milk and Ice Cream Company (Pure Milk), which acquired producer-handler status in July of 1988. Proponents testified that Pure Milk had been a fully regulated handler under the Texas order for a long period of time. Producer-handler status was achieved as a result of the purchase of the Pure Milk fluid milk plant at Waco, Texas, by Gore, Inc., a family corporation that, as a producer, operated seven dairy farms under the Texas order. Proponents testified that during May 1988, when Pure Milk was a fully regulated handler, production of the seven farms was in excess of five million pounds while the plant received about 4.4 million pounds of milk, 3.4 million of which was for fluid use. Proponents claim that as a result of acquiring producer-handler status, Pure Milk has a significant competitive advantage over regulated handlers. Basically, proponents contend that the advantage is equivalent to the difference between the order Class I price, which is the minimum price that regulated handlers must pay, and the order blend price, which is what Gore, Inc., would receive as a producer under the order. On this basis, proponents contend, Pure Milk has as much as a 14-cent per gallon advantage over regulated handlers. On the basis of Pure Milk's May 1988 utilization, proponents testified that Pure Milk reduced its cost for milk by almost $34,000 by operating as a producer-handler, equivalent to 77 cents per hundredweight of milk received at the plant. Proponents testified that cost differences of such magnitude, when outlets change hands for a fraction of a cent, represents a disorderly marketing condition in and of itself. In addition, proponents testified that the acquisition of producer-handler status also resulted in a loss of income to dairy farmers by the removal of Class I sales from the market. Furthermore, proponents maintain that an operation the size of Pure Milk, which supplies supermarkets, institutions, restaurants and military bases, is clearly not the type of operation that was intended to be exempt from regulation.

In its testimony and brief, Pure Milk argues that the proposal to regulate producer-handlers on the basis of either size or method of distribution would be inconsistent with a longstanding policy of the Department. Furthermore, Pure Milk contends that the legislative criteria for regulation is not based on size itself, but rather on whether producer-handlers (independently or in the aggregate) represent so large a portion of sales in a Federal order market as to disrupt the operation of the order to the detriment of other dairymen in the market. In this context, Pure Milk argues that it is not a significant factor in the market because its production represents about one percent of producer milk and that its status as a producer-handler represents a loss to order producers of about one-half of one percent of total revenue. Thus, Pure Milk concludes that it represents a far lesser proportion of sales and has a lesser impact on producers than producer-handlers in other markets where similar proposals to fully regulate producer-handlers were denied. Pure Milk argues that it would be inappropriate and inconsistent for it to be fully regulated when producer-handlers representing from six to 20 percent of Class I sales in other markets were not found to be sufficiently large as to be disruptive.

Pure Milk also contends that it would not be an economically viable operation if it were fully regulated. Basically, Pure Milk contends that it does not have a competitive advantage over regulated handlers with its current producer-handler status. Pure Milk testified that it does not have a pricing advantage equal to the difference between the order Class I and blend price as testified by proponents since its plant utilization is not taken into consideration. Pure Milk testified that its plant utilization of milk reflects a blend price value that exceeds the order blend price by only 90 cents per hundredweight since an 80 percent Class I utilization must be maintained to balance its fluid milk needs. Also, Pure Milk contends that such figure does not include the costs associated with disposing of its reserve milk supplies or the offsetting value that accrues to the pool on its surplus milk that is allocated to Class I use at the regulated plant that purchases Pure Milk's surplus production. In addition, Pure Milk argues that the blend price or the plant utilization value has nothing to do with the cost of producing milk. Pure Milk testified that its cost of production exceeds the order blend price by about one dollar per hundredweight, which is a primary reason that producer-handler status was sought. Furthermore, Pure Milk argues that since the cost of raw milk represents about 43.5 percent of the cost of finished fluid milk products,

there are sufficient opportunities for cost reductions from increased efficiencies by larger operations to compete with smaller operations that may have a lower raw product cost.

Pure Milk also argues that even if it had a pricing advantage as suggested by proponents, other factors associated with the nature of its business would render the advantage meaningless. Basically, Pure Milk contends that any pricing advantage could not be exploited in the marketplace since its source of supply is limited to its own-farm production. Even increased distribution as a result of sales by Pure Milk's customers result in higher costs associated with additional hauling of partial loads of milk from its farms to meet additional milk needs, according to Pure Milk. In addition, Pure Milk contends that should it have some milk with quality problems it cannot replace this milk with milk from the open market as can be done by a regulated handler. Moreover, Pure Milk testified, for a handler no more than a load of milk is lost. For Pure Milk, it is argued, the load is lost and it also faces additional costs of full regulation if supplemental milk must be purchased. Pure Milk further argues that a large proportion of its income must be spent in quality assurance at the farm as well as at the plant.

Pure Milk also argues that there is no evidence of disorderly marketing conditions that might warrant adoption of the proposal. Pure Milk claims that producers are not materially affected by Pure Milk's producer-handler status and there is no significant evidence of a loss of accounts by any handlers. Also, there is no pattern of bids on sales to institutions, schools, military bases or prisons to suggest an unfair competitive advantage by Pure Milk. Furthermore, Pure Milk argues that there is no evidence of the trend towards vertical integration of production and processing functions as was indicated by proponents. Pure Milk testified that many factors are involved in this, such as the location of the plants and farms, the size of the farms compared to the size of plants, the availability of a plant, the economic viability of the plant, and the desire or ability to incur the additional management load and risk. In addition, Pure Milk contends that it must pursue a conservative marketing practice because of the substantial risks involved in being both a processor and a producer, including the threat of full regulation if supplemental supplies must be purchased.

The purpose of Federal milk marketing orders is to establish orderly marketing conditions for producers who are the regular suppliers of milk. In its simplest terms, this is accomplished by establishing minimum prices for milk in accordance with its use and providing for the pooling or equal sharing of the proceeds from the sale of milk in all uses among all dairy farmers supplying the market.

Any time that milk is sold within a Federal order marketing area and such milk is not priced by the order, the ability of the order to maintain orderly and stable marketing conditions for milk may be impaired. When milk of a producer-handler is sold in a Federal milk marketing area, such milk is not priced by the order. In such case, the order does not provide uniform regulated pricing among competing handlers since fully regulated handlers must pay the minimum order Class I price for milk in fluid uses while producer-handlers are not required to do so. This raises the potential for competitive inequities among handlers. Furthermore, thare is not an equal sharing among all dairy farmers in the market of the returns from the sale of all milk in all uses since producers whose milk is being priced under the order do not share in the Class I sales of producer-handlers.

Although the marketing of milk by producer-handlers has the potential of creating disorderly marketing conditions, it has not been found necessary to regulate fully this type of operation. In fact, the policy has been to exempt such types of operations. Such policy has been based, generally, on findings in regulatory proceedings that producer-handlers have no significant advantage in the market in their capacity as either handlers or producers as long as they are solely responsible for their production and processing facilities and assume essentially the entire burden of balancing their production with their fluid milk requirements.

Although producer-handlers have not been fully regulated as a general practice, the Act provides the authority to regulate handlers of milk to carry out the purposes of the Act. With respect to producer-handlers, guidelines from the legislative history indicate that there is authority to regulate such operations if they are so large as to disrupt the market for producers. However, on the basis of the overall history of the treatment of producer-handlers, a size consideration, in and of itself, is not particularly relevant to the issue. Even large operations in relation to the markets they serve have continued to be exempt from full regulation. Consequently, any decision to fully regulate a producer-handler type operation must be supported by substantial evidence of the existence of disorderly marketing that is a direct result of producer-handler activity. Although the size of an operation obviously leads to concern, since relatively greater quantities of unpriced milk are involved, it does not in itself provide a basis for full regulation. The existence of large producer-handler operations merely implies that the conditions for disorderly and disruptive marketing conditions may exist.

Seven producer-handlers operate under the Southwest Plains order. Combined, they represent less than one-half of one percent of the fluid milk products distributed in the marketing area. Also, such operations do not restrict their sales to home delivery or to sales from a store on the same premises as the plant. They basically compete in the same marketing channels with handlers who are fully regulated "under the order.

There is no evidence of market disorder as a result of competition between such producer-handlers and fully regulated handlers. In addition, the proponents of the proposal did not intend that any of the existing producer-handlers be fully regulated as they are currently operating. In fact, the proposed exemption level was increased to accommodate two of the producer-handlers who testified at the hearing. The proposal was intended to prevent the acquisition of producer-handler status by a relatively large handler who has own-farm production. Such concern over the potential of a large handler who may have the ability to become a producer-handler does not provide a sufficient basis for a regulatory change.

In the Texas market, there are three producer-handlers who have route disposition in the marketing area. The point of concern, however, was directed only to Pure Milk. There is no evidence concerning the proportion of fluid milk sales in the Texas marketing area by Pure Milk or the three producer-handlers combined. However, other information clearly indicates that Pure Milk is a rather significant operation, size wise, in the Texas market.

Pure Milk was a fully regulated handler under the Texas order for a number of years. However, following the purchase of the milk plant by Gore, Inc., a producer who supplied the market for a long pariod of time, the entire operation was qualified as a producer-handler under the order in July 1988. The plant at Waco, Texas, is primarily a fluid milk operation, with some Class II

use, that processes in excess of four million pounds of milk per month. The plant has a wide distribution area that covers about 16 counties with sales to supermarkets, institutions, restaurants, and military bases in direct competition with fully regulated handlers. The milk supply for the plant is produced on seven dairy farms in Comanche and Brown Counties that are located about 100 miles from the plant. Milk production averages about 4.6 million pounds per month, and ranges from about 4.2 to in excess of 5 million pounds per month. Milk production that is in excess of the plant's needs is shipped to a fully regulated distributing plant located in Wichita County, Texas. Such milk is normally allocated to the lowest class uses at the regulated handler's plant, with any allocation to Class I use requiring a payment to the producer-settlement fund by the regulated handler at the difference between the order Class I and Class III prices.

Proponents' contention that the plant continues to be operated in competition with regulated handlers, and that only an ownership change has resulted in the producer-handler's ability to avoid paying class prices for milk, is essentially correct. However, as a result of the ownership change, a number of different conditions apply. First of all, the plant is no longer in competition with other handlers for a supply of milk. Also, Pure Milk now bears the entire risk and cost of balancing its own supply of milk, whereas such burden was formerly borne by all producers who supply the market. Also, Gore, Inc., has now assumed all risks associated with the operation of the plant in addition to all the risks associated with the production of milk.

Proponents' major contention is that Pure Milk has a significant competitive advantage over regulated handlers in the sale of fluid milk products since it is not subject to classified pricing. The maximum advantage contended is the difference between the Class I price that fully regulated handlers must pay and the blend price, which is the alternative, or opportunity cost, that Gore, Inc., could receive as a producer. In terms of the plant's utilization, relative to that of the entire market, cost advantages of 77 to 90 cents per hundredweight are computed for its Class I sales relative to regulated handlers. However, such advantages do not reflect the costs that may be associated with disposing of production that is surplus to Pure Milk's needs. For example, the fact that Pure Milk would have been able to avoid about a $34,000 pool obligation by operating as a producer-handler in May 1988 does not include the lost revenue or costs associated with disposing of the additional 600,000 pounds of milk production that was surplus to the needs of, or receipts of, milk at the Pure Milk plant. Thus, the amount of the avoided pool obligation is not a measure of Pure Milk's economic advantage over regulated handlers since it does not encompass the entire operation.

It would appear logical that there must be some economic incentive for Pure Milk to operate as a producer-handler rather than as a handler. Otherwise, the action to attain producer-handler status would not have been taken. In fact, Pure Milk admits that it would not be economically viable for it to operate as a regulated handler. Basically, Pure Milk has decided to give up the blend price on all of its production (well in excess of $600,000 per month at the blend price) to avoid a pool obligation as a handler on its Class I sales (less than $34,000 per month) and to retain all of the proceeds from the sale of finished fluid milk products. However, this does not necessarily mean that Pure Milk as a producer-handler has an advantage over regulated handlers. It may merely mean that Pure Milk is expected to be competitive only as a producer-handler, but without any clearly demonstrated advantage. In conclusion, the degree of any cost or pricing advantage cannot clearly be determined.

The justified concern of proponents over the potential for unfair and disorderly marketing conditions has not manifested itself with any demonstrable evidence of disorder in the Texas market. This may be a result of the nonexistence of any pricing advantage or it may well be that not sufficient time has elapsed between the time that Pure Milk acquired producer-handler status and when the hearing was held. Consequently, in view of insufficient evidence of market disorder attributable to producer-handler operations, there is no basis for adopting the proposal to regulate relatively large producer-handlers.

A refinement of the current producer-handler provisions to set forth in more specific detail those factors that bear on the "sole risk" requirement of the order also does not appear to be necessary at this time. There was no demonstration on the record of attempts by Pure Milk, or other producer-handlers, to transfer the costs or risks of operating to others. Pure Milk has qualified as a single entity. There is no indication that Pure Milk has attempted organizational changes (such as splitting off some of the milk production facilities) to take advantage of the benefits (keeping the Class I sales) and to share the costs (burden of the surplus) with others. Also, there is no evidence that Pure Milk intends to follow a practice of shifting from exempt status to full regulation to meet changed circumstances, which would also amount to transferring costs and risks to others. Thus, in terms of the current situation, the current provisions have not been abused or circumvented in a way that could provide s basis for either clarification or modification of the current regulations.

Proponents, in conjunction with their proposal to revise the producer-handler definition, proposed that the administrative assessment that is applied to other handlers also apply to all producer-handlers. Proponents contend that it is unfair to other handlers to incur an administrative assessment as a result of costs that are incurred in determining whether certain operations should be qualified as producer-handlers and, thus, be exempt from the pricing and pooling provisions. Basically, proponents contend that producer-handlers should pay their pro rata share of at least the administrative costs involved in determining and monitoring their exempt status. Proponents contend that handlers should not have to bear such cost since they do not benefit from the producer-handler exemption.

Currently, the administrative assessment is applied to handlers on their receipts of producer milk and on other receipts on which there is a pool obligation. Producer-handlers on the other hand, who have no receipts of producer milk or any pool obligation, are not subject to an administrative assessment.

Contrary to proponents' views, handlers do derive a benefit from the administrative expense that they incur. To the extent administrative costs are incurred in administering the producer-handler provisions, handlers are assured that producer-handlers continue to operate in the manner provided under the order. As previously stated, this insures that producer-handlers are not able to transfer the costs and risks of their operation to others and, consequently, are not able to gain a demonstrable advantage relative to producers or handlers. In addition, the producer-handler exemption from the

administrative assessment is similar to the exemption of the assessment on other handlers for receipts of other source milk that is allocated to other than Class I use. Such receipts affect the administrative costs and complicate the verification process involved in determining the utilization of producer milk. There is no indication that orderly marketing has suffered from the restriction of the application of administrative assessments to producer milk and other milk on which there is a pool obligation. Therefore, the proposal to apply an administrative assessment to producer-handlers is denied.

2. The Producer Definition

No changes should be made to the producer definition.

Proponents, in conjunction with their proposal to fully regulate certain producer-handlers, and exempt others, proposed a conforming amendment to the producer definition. The proposal would prohibit a dairy farmer from being a producer if such dairy farmer delivered milk to or received milk from a producer-handler. Proponents contend that if producer-handlers are to be exempt from the pricing and pooling provisions, it would not be fair for a producer-handler to receive milk from other dairy farmers or for a producer-handler to ship excess milk to a dairy farmer that could then receive the blend price under the order. Basically, proponents contend that such a situation would amount to a transfer of risks and costs associated with the maintenance of the reserve supplies of milk to others.

In addition, the proposal would exclude as a producer, any dairy farmer who disposes of more than 110 pounds of milk per day directly to consumers. Proponents contend that such dairy farmers should not share in the proceeds of Class I sales under the order since they maintain a portion of fluid milk sales for themselves. Proponents contend that since such dairy farmers do not operate plants, and thus cannot be regulated as handlers, they should at least be prevented from being producers under the orders.

The current producer-handler provisions provide that producer-handlers cannot receive milk from other dairy farmers. If milk were received from a dairy farmer, producer-handler status would be lost and full regulation would apply. Thus, the dairy farmer supplying the handler operating the regulated plant would be eligible for producer status. As a result, it is not necessary to specify that a dairy farmer who supplies a producer-handler could not be a producer, since such a situation is not permissible. Also, there is no indication on the record to suggest that any producer-handler has attempted to circumvent the "sole risk" standard of the current provisions by attempting to pool surplus milk production through another producer. Also, there is no indication of the extent to which dairy farmers may be involved in selling unprocessed milk directly to consumers. There is no evidence to suggest a problem of sufficient degree to warrant further restrictions through Federal milk order regulation at this time.

3. Whether Emergency Marketing Conditions Exist With Respect to Issue Number One

The request for emergency action is denied since proposals to modify the producer-handler provisions are denied for reasons previously stated.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Determination

The findings and conclusions of this decision do not require any changes in the regulatory provisions of the orders regulating the handling of milk in the Texas and Southwest Plains marketing areas.

List of Subjects in 7 CFR Parts 1126 and 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1126 and 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on June 22, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–15283 Filed 6–27–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ASO–27]

Proposed Amendment To Control Zone, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Miami, FL, control zone. An arrival area extension would be added to accommodate a planned Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway 9L at the Miami International Airport based on the Cook NDB.

DATE: Comments must be received on or before: July 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 89–ASO–27, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia, 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia, 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the

following statement is made: "Comments to Airspace Docket No. 89–ASO–27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Miami, FL, control zone. An arrival area extension is necessary to provide controlled airspace for protection of aircraft executing an NDB SIAP planned for Runway 9L at the Miami International Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Miami, FL [Amended]

Following the phrase, "* * * Miami International Airport (Latitude 25°47'34" N.; Longitude 80°17'10" W.);" insert the phrase, "within 2.5 miles each side of the 267° bearing from the Cook NDB, extending from the 6-mile radius area to 4 miles west of the NDB;"

Issued in East Point, Georgia, on June 14, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–15210 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–30]

Proposed Revision to Control Zone, Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to revise the Vero Beach, FL, control zone. A Nondirectional Radio Beacon (NDB) is being installed and a Standard Instrument Approach Procedure (SIAP) has been developed based on the NDB. This revision would add an arrival area extension to the existing control zone to provide controlled airspace for aircraft executing the new NDB SIAP. Also, a minor correction would be made to the geographic position coordinates of the Vero Beach Municipal Airport.

DATES: Comments must be received on or before: July 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 89–ASO–30, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket NO. 89–ASO–30." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia, 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO/530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Vero Beach, FL, control zone. An arrival area extension would be added to provide controlled airspace for aircraft executing a new NDB SIAP planned for the airport. Also, a minor correction would be made to the geographic position coordinates of the Vero Beach Municipal Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Vero Beach, FL [Revised]

Within a 5-mile radius of Vero beach Municipal Airport (Latitude 27°39'16" N; Longitude 80°24'58" W); within 3 miles each side of the 261° bearing from the Vero Beach NDB (Latitude 27°39'50" N; Longitude 80°25'11" W) extending from the 5-mile radius area to 8.5 miles west of the NDB.

Issued in East Point, Georgia, on June 15, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-15211 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-29]

Proposed Amendment to Control Zone, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Nashville, TN, Control Zone. A new runway (2R) is being built at the Nashville International Airport and an associated Standard Instrument Approach Procedure (SIAP) is being developed. Additional airspace is required for protection of Instrument Flight Rules (IFR) aircraft executing the new SIAP. The existing control zone extension on the south would be expanded to the east one additional mile.

DATE: Comments must be received on or before: July 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-29, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before the taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the Docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Nashville, TN, Control Zone. The increase in controlled airspace is required for protection of IFR aircraft executing a recently developed ILS SIAP to Runway 2R at the Nashville

International Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Nashville, TN [Amended]

By changing the phrase in the existing description, "within 1.5 miles each side of the ILS localizer south course, extending from the 5-mile radius zone to the LOM;" to read, "within 1.5 miles west and 2.5 miles east of the BNA ILS Localizer south course, extending from the 5-mile radius zone to 7 miles south of the airport;"

Issued in East Point, Georgia, on June 15, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-15212 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-28]

Proposed Designation of Transition Area, Philadelphia, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Philadelphia, MS, transition area to accommodate Instrument Flight Rules (IFR) operations at the Philadelphia Municipal Airport. This action will lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. A Standard Instrument Approach Procedure (SIAP) is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations. Concurrent with the publication of the SIAP, the operating status of the airport will change from Visual Flight Rules (VFR) to IFR.

DATE: Comments must be received on or before: July 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-28, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Philadelphia, MS, transition area. This action will provide controlled airspace for aircraft executing a new SIAP to the Philadelphia Municipal Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is

so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Philadelphia, MS [New]

"That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Philadelphia Municipal Airport (latitude 32°47'55" N, longitude 89°07'30" W); within 3.5 miles each side of the 001° bearing from the Philadelphia NDB (latitude 32°47'54" N, longitude 89°07'28" W), extending from the 6.5-mile radius area to 11.5 miles of the NDB."

Issued in East Point, Georgia, on June 14, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-15213 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 86N-0479]

RIN 0905-AC54

Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency; Reproposed Rule; Correction

AGENCY: Food and Drug Administration.

ACTION: Reproposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a reproposed rule to amend its tampon labeling regulations (21 CFR 801.430) that appeared in the **Federal Register** of June 12, 1989 (54 FR 25076). The correction will clarify that the agency is proposing that any final rule based on the reproposal would become effective 6 months after the date of publication of the final rule. The agency is also clarifying that the estimate of 1.05 per 100,000 per year as data extrapolated from the nationwide incidence of menstrual toxic shock syndrome (TSS) in 1986 refers to "menstruating women and girls."

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

In FR Doc. 89-13959, appearing at page 25076 in the **Federal Register** of Monday, June 12, 1989, the following corrections are made:

1. On page 25076, in the first column, under the caption "**DATES:**", the second sentence should read "The agency is proposing that any final rule based on the reproposal become effective for packages of tampons initially introduced or initially delivered for introduction into commerce 6 months after the date of publication of any final rule based on the reproposal.

2. On page 25079, in the first column, in the first complete paragraph, line 10, "estimated to be 1.05 per 100,000 per year." should read "estimated to be 1.05 per 100,000 menstruating women and girls per year."

§ 801.430 [Corrected]

3. On page 25092, in the second column, § 801.430(h) should be corrected to read as follows:

(h) Any menstrual tampon that is not labeled as required by paragraphs (c), (d), and (e) of this section and that is initially introduced or initially delivered for introduction into commerce after (insert date 6 months after date of publication of the final rule), is misbranded under sections 201(n), 502 (a) and (f) of the act.

Dated: June 23, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15250 Filed 6-27-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 44

RIN 1219-AA45

Rules of Practice for Petitions for Modification of Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Due to request from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its proposed rule for petitions for modification of mandatory safety standards in 30 CFR Part 44.

DATE: Written comments for the proposed rule on petitions for modification of mandatory safety standards should be received on or before August 7, 1989.

ADDRESS: Comments should be sent to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On May 5, 1989, MSHA published in the **Federal Register** (54 FR 19492) a proposed rule to revise existing Part 44 by specifying time frames at all stages of the petition for modification process. The proposal would also include a revision of the Agency's existing procedures for evaluating applications for interim relief, conforming them to the decision of the United States Court of Appeals in *International Union, United Mine Workers of America (UMWA)* v. *Mine Safety and Health Administration (MSHA)*, 823 F.2d 608 (DC Cir. 1987).

The comment period was scheduled to close on July 5, 1989. Due to requests from the public MSHA is extending the comment period to August 7, 1989. All interested parties are encouraged to submit comments and comments must be received on or prior to that date.

Date: June 22, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-15203 Filed 6-27-89; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS–42012E; FRL–3609–3

Diethylenetriamine (DETA); Proposed Amendments to Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the test rule for DETA in 40 CFR 799.1575 by extending the deadline for submission of the final report on the chemical fate testing and by rescinding the requirement for dermal absorption testing. The proposed extension would require submission of the final report twelve months after the final rule incorporating this amendment is published in the Federal Register.

DATE: Submit written comments on or before July 28, 1989.

ADDRESS: Written comments, in triplicate, identified by docket number [OPTS–42012E], should be submitted to: TSCA Public Docket Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M Street SW., Washington, DC 20460

A public version of the administrative record supporting this action is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is proposing under TSCA section 4(a) to modify the chemical fate and dermal adbsorption testing requirements for DETA in 40 CFR 799.1575.

I. Introduction

A. Regulatory History

Section 799.1575 of 40 CFR requires the testing of DETA for oral subchronic toxicity, dermal absorption (in the same animal species used for the subchronic testing), mutagenicity (tiered sequences of tests for detecting chromosomal aberrations and gene mutations), and chemical fate testing (for the detection of possible chemical or biological transformations of DETA to *N*-nitrosamines in samples of soil, lake water, and sewage sludge). The primary purpose if the dermal absorption testing of DETA was to relate potentially adverse effects which might be observed in the required 90-day oral subchronic toxicity study to expected exposure by the dermal route.

EPA has received and evaluated the final reports resulting from all of the testing required for DETA except for chemcial fate and dermal absorption. On two occasions, pursuant to 40 CFR 790.55, Dow Chemical Company (the test sponsor for both of these tests), requested that EPA extend the reporting requirement deadlines for the submission of the final reports for these two tests because it was unable to obtain the ^{14}C-radiolabelled DETA necessary for the conduct of these studies from reputable contract laboratories. In a letter of October 22, 1987 (Ref. 1), the test sponsor requested a 4-month extension of the reporting deadlines for these two tests. In its letter of February 15, 1988, (Ref. 3), the sponsor requested an additional 2-month extension. Both these requests were granted by EPA (Refs. 2 and 4).

In letters dated September 16, 1988 (Ref. 5), and September 29, 1988 (Ref. 6), the test sponsor requested an additional 1-year extension of the deadlines for the final reports for these two tests, due to continuing difficulties in obtaining the required radiolabelled DETA. The sponsor provided supplemental information to justify the request. Because the test sponsor has already received extensions totalling 6 months, any further extensions of these deadlines must be considered, pursuant to 40 CFR 790.55 (b)(3) and (4)(iv), to significantly change the schedule for completing testing, and require notice and public comment.

B. Proposed Modifications

EPA has carefully evaluated the data contained in references 1, 3, 5, and 6, and has concluded that the test sponsor's difficulties in obtaining the ^{14}C-radiolabelled DETA necessary to conduct the chemical fate and dermal absorption testing of DETA warranted the previous extensions of the deadlines for the final reports for these two tests already granted by EPA, and continues to warrant a further extension in the deadline for the chemical fate testing of DETA. EPA is proposing that the deadline for the chemical fate testing of DETA be extended by 12 months from the effective date of the final rule resulting from this proposal. EPA believes that this 12-month extension will provide the test sponsor adequate time to obtain the radiolabelled test substance, and conduct the testing.

EPA is proposing to rescind the requirement for dermal absorption testing of DETA for the following reasons: (1) The dermal absorption testing of DETA was required to relate potential adverse effects which might be observed in the required 90-day dietary subchronic toxicity study to the expected dermal route of human exposure; (2) EPA's evaluation of the 90-day dietary subchronic toxicity study (Ref. 8) indicates that no significant toxic effects were observed in this study; and (3) the available acute toxicity data indicate that DETA would be expected to be about equally or only slightly more toxic following administration by the dermal as compared with the oral route of administration (Ref. 9).

II. Rulemaking Record

EPA has established a record for this rulemaking (Docket Number OPTS–42012E). This record contains the basic information considered by EPA in developing this proposal and appropriate Federal Register notices.

This record includes:

A. Supporting Documentation

(1) Final Phase II rule on diethylenetriamine (52 FR 3230; February 3, 1987).

(2) Contact reports of telephone conversations.

B. References

(1) The Dow Chemical Company (Dow). Letter to the Director, Office of Compliance Monitoring (OCM), Office of Pesticides and Toxic Substances (OPTS), U.S. Environmental Protection Agency (EPA). (October 22, 1987).

(2) OPTS, EPA. Letter to John Gray, Dow. (December 16, 1987).

(3) Dow. Letter to the Director, OCM, OPTS, EPA. (February 15, 1988).

(4) OPTS, EPA. Letter to John Gray, Dow. (April 5, 1988).

(5) Dow. Letter to the Director, OCM, OPTS, EPA. (September 16, 1988).

(6) Dow. Letter to the Director, OCM, OPTS, EPA. (September 29, 1988).

(7) Existing Chemical Assessment Division, EPA. Letter to John Gray, Dow. (October 24, 1988).

(8) Health and Environmental Review Division (HERD), EPA. Memorandum to Richard Troast, Test Rules Development Branch (TRDB), EPA. (August 4, 1988).

(9) HERD, EPA. Memorandum to Richard Troast, TRDB, EPA. (October 21, 1988).

The record for this rulemaking is available for inspection in the OPTS Reading Room, G–004, NE Mall, 401 M Street SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays. EPA will supplement the record periodically with additional relevant information.

III. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA judged that the final Phase II test rule for DETA was not "major" and therefore was not subject to the requirement of a Regulatory Impact Analysis. The proposed modifications to the rule do not alter this determination.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA certified that the final Phase II rule for DETA would not have a significant impact on a substantial number of small businesses. The proposed modifications do not alter this certification.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 *et seq.* and have been assigned OMB control number 2070–0033.

Public reporting burden for the collection of information is expected to be altered by this modification by adding an estimated eight hours of time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information in preparing an additional semiannual progress report.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 799

Chemicals, Environmental protection, Hazardous sustances, Testing, Laboratories, Recordkeeping and reporting requirements.

Dated: June 19, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In § 799.1575 by removing paragraph (c)(4) and revising paragraph (d)(3) and (f) to read as follows:

§ 799.1575 Diethylenetriamine (DETA).

* * * * *

(d) * * *

(3) *Reporting requirements.* The testing shall be completed and a final report submitted to EPA within 12 months of (the effective date of the final rule granting a 12-month extension of the deadline for the final report).

* * * * *

(f) *Effective dates.* The effective date of 40 CFR 799.1575, final Phase II rule for DETA, is March 19, 1987, except for paragraph (d)(3) which is effective (44 days after publication in the Federal Register of the final rule granting a 12-month extension of the deadline for the final report).

[FR Doc. 89–15272 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 54, No. 123
Wednesday, June 28, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Public Comment Period Extended for the Alder Timber Sale Draft Environmental Impact Statement and the Polk Timber Sale Draft Environmental Impact Statement; Lassen National Forest, Including Tehama County, CA

AGENCY: USDA Forest Service.

ACTION: Notice.

The Lassen National Forest has extended the public comment period for the Draft Environmental Impact Statements for the Alder and Polk Timber Sales until July 31, 1989. A Cumulative Watershed Effects report has been prepared for these two sales and is now available for public review. Copies of this report may be obtained from the address below.

The Forest Service will respond to all public comments in the Final Environmental Statement for each of these timber sales. Written comments or requests for the Cumulative Watershed Effects report should be sent to Laurence Crabtree, District Planning Officer, Almanor Ranger District, Lassen National Forest, P.O. Box 737, Chester, California 96020. Public comments should be received by July 31, 1989.

For more information, contact Laurence Crabtree at the above address or phone: (916) 258-2141.

Richard A. Henry,

Forest Supervisor.

Date: June 20, 1989.

[FR Doc. 89-15254 Filed 6-27-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Partially Closed Meeting

A Meeting of the Materials Technical Advisory Committee will be held July 13, 1989, 10:30 a.m., Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda

General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Introduction of New Members.
5. Discussion of Committee's Area of Responsibility.
6. Discussion by Committee on the Following New Responsibilities:

1001—Technology for Metal Working and Manufacturing
1110—Equipment for Production of Liquid Fluorine;
1129—Vacuum Pump Systems.
1131—Pumps.
1133—Valves, Locks, and Pressure Regulators.
1142—Tubing.
1145—Containers, Jacketed Only.
1203—Electric Furnaces.
1206—Electric Arc Devices.
1389—Materials and Coatings.
1561—Radar Absorbing Materials.
1573—Superconductive Electromagnets and Solenoids.
1587—Quartz Crystals.
1588—Materials Composed of Crystals.
1601—Inert Gas and Vacuum Atomizing.
1602—Pyrolitic Deposition Technology.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

Date: June 19, 1989.

[FR Doc. 89-15193 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-583-501]

Final Determination of Sales at Less Than Fair Value: 12-Volt Motorcycle Batteries From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that 12-volt motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Taiwan as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this

notice, whether these imports materially injure or threaten material injury to a U.S. industry.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: John Gloninger or Gray Taverman, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (203) 377–8330 or 377–0161.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that 12-volt motorcycle batteries are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weight-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our notice of preliminary determination (54 FR 15507, April 18, 1989), the following events have occurred. Verification of the questionnaire responses submitted by Wei Long Electric Industrial Co. Ltd. (Wei Long), Ztong Yee Industrial Co. Ltd. (Ztong Yee) and Cheng Kwang Storage Battery Co. Ltd. (Cheng Kwang) was conducted in Taiwan in April 1989. A public hearing was held on May 25, 1989. Petitioner and respondents filed pre-hearing briefs on May 24, 1989 and posthearing briefs on June 2, 1989.

Scope of Investigation

The United States had developed a sysem of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing the appropriate HTS item number(s) for convenience and customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

This determination covers 12-volt motorcycle batteries. Motorcycle batteries are lead-acid storage batteries which are rated from 2 to 32 ampere hours (10 hour rate) with voltage levels of either 6 or 12 volts. This investigation is limited to 12-volt motorcycle batteries. The batteries are mainly used as replacement batteries for motorcycles, but may, to a very limited extent, be used in snowmobiles, lawnmowers, and other such equipment. They are currently classifiable under HTS item number 8507.10.00.

Period of Investigation

This period of investigation is April 1, 1988 through September 30, 1988.

Fair Value Comparisons

To determine whether sales of certain 12-volt motorcycle batteries from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For each of the respondents in this investigation, all sales used in our analysis were made directly to unrelated parties prior to importation into the United States. Therefore, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

The calculation of United States price for each respondent is detailed below.

A. Ztong Yee: For the reasons detailed in the DOC Position to Comment 2, we have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for Ztong Yee.

B. Wei Long: We calculated purchase price based on the packed, F.O.B. or C.I.F. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, quantity disounts, port fees and bank processing fees. We also made a deduction for a discount which Wei Long claimed in its response to be a warranty expense, but which we verified was simply a reduction to the invoice price.

During verification, we found that Wei Long had not reported a 0.5 percent port tax on exports of the subject merchandise. Therefore, we made a deduction of 0.5 percent of gross unit price for this port tax.

C. Cheng Kwang: We calculated purchase price based on the packed, F.O.B. or C.I.F. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, bank processing fees, port charges, and customs inspection fees.

During verification, we found that on some sales, Cheng Kwang calculated brokerage and handling, ocean freight, foreign inland freight and packing expenses based on a catalog weight. These expenses were recalculated based on actual weights obtained at verification.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we calculated foreign market value based on home market or third country sales. The calculation of foreign market value for each respondent is detailed below.

A. Ztong Yee: For the reasons detailed in the DOC position to Comment 2, we have determined in accordance with section 776(c) of the Act, that the use of best information available is appropriate for Ztong Yee.

B. Wei Long: Wei Long had no home market sales during the period of investigation; therefore, we used third country sales for the purpose of determining foreign market value in accordance with section 773(a)(1)(B) of the Act. We calculated foreign market value based on the packed, F.O.B. price to the unrelated trading company, and F.O.B. or C.I.F. prices for the direct sales. We made deductions where appropriate for brokerage and handling charges, foreign inland freight, ocean freight, marine insurance, quantity discounts, and port fees. We made circumstances of sale adjustments for differences in credit and warranty expenses pursuant to section 353.56 of the department's new regulations, 54 FR 12742 (March 28, 1989) (to be codified at 19 CFR 353.56). We deducted third country packing and added U.S. packing.

In addition, we added commissions incurred on U.S. sales and offset these expenses by the verified indirect selling expenses incurred on third country sales, in accordance with § 353.56 of the antidumping regulations. (See DOC position to Comment 5).

All product matches claimed by Wei Long were identical; therefore, no adjustment was made for differences in physical characteristics.

C. Cheng Kwang: Cheng Kwang's home market sales during the period of investigation were inadequate for determining foreign market value; therefore, we used third country sales, for purposes of determining foreign market value in accordance with section 773(a)(1)(B) of the Act. We calculated foreign market value based on the packed, F.O.B. or C.I.F. prices. We made

deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, port usage fees, banking charges, and customs inspection fees.

We made a circumstance of sale adjustment for differences in credit expenses pursuant to § 353.56 of the antidumpig regulations. We deducted third country packing and added U.S. packing.

We made adjustments, where applicable, for differences in the phyusical characteristics of the merchandise in accordance with § 353.57.

Cheng Kwang claimed an adjustment to third country price for additional costs incurred on smaller production lots. We disallowed this claim for the final determination because we were not able to verify a direct relationship between the costs of differing production lot sizes and selling price. (See DOC position to Comment 3).

Currency Conversion

Since we calculated United States price on a purchase price basis, we used the official exchange rates in effect on the date of sale, in accordance with § 353.60. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Comments

Comment 1. Petitioner contends that the responses of Ztong Yee and Wei Long should be rejected by the Department because the public versions wee inadequate and in direct violation of the Department's regulations. Petitioner also contends that while the public version of Cheng Kwang's response contained some summarization, it was incomplete, particularly in its summarizations of difference in merchandize adjustments.

Petitioner argues that the failure of these respondents to submit adequate public versions of their responses has prevented it from knowing the full extent and significance of respondents' claims. Petitioner further argues that the absence of adequate public versions has eliminated the possibility of any input by the company officials of Yuasa-Exide.

DOC Position

The original public versions of Wei Long's and Ztong Yee's responses did not provide adequate summarization of business proprietary information. Therefore, we issued a deficiency letter on February 21, 1989, requesting that respondents amend their non-confidential summaries by ranging or indexing numerical data in accordance with § 353.32. We further noted that if any information was not susceptible to such summary or presentation, then a statement of the reasons must be submitted. On February 28, 1989 and on March 1, 1989, we received revised public versions from Ztong Yee and Wei Long, respectively.

While certain summaries in the public version submitted by all three respondents were not as detailed as requested in our deficiency letter, it is our view that there was enough information contained in the summaries of each data set and in the summaries as a whole as to give petitioner the ability to participate fully in the investigation. Therefore, the public summaries are not so inadequate as to warrant the rejection of the responses as deficient. Furthermore, with the exception of customer or supplier names, sources of information, verification exhibits and trade secrets, petitioner's counsel received access to all business proprietary information under administrative protective order (APO) issued by the Department.

Comment 2. Petitioner asserts that the Department should not use Ztong Yee's response for purposes of the final determination due to extensive errors and discrepancies found during verification, contending that the errors reflect a basic unreliability in the responses themselves.

Petitioner argues that the product concordance reported some merchandise as being identical when significant cost differentials existed. Furthermore, labor costs for acid packaging were not verified, and claimed inspection expenses for special quality control were allegedly overstated and included expenses not associated with quality control. Home market and export packing were reported by Ztong Yee as identical, but they were found to be different at verification. The commission charge on U.S. sales was understated, and the claimed duty drawback adjustment was not in existence during the period of investigation. In addition, Ztong Yee failed to report all home market sales of the merchandise subject to investigation. In sum, petitioner argues, the sections of the response that cannot be used due to respondent's failure to support such claims during verification, plus the magnitude of errors found at verification, raise serious questions as to the accuracy of the entire response. Petitioner contends that the Department should reject Ztong Yee's response and use best information available for the final determination.

Ztong Yee argues that its concordance is correct and should be accepted by the Department, particularly since the criteria used for comparison purposes was proposed by the petitioner. The product characteristics listed in Appendix V of the Department's questionnaire were used in determining which merchandise is identical for purposes of the investigation. Ztong Yee further argues that its use of the criteria listed in Appendix V of the questionnaire was made clear in its response of January 11, 1989, and that petitioner should have objected to the concordance at that time.

With respect to petitioner's argument that respondent failed to report all home market sales of merchandise subject to investigation, Ztong Yee claimed that it reported these sales as being sold during the period of investigation, but did not report them in the Section B sales listing because they were not considered by Ztong Yee to be such or similar to any U.S. sales.

In its January 13, 1989 response, it indicated that given the large number of home market sales, it limited its questionnaire response to those home market sales which it felt the Department needed.

Furthermore, Ztong Yee disputes the statement in the verification report and petitioner's allegation that certain commissions were understated, claiming that its May 12, 1989 submission addressed this issue.

DOC Position

In accordance with section 776(c) of the Act, we have used best information available for Ztong Yee.

It is not uncommon to find minor methodological problems and mathematical errors during verification. However, during the verification of Ztong Yee's sales response, we found that the magnitude of the discrepancies, unreported expenses and costs, methodological errors, and information that could not be supported by sources documents were so extensive as to require completely new responses, which at that stage of the proceeding could not be subjected to satisfactory

analysis or verification. The deficiencies found during verifications are outlined in the public versions of our verification report.

In particular, we discovered at verification that for a substantial percentage of U.S. sales, Ztong Yee reported certain U.S. models as identical to home market models, when significant cost differences existed.

Faced with responses containing numerous fundamental flaws, the Department could not properly base its determination on the information submitted by Ztong Yee. Nor is it acceptable, in such situations, that the Department bear the responsibility of attempting to identify and perform numerous and substantial recalculations necessary for the development of accurate sales data. Such a role would place too great a burden on the resources of the Department under the time constraints and procedural framework of this investigation. As stated in *Photo Albums and Filler Pages from Korea; Final Determination of Sales at Less Than Fair Value* (50 FR 43754, October 29, 1985): "[I]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to analyze fully the information and other parties are able to review and comment on it." Verification is intended to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department, or to perform the recalculations necessary to develop accurate information. Furthermore, the May 12, 1989 submission by Ztong Yee which addressed the issue of commissions was received after verification. The submission was not verified; therefore, it cannot be considered for purposes of this final determination.

For all of the reasons described above, we have determined that rejection of Ztong Yee's response and use of best information available is appropriate for this determination. Furthermore, because we have used best information available with respect to Ztong Yee, petitioner's and respondent's comments pertaining to specific charges, adjustments, and other issues concerning Ztong Yee's response need not be addressed. We have determined that the 28.06 percent rate calculated for Ztong Yee in the preliminary determination is the most appropriate basis for best information available. This rate is higher than either the rate alleged in the petition or the calculated rate for any other respondent in this investigation.

Comment 3. Petitioner argues that no quantity adjustment should be allowed because Cheng Kwang did not meet the requirements as outlined in § 353.55(b) of the antidumping regulations. In particular, petitioner argues that no price list or discount schedule was maintained, and that only one third country sale contained an actual discount. Furthermore, petitioner claims that although Cheng Kwang did quantify the cost of production differences between the United States and third country merchandise due to differences in the length of production runs, the formula presumed a standard of 250 units per changeover. Petitioner claims that during verification, the Department discovered that the average production run claimed did not accurately measure production run lengths during the period of investigation.

DOC Position

As stated in *Brass Sheet and Strip from the Netherlands*, 53 FR 2341, 2342 (1988), "the controlling requirement of § 353.14 [353.55 under the new antidumping regulations] is that, to be eligible for a quantity-based adjustment, a respondent must demonstrate a clear and direct correlation between price differences and quantities sold or costs incurred." The exporter must clearly demonstrate that discounts are warranted on the basis of savings which are specifically attributable to longer production runs. Cheng Kwang failed to establish that discounts granted in the United States are directly reflective of these savings. In its response, Cheng Kwang claimed that during the period of investigation, its minimum production quantity standard was 250 units per type of battery. Cheng Kwang was unable to provide any documents at verification to support this minimum standard nor its relationship to the actual prices charged.

Accordingly, we have disallowed Cheng Kwang's claim for an adjustment for differences in quantities.

Comment 4. Petitioner argues that due to the high number of errors in the packing and credit adjustments reported by Wei Long, best information should be used instead of the submitted information.

DOC Position

We disagree. At verification, we found only two discrepancies in packing charges for the preselected sales. Other errors in packing charges were noted by reviewing the database during verification. We found that many of these errors were the result of a faulty telefax transmission from Wei Long to the company in Washington which prepared its computerized database. The original values for packing were provided at verification and are noted in our verification report.

In the credit category, only two errors were noted in the preselected sales: A misreported date of shipment and date of payment. The correct information was noted at verification. Furthermore, for the final determination, we have recalculated Wei Long's credit expenses based on information obtained at verification.

Comment 5. Petitioner argues that for purposes of the final determination, no offset for indirect selling expenses claimed by Wei Long should be allowed. First, petitioner contends that Wei Long did not itemize its claimed expenses in a form that could be analyzed. Second, petitioner argues that several claimed expenses were not verified by the Department, inlcuding claims for bad debt and certain air freight charges for samples. Third, petitioner claims that Wei Long improperly included the salary of the general manager as part of the salaries paid to Export Department employees. Since the general manager has management and production responsibilities, peititioner argues his salary cannot be properly included. Finally, petitioner contends that Wei Long has misallocated its indirect selling expenses by including several claimed expenses attributable to sales other than to the United Kingdom.

DOC Position

We disagree and have allowed the offset for the final determination; however, we have recalculated the amount of the offset based on verified information. Wei Long's original submission did not itemize properly its claimed indirect selling expenses, but did so prior to verification in its revised submission of April 12, 1989. Furthermore, the expenses claimed were verified by checking source documents, and no errors were found in the amounts claimed. Certain changes were made, however, to properly allocate some of the expenses. Air freight sample expenses were allocated over the total U.K. order value; however, Wei Long was unable to support its claim that all samples were shipped to the U.K. during the period of investigation. We recalculated this amount by allocating the air freight expenses over Wei Long's total export sales value. We also made an adjustment to the total expenses claimed for saleman salaries. Since we found at verification that the general manager spends three out of five days a week in non-sales functions, we reduced this category of expenses by three-fifths of this salary. Two percent reserve for

bad debts was not allowed as an indirect selling expenses, as respondent was unable to support its claim at verification.

Finally, we disagree with petitioner's assertion that respondent misallocated these expenses by including expenses which are attributable to sales other than to the U.K. In its April 12, 1989 submission, Wei Long properly allocated each category of expense.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of 12-volt motorcycle batteries from Taiwan that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service will require a cash deposit equal to the estimated amounts by which the foreign market value of 12-volt motorcycle batteries from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect unitl further notice. The margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Ztong Yee	28.06
Wei Long	3.15
Cheng Kwang	0.74
All Others	5.65

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury or threat of material injury does not exist with respect to the products under investigation, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

June 22, 1989.

[FR Doc. 89-15301 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-802]

Preliminary Negative Countervailing Duty Determination: Aluminum Sulfate From Venezuela

AGENCY: Import Administration International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute subsides within the meaning of the countervailing duty law are being provided to producers or exporters in Venezuela of aluminum sulfate, as described in the "Scope of Investigation" section of this notice. If this investigation proceeds normally, we will make a final determination on or before September 5, 1989.

We have notified the United States International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Michelle L. O'Neill or Carole A. Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1673 or 377-3217.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Venezuela of aluminum sulfate.

Case History

Since publication of the Notice of Initiation in the **Federal Register** (54 FR 18131, April 27, 1989), the following events have occurred. On May 1, 1989, we presented a questionnaire to the Government of Venezuela in Washington, DC concerning petitioner's allegations. On June 9 and 12, 1989, we received responses from the Government of Venezuela and Sulfatos del Orinoco, C.A. (SULFORCA).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The product covered by this investigation is aluminuim sulfate from Venezuela, which is used in water purification, in waste water treatment, and for other industrial applications. Prior to January 1, 1989, such merchandise was classifiable under item 417.1600 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS item 2833.22.00.

Analysis of Programs

Conistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibilty of a company or producer under a program, and the Department has no persuasive évidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification under section 776(b) of the Act. If the response cannot be supported at verification and a program is otherwise countervailable, the program will be considered a subsidy in our final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies (the review period) is calendar year 1988.

Based on our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that producers or exporters in Venezuela of the subject merchandise did not receive benefits during the review period for exports of the subject merchandise to

the United States under the following programs:

A. Export Bond Program

The Fund for Financing Exports (FINEXPO) was established in 1973 to promote the export of non-traditional goods and services of Venezuelan origin. The export bond program is administered by FINEXPO. Under this program, exporters are remunerated for their exports by the Government of Venezuela in the form of export bonds which may be used to pay taxes or sold for cash. The value of the export bond is based on a percentage, known as the export bond percentage, of the FOB value of the product exported. The applicable export bond percentage for a company corresponds to that company's national value added percentage.

B. Short-Term FINEXPO Financing

Under this program, FINEXPO, in conjunction with Venezuelan commercial banks, provides short-term loans to Venezuelan exporters. Export receivables, such as drafts under letters of credit, are used as collateral. FINEXPO provides up to 60 percent of the loan principal for these loans at five percent interest to the participating commercial bank. The commercial bank provides the remaining loan principal amount and is required to charge the exporter an average of the FINEXPO rate and its own commercial rate.

C. Other FINEXPO Programs

FINEXPO operates a veriety of programs which provide financing at perferential rates to Venezuelan exporters and, under one program, foreign importers of Venezuelan goods. Operations or capital needs for which companies can receive this financing include feasibility studies, market research, promotional expenses, fixed capital investment, working capital, inventory financing, financing of services rendered abroad, and financing for importers representing foreign state-owned companies.

D. Preferential Tax Incentives

Certain tax benefits are available to Venezuelan manufacturers under Decrees 1775 and 1776, which were promulgated in December 1982. Decree 1775 established tax credits for manufacturers of finished or intermediate goods based on their level of domestic value-added. Eligible companies could receive tax credits ranging from 10 to 25 percent of the value of new investments depending on the percentage of domestic value-added of the acquired asset. These rates of credit applied only in the three years subsequent to the publication of the decree after which the rate fell to 10 percent for all eligible investments.

Decree 1776 seeks to stimulate the domestic production of capital goods in order to reduce Venezuela's dependence on foreign supplies of technology. The decree sets out a series of tax benefits for makers of specific capital goods which are listed in the decree. Eligible companies may receive a variety of fiscal and financial incentives.

E. Financing Company of Venezuela Loans (FIVCA)

FIVCA was established in 1976 as a financing subsidiary of the Industrial Bank of Venezuela. Its objective is to provide long-term financing to the Venezuelan industrial sector according to the economic policies established by the Government of Venezuela.

F. Other Government Loans and Loan Guarantees

Petitioner alleges that preferential government loans and loan guarantees are provided by the following institutions:

- Ministry of Finance (MOF).
- Venezuelan Investment Fund (FIV).
- Industrial Bank of Venezuela (BIV).

According to the response, MOF is responsible for the planning and implementation of economic and financial policy for the Government of Venezuela and does not provide loans of any kind. FIV provides capital to finance major investments in basic industries and BIV operates as a commercial bank. The response states that FIV and BIV had no outstanding loans to SULFORCA during the review period.

With respect to loan guarantees, the response states that the Government of Venezuela does not offer loan guarantees to private companies either directly or through any governmental agency. BIV offers loan guarantees in the ordinary course of business under terms and conditions that reflect ordinary commercial banking practice as well as the credit risk of the particular customer. According to the response, BIV did not issue any loan guarantees with respect to SULFORCA during the review period.

II. Programs Preliminarily Determined Not To Exist

We preliminarily determine that the following program does not exist:

Sales Tax Exemptions

Petitioner alleges that the Government of Venezuela, through various regional authorities, provides sales tax exemptions to specific enterprises or industries in Venezuela. The response states that there is no such benefit provided by the Government of Venezuela.

III. Programs for Which Additional Information Is Needed

We preliminarily determine that we need additional information to determine whether the following programs confer a benefit on the manufacture, production, or exportation of aluminum sulfate from Venezuela:

A. Preferential Pricing of Inputs

The petitioner alleges that government-owned firms are providing sulfuric acid, aluminum hydrate, and electricity to SULFORCA at preferential rates. In its response, SULFORCA confirmed that it purchased these inputs solely from government-owned suppliers. The response also reported the bases for the prices charged by the suppliers: (1) Petroquimian de Venezuela S.A. (PEQUIVEN), SULFORCA's sulfuric acid supplier, bases its price on its own production costs and the cost of the imported product; (2) Interamericana de Aluminia, C.A. (INTERALUMINA), SULFORCA's aluminum sulfate supplier, establishes its monthly price based on a formula comprising several cost factors; and (3) Electricficacion del Caroni, C.A. (EDELCA), SULFORCA's electricity supplier, determines its price based on the level of consumption of the customer or the level of tension supply to the customer.

We preliminarily determine that the information provided in the response is not sufficient to make a determination that inputs are being provided to a specific enterprise or industry, or group of enterprises or industries, at preferential rates. Therefore, we intend to gather information for our final determination.

B. Multiple Exchange Rate System

In *Final Affirmative Countervailing Duty Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela* (53 FR 24763, June 30, 1988), we found that redraw rod producers were able to buy imports at the fixed exchange rate and to convert a portion of their export earnings at the free market exchange rate, which was substantially higher. We determined that the exchange of export earnings under this multiple exchange system conferred an export subsidy. During verification, however, we found that there was a change in the multiple exchange rate system in December 1986 which eliminated the differential

between the rate for purchasing imports and the rate at which export proceeds were converted. Therefore, we determined that the benefit to exporters of redraw rod under the multiple exchange rate system was eliminated. Since petitioner did not allege new facts or provide information or changed circumstances, we did not include this program in our initiation.

In response to general questions concerning exchange rates, the Government of Venezuela stated in its response in this investigation that there were changes in the December 1986 exchange rate regime in October 1988 and March 1989. The October change permitted exporters who waived the fiscal incentive to exchange export earnings at the free market exchange rate. In March, a free market exchange rate was adopted for all purposes, including imports and exports.

While SULFORCA stated in its response that it did not use fiscal incentives during 1988, neither do we have any information that it used the free market exchange rate during this period. Therefore, we intend to gather information for our final determination.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination 45 days after the Department makes its final determination.

Public Comment

In accordance with § 355.38 of the Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR section 355.38), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on August 18, 1989, at 1:00 p.m., at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the **Federal Register**.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the arguments to be raised at the hearing. In accordance with 19 CFR 355.38 (c) and (d), case briefs and rebuttal briefs must be submitted to the Assistant Secretary in ten copies of the business proprietary version and seven copies of the nonproprietary version by August 11, 1989 and August 16, 1989, respectively. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.38, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act [19 U.S.C. 1671(f)].

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-15302 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-601]

Certain Cut Flowers From Costa Rica; Preliminarily Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica. We preliminary determine that the signatories have complied with the terms of the suspension agreement during the period January 13, 1987 through December 31, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 1356) a notice of suspension of countervailing duty investigation regarding certain cut flowers from Costa Rica. On January 28, 1988, the petitioner, the Floral Trade Council, requested an administrative review of the suspension agreement. We published the initiation of the administrative review on March 2, 1988 (53 FR 6681). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Costa Rican miniature (spray) carnations, standard carnations and pompon chrysanthemums. During the review period, such merchandise was classifiable under items 192.17 and 192.21 of the Tariff Schedules of the United States. This merchandise is currently classifiable under HTS items 0603.10.30 and 0603.10.70.

The review covers 29 producers and exporters of the subject merchandise. These 29 producers and exporters, along with the Government of Costa Rica (GOCR) and the Associacion Costarricense de Floricultores (ACOFLOR), are the signatories to the suspension agreement (see Appendix A of this notice for a listing of the 29 signatory producers and exporters). The review covers the period January 13, 1987 through December 31, 1987, and six programs.

Analysis of Programs

(1) Tax Credit Certificates

Certificados de Abono Tributario (CAT) are bearer instruments issued by the Central Bank of Costa Rica. The

value of the CAT is equal to 15 percent of the f.o.b. value of a firm's shipments of non-traditional exports. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CAT program for shipments of the subject merchandise to the United States. Effective the date of the agreement (January 13, 1987), any unused certificates received on prior shipments of the subject merchandise to the United States were to be returned to the Central Bank of Costa Rica. During verification, we found that none of the signatory producers and exporters received or possessed unused CATs during the review period. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(2) Certificates for Increasing Exports (CIEX)

This program provides grants to agricultural and agro-industrial producers who increase exports from one year to the next. In August 1984, the program was discontinued. However, the GOCR later appropriated additional monies to pay those companies that were eligible for, but had not yet received, benefits for increasing their exports in 1983. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CIEX program. During verification, we found that none of the signatory producers and exporters received benefits under this program during the review period. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(3) Income Tax Exemptions for Export Earnings

Firms in Costa Rica are eligible for a tax exemption for export earnings. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any income tax exemption for income derived from exports of the subject merchandise to the United States. During verification, we found that none of the signatory producers and exporters applied for or received any income tax exemptions for export earnings during the review period. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases

Exporting firms in Costa Rica are eligible for a rebate of sales taxes and selective excise taxes (*i.e.*, indirect taxes) paid on certain domestically-purchased articles. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any rebates of sales taxes and selective excise taxes on domestic purchases not physically incorporated into any exports. During verification, we found that none of the signatory producers and exporters applied for or received any rebates of these taxes during the review period on domestic purchases not physically incorporated into exports. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(5) Exporter Exemptions for Taxes and Duties on Imports

Costa Rican firms with export contracts may be exempted from paying duties and taxes on imported raw materials, intermediate products and capital goods used to produce exported finished products. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any exemptions from taxes, surcharges and duties (*i.e.*, indirect taxes) on non-physically incorporated imports.

During verification, we found that the agency responsible for granting the exemptions, the Centro para la Promocion de las Exportaciones y de las Inversiones (CENPRO), had instituted a system of controls to ensure that no exemptions would be given for imports not physically incorporated into exports of the subject merchandise. As part of this system of controls, ACOFLOR received a list from CENPRO that showed those flower growers that applied for tax and duty exemptions. Before any applications were processed, a representative of ACOFLOR visited the flower growers claiming the exemptions and inspected the imported good in question and verified its intended use. If the ACOFLOR representative determined that the imported good would be used in the production of the subject merchandise, ACOFLOR would require that the flower grower promptly withdraw its application for exemption.

At verification, we examined the system of controls administered by ACOFLOR and CENPRO. We also visited a number of flower farms and inspected the imported items that received duty exemptions during the review period. We verified that, of forty imported items that received exemptions, only one had been used in the production of the subject merchandise, and such use had been inadvertent. ACOFLOR had discovered this oversight, and CENPRO subsequently revoked the duty exemption for the item; the producer paid the full duties and taxes required. Because we were able to satisfactorily verify that items receiving duty-free treatment did not provide benefits on the subject merchandise, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(6) Accelerated Depreciation

Exporting firms in Costa Rica may utilize accelerated depreciation for new equipment if they are approved for that benefit by specific provisions of their export contract and if they export over 50 percent of their sales (by value). The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from making use of accelerated depreciation in the calculation of income taxes. During verification, we found that none of the signatory firms used this program during the review period. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement for the period January 13, 1987 through December 31, 1987.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject cut flowers into the United States. Our information indicates that the 29 signatory companies accounted for substantially all of the imports into the United States of this merchandise during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will

publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Date: June 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix A—List of Signatory Producers and Exporters

1. American Flower Corp., S.A.
2. Flores del Cerro
3. Agroflor de Paraiso, S.A.
4. Hermelink y Garces, S.A.
5. Tico Flor, S.A.
6. Cooexflo R.L.
7. Compania Agricola Flex, S.A.
8. Flor Bella, S.A.
9. Expoflor de Cartago, S.A.
10. Lianpa, S.A.
11. Floricultura de Costa Rica, S.A.
12. Vivero el Zamorano, S.A.
13. Flores de Iztaru, S.A.
14. Inversiones Costa Flor, S.A.
15. Coopeflor R.L.
16. Euroflores, S.A.
17. Flores y Follajes del Tirol, S.A.
18. Flores del Volcan CRP, S.A.
19. Goreza, S.A.
20. Llano Claro, S.A.
21. Ornamentales Cargil, S.A.
22. Floricultura La Colina, S.A.
23. Flores Intercontinentales, S.A.
24. Fincas Nabori, S.A.
25. Flores de Coris, S.A.
26. Florex, S.A.
27. C.R.B. Internacional, S.A.
28. Flores del Caribe, S.A.
29. Zurqui Flor de Costa Rica, S.A.

[FR Doc. 89-15303 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-DS-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, Applicable Form, and Applicable OMB Control Number: 1990 Enumeration (Census) of DoD Employees and Dependents Overseas.

Type of Request: New.

Average Burden Hours/Minutes Per Response: .2964 hours.

Frequency of Response: One.

Number of Respondents: Estimated 900,000.

Annual Burden Hours: 266,787.

Annual Responses: 900,000.

Needs and Uses: The requested information provides complete-count and characteristic information on DoD employees and their dependents overseas which will be used for a variety of program-planning purposes, complete overseas evacuation planning and comparisons with 1990 decennial census data on the U.S. residents.

Affected Public: Individuals and households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management of Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 21, 1989.

[FR Doc. 89-15229 Filed 6-27-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 149. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 149 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 1989.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1989.

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA:		
ADAK 1/	$ 25	01-01-88
ANAKTUVUK PASS	140	01-01-88
ANCHORAGE	125	01-01-88
ATQASUK	215	01-01-88
BARROW	148	05-01-89
BETHEL	135	02-01-89
BETTLES	110	01-01-88
COLD BAY	125	02-01-89
COLDFOOT	122	01-01-88
COLLEGE	122	02-01-89
CORDOVA	143	02-01-89
DILLINGHAM	114	01-01-88
DUTCH HARBOR-UNALASKA	127	01-01-88
EIELSON AFB	122	02-01-89
ELMENDORF	125	01-01-88
FAIRBANKS	122	02-01-89
FT. RICHARDSON	125	01-01-88
FT. WAINWRIGHT	122	02-01-89
HOMER	127	05-01-89
JUNEAU	117	02-01-89
KATMAI NATIONAL PARK	148	01-01-88
KENAI	119	04-01-88
KETCHIKAN	119	02-01-89
KING SALMON 3/	134	01-01-88
KODIAK	118	01-01-88
KOTZEBUE 3/	153	06-01-89
KUPARUK OILFIELD	127	01-01-88
MURPHY DOME 3/	122	02-01-89
NOATAK	143	04-01-88
NOME	129	01-01-88
NOORVIK	143	04-01-88
PETERSBURG	119	02-01-89
POINT HOPE	160	01-01-88
POINT LAY	179	01-01-88
PRUDHOE BAY	121	05-01-89
SAND POINT	103	01-01-88
SEWARD	109	02-01-89
SHEMYA AFB 3/	30	01-01-88
SHUNGNAK	143	04-01-88
SITKA-MT. EDGECOMBE	119	02-01-89
SKAGWAY	119	02-01-89

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA: (CONT'D)		
SPRUCE CAPE	$118	01-01-88
ST. MARY'S	100	01-01-88
ST. PAUL ISLAND	115	01-01-88
TANANA	129	01-01-88
UMIAT	160	01-01-88
UNAKAKLEET	105	01-01-88
VALDEZ	157	05-01-89
WAINWRIGHT	165	01-01-88
WALKER LAKE	136	01-01-88
WRANGELL	119	02-01-89
YAKUTAT	110	01-01-88
OTHER 3, 4/	94	02-01-89
AMERICAN SAMOA	102	05-01-89
GUAM, M.I.	129	05-01-89
HAWAII:		
ISLAND OF HAWAII: HILO	76	05-01-89
ISLAND OF HAWAII: OTHER	99	05-01-89
ISLAND OF KAUAI	142	05-01-89
ISLAND OF KURE 1/	13	05-01-89
ISLAND OF MAUI: KIHEI		
04-01--12-19	135	05-01-89
12-20--03-31	147	12-20-89
ISLAND OF MAUI: OTHER	99	05-01-89
ISLAND OF OAHU	126	05-01-89
OTHER	99	05-01-89
JOHNSTON ATOLL 2/	35	02-01-89
MIDWAY ISLANDS 1/	13	01-01-88
NORTHERN MARIANA ISLANDS:		
ROTA	76	01-01-88
SAIPAN	115	02-01-89
TINIAN	68	01-01-88
OTHER	20	01-01-88
PUERTO RICO:		
BAYAMON		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
CAROLINA		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
FAJARDO (INCLUDING LUQUILLO)		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
PUERTO RICO: (CONT'D)		
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)		
05-16--12-15	$133	11-01-88
12-16--05-15	163	12-16-88
ROOSEVELT ROADS		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
SABANA SECA		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
OTHER	121	11-01-88
VIRGIN ISLANDS OF THE U.S.		
05-01--11-30	144	05-01-88
12-01--04-30	180	01-01-88
WAKE ISLAND 2/	21	04-01-89
ALL OTHER LOCALITIES	20	01-01-88

FOOTNOTES

1/ Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[FR Doc. 89-15227 Filed 6-27-89; 8:45 am]
BILLING CODE 3810-01-C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1989 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Travel Costs.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition and Regulatory Policy, (202) 523–3781.

SUPPLEMENTARY INFORMATION: a. *Purpose:* FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardization Regulations, section 925, "Maximum Travel Per Diem Allowances for Foreign Areas". The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used. This information is required for an adequate implementation of Pub. L. 99–234.

The information is used by contracting officers to ensure that the Government does not reimburse contractors for excessive travel costs.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *16,000;* responses per respondent, *10;* total annual responses, *160,000;* hours per response, *.25;* and total response burden hours, *40,000.*

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202 523–4755. Please cite OMB Control No. 9000–0088, Travel Costs.

Dated: June 21, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–15234 Filed 6–27–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF EDUCATION

Fund for the Improvement and Reform of Schools and Teaching Board; Meeting

AGENCY: Fund for the Improvement and Reform of Schools and teaching Board.

ACTION: Notice of a partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: July 27, 1989—8:30 a.m.–12:00 Noon (Open); July 27–28, 1989—12:00 Noon to 5:00 p.m. on July 27 and from 9:00 a.m. to 5:00 p.m. on July 28 (Closed).

ADDRESS: U.S. Department of Education, OERI Headquarters, 555 New Jersey Avenue NW., Room 326, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard T. LaPointe, Director, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., Room 522, Washington, DC 20208–5524, (202) 357–6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) is established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). The Board is established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund.

The Board will convene in open session from 8:30 a.m. to 12:00 Noon on July 27 and conclude with a portion of the meeting closed to the public from 12:00 Noon to 5:00 p.m. on July 27 and from 9:00 a.m. to 5:00 p.m. on July 28. The closed portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemptions (4) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c) (4) and (6)). This closed portion will involve discussion of matters that may disclose sensitive information about: (1) Applicants, (2) funding requests and levels, and (3) the names and comments of expert reviewers. Any such discussion would disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, and disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy if conducted in open session.

The proposed agenda for the open session from 8:30 a.m. to 12:00 Noon on July 27, includes: nomination/discussion of new (renewal) Board members; conversation/photo with Secretary Cavazos; Ethics and Standards of Conduct briefings; introduction of new staff members; discussion of FIRST/FIPSE joint October meeting.

The closed portion of the meeting from 12:00 Noon to 5:00 p.m. on July 27 and from 9:00 a.m. to 5:00 p.m. on July 28 will involve the application review. A summary of the activities at the closed session and related to matters, which are informative to the public consistent with the policy of Title 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the Fund for the Improvement and Reform of Schools and Teaching, Room 522, 555 New Jersey Avenue NW., Washington, DC, from the hours of 8:30 a.m. to 5:00 p.m.

Dated: June 20, 1989.

Bruno V. Manno,

Acting Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 89–15233 Filed 6–27–89; 8:45 am]

BILLING CODE 4000–01–M

Office of Educational Research and Improvement

National Center for Education Statistics; Reporting Deadline for Submission by State Educational Agencies of Revisions to State Revenue and Expenditure Reports for Fiscal Year 1988 Used in Allocating Certain Fiscal Year 1990 Appropriated Funds for Federal Education Programs

AGENCY: Department of Education.

ACTION: Notice of reporting deadline.

Deadline for receipt: September 1, 1989

SUMMARY: The National Center for Education Statistics (NCES) of the U.S. Department of Education, acting as the data collection agent for the Department, announces a September 1, 1989, closing date for submission of revisions to fiscal year (FY) 1988 current expenditure data and average daily attendance statistics submitted on or about March 15, 1989, by State educational agencies (SEAs) on ED form 2447, "Common Core of Data, Part VI—Revenues and Current Expenditures for Public Elementary and Secondary Education." This deadline for the submission of FY 1988 fiscal data is necessary to ensure timely distribution of Federal funds. The data are used to calculate allocations for Federal education programs, including Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (Chapter 1), Financial Assistance for Local Education Agencies in Areas Affected by Federal Activity (Impact Aid), Financial Assistance to Local Education Agencies for Education of Indian Children (Indian Education), Part B—Assistance for Education of All Handicapped Children (Education of the Handicapped), Title VII of the Stewart B. McKinney Homeless Assistance Act, and other programs whose allocations are based, in whole or in part, on the State per pupil expenditure (SPPE) data derived from the information reported by SEAs. These data will be published by NCES and will be used in the calculation of allocations for FY 1990 appropriated funds.

DATE: Fiscal data on Form 2447 are due at the address indicated in this notice on or before 4:00 p.m. (Washington, DC time) on Friday, September 1, 1989. SEAs may hand deliver Form 2447 to the address indicated in this notice by 4:00 p.m. (Washington, DC time) on the deadline date. Regular mail submissions of Form 2447 must be postmarked by midnight August 30, 1989, and express mail postmarked by midnight August 31, 1989. An SEA must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If Form 2447 is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

ADDRESS: ED form 2447, "Common Core of Data, Part VI—Revenues and Current Expenditures for Public Elementary and Secondary Education—Fiscal Year 1988" (OMB No. 1850-0067) should be sent to the U.S. Department of Education, Office of Educational Research and Improvement, National Center for Education Statistics, 555 New Jersey Avenue NW., Washington, DC 20208-5651, Attention: GSAB-Fiscal Survey.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Fowler, Jr., at the address shown above, or call (202) 357-6921.

SUPPLEMENTARY INFORMATION: NCES collects data annually from SEAs through ED form 2447, pursuant to section 406 (g) of the General Education Provisions Act, as amended (20 U.S.C. 1221e-1(g)), which authorizes NCES to collect data from the States on the financing of elementary and secondary education. This report includes attendance, revenue, and expenditure data from which NCES determines, among other statistics, the average State per pupil expenditure (SPPE) for elementary and secondary education. SPPE data provide useful statistical information, and they are needed for calculating State allocations under certain formula grant programs.

Initial FY 1988 data on ED Form 2447 were due on March 15, 1989, or as soon thereafter as possible. If an SEA did not submit FY 1988 data on or about March 15, 1989, it should have informed NCES, in writing, of the delay and the date by which it will submit FY 1988 data. Submissions by SEAs to NCES are edited by NCES and returned to each SEA for verification. NCES acknowledges that data submitted prior to September 1, 1989, may be preliminary and are subject to revision by an SEA by September 1, 1989.

To ensure timely distributions of Federal education funds based on the best, most accurate data available, NCES must establish, for allocation purposes, a final date by which ED form 2447 must be submitted. SEAs should be aware, however, that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Program Authority: 20 U.S.C. 1221e-1(g).

Dated: June 22, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-15232 Filed 6-27-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent to Award Grant to National Academy of Sciences

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial award.

SUMMARY: The Department of Energy announces that it plans to make a noncompetitive award of $120,000, under grant number DE-FG01-89FE61873, to the National Academy of Sciences (NAS) to assist in the conduct of a study on the tropospheric ozone. The purpose of this study is to evaluate the scientific information and data bases in the tropospheric area and to recommend strategies for improving critical scientific and technical gaps in the information and data bases. The National Academy of Sciences is a uniquely qualified, unbiased, external organization chartered by Congress in 1863, to conduct studies in the fields of science and art when called upon by the Government. Executive Order 2859 established the role of the NAS to seek cooperative links between Government and nongovernment research activities, and Executive Order 10688 furthers the objectives for NAS promotion of research and efforts to avoid duplication in research. This latter Executive Order established roles for bringing foreign and U.S. research efforts and gathering scientific data from public and private sources. NAS is uniquely qualified to assemble scientific and engineering expertise of the highest reputation from the public and private sectors to address national problems of high priority. It is able, through its advisory panels and committees to provide independent and

objective findings and opinions as well as acceptance of these findings and opinions by the target audience. DOE's contribution represents 27% of the total estimated study cost of $450,000. The remaining funds will be provided by Environmental Protection Agency, Motor Vehicle Manufacturers Association, American Petroleum Institute, and the Department of Transportation.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Earlette Robinson, MA–452.1, 1000 Independence Avenue SW., Washington, DC 20585. Telephone No. (202) 586–6700.

Jeffrey Rubenstein,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 89–15297 Filed 6–27–89; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submittted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of requrest, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 28, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–561.
3. 1902–0099.
4. Annual Report of Interlocking Positions.
5. Extention.
6. Annually.
7. Mandatory.
8. Individuals or Households.
9. 1,500 respondents.
10. 1,500 responses.
11. .25 hours per response.
12. 375 hours (total).
13. This information collection requirement is required by section 305(c) of the Federal Power Act. The information is collected by FERC to identify persons holding interlocking positions involving public utilities and possible conflicts of interest.

Statutory Authority: Section 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 798a.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–15298 Filed 6–27–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2528 Maine]

Central Maine Power Co; Availability of Environmental Assessment

June 22, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Cataract Project located on the Saco River in York County, in Saco and Biddeford, Maine, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–15291 Filed 6–27–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP89–42–000]

Transwestern Pipeline Co. v. Corinne Grace Petition To Reopen and Vacate Final Well Category Determination

June 22, 1989.

On May 22, 1989, Transwestern Pipeline Company (Transwestern) filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and vacate a final well category determination of continued stripper well classification for the City of Carlsbad #1 gas well in Eddy County, New Mexico under section 108 of the Natural Gas Policy Act of 1978 (NGPA).[1] The subject determination became final on December 27, 1985, in conformance with NGPA section 503(d) and 18 CFR 275.202(a).

Transwestern alleges that in making the determination the New Mexico Oil Conservation Division relied upon a misstatement of material fact. Specifically, Transwestern contends

[1] 15 U.S.C. 3318 (1982).

that Corrine Grace stated in her application for the continued section 108 determination that she had utilized enhanced recovery techniques, when in fact she recompleted into a separate reservoir. Transwestern requests the Commission to reopen and vacate the section 108 determination and issue a determination that the well qualifies under section 104 of the NGPA, and require Mrs. Grace to refund all overpayments, with interest, made since the date of the 1985 recompletion.

Notice is hereby given that, in the event the subject determination is reopened, the question of whether the Commission will require refunds, plus interest computed under § 154.102(c) of the regulations, is a matter subject to the review and final decision of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should, within 30 days after this notice is published in the **Federal Register** file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15290 Filed 6-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 22, 1989

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 16, 1989 certain revised tariff sheets included in Appendix A attached to filing. Such sheets are proposed to be effective February 1, 1989, April 1, 1989, May 1, 1989 and June 1, 1989 respectively.

ESNG states it is filing revised rates under its Rate Schedule LSS to track changes in the rates ESNG is charged under Transcontinental Gas Pipe Line Corporation's (Transco) Rate Schedule LSS. ESNG purchases storage service from Transco under ESNG's Rate Schedule LSS. Therefore, pursuant to Section 24 of ESNG's General Terms and Conditions, ESNG is submitting herewith for filing Second Substitute Forty-Fourth Revised Sheet No. 6 and Second Substitute Fifteenth Revised Sheet No. 14 in order to reflect under Rate Schedule LSS, the revised rates under Transco's Rate Schedule LSS. Such tariff sheets are proposed to be effective February 1, 1989.

Also, included herein for filing are revised tariff sheets proposed to be effective April 1, 1989 and May 1, 1989. ESNG states that such sheets incorporate the revised Rate Schedule LSS rates filed herein to be effective February 1, 1989, into tariff sheets which have been filed with the Commission subsequent to February 1, 1989.

ESNG states it further filing to revise the billing amounts shown on Second Revised Sheet No. 6B to comply with the provisions of Ordering Paragraph (B) of the Commission's August 26, 1988 order in the original Order 500 "tracking" filing in Docket No. RP88-226-000. The referenced order requires ESNG to filed revised billing amounts to "track" any modifications to Transco's take-or-pay charges ordered by the Commission. The Commission on May 31, 1989 accepted a May 1, 1989 filing made by Transco to recover 75% of the approximately $20.4 million of Litigant Producer Settlement Payments (LPSP). Transco states the LPSP costs are proposed to be recovered over a one year amortization period beginning June 1, 1989 through May 31, 1990. Transco's filing results in an increase of $5,561 per month (i.e. from $68,345 to $73,906) in the total amount of fixed monthy PSP Charges pertaining to ESNG, commencing June 1, 1989.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

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 Rule 211 and Rule 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 June 29, 1989. 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. 89-15288 Filed 6-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-10-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

June 22, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on June 19, 1989 tendered for filing First Revised Second Substitute Twenty-First Revised Sheet Nos. 57(i) and 57(ii) and First Revised Second Substitute Eighth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that these tariff sheets reflect revised current PGA rates for the months of June and July, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada Pipelines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

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. All such petitions or protests should be filed on or before June 29, 1989. 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. 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. 89-15289 Filed 6-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-33-000]

Northern Border Pipeline Co; Informal Technical Conference

June 22, 1989.

Take notice that on July 10, 1989, at 1:30 p.m. there will be an informal technical conference in the above-captioned cause. Said conference will occur at the offices of the Commission at 825 North Capitol Street, Washington, DC, and will be for the purposes of providing information relevant to the Commissions May 30, 1989, Policy Statement Providing Guidance With Request To The Designing Of Rates in Docket No. PL89-2-000. All parties may at their option attend; however, mere attendance will not confer party status. Any person wishing to become a party must file a Motion to Intervene in accordance with 18 CFR 385.214 (1988).

Lois D. Cashell,

Secretary.

[FR Doc. 15292 Filed 6-27-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00278; FRL-3609-4]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a two-day meeting, beginning on July 10, 1989 and ending on July 11, 1989. This notice announces the location and times for the meeting and sets a tentative agenda. The meeting is open to the public.

DATE: The SFIREG will meet on Monday, July 10, 1989 from 8:30 a.m. to 5:00 p.m. and on Tuesday, July 11, 1989 beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 486-1234.

FOR FURTHER INFORMATION CONTACT: By mail:

Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 1007, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-5077.

SUPPLEMENTARY INFORMATION: The tentative agenda includes the following:

1. Regional reports.
2. Reports from the SFIREG Working Committees.
3. Update on activities of Registration Division, Office of Pesticide Programs.
4. Update on activities of the Special Review and Reregistration Division, Office of Pesticide Programs.
5. Update on activities of the Office of Compliance Monitoring.
6. Presentation of final recommendations of the Termiticide Labeling Task Force.
7. A report on the EPA's Pesticide Monitoring Workshop of June 7 and June 8, 1989.
8. Briefing on the Office of Pesticide Programs' computer based systems.
9. Briefing on the Office of Pesticide Programs' Tolerance Assessment System (TAS)
10. Update on development of regulations pertaining to pesticide disposal.
11. Office of Enforcement and Compliance Monitoring's Reporting of State Enforcement Actions.
12. Other topics as appropriate.

Dated: June 22, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-15353 Filed 6-26-89; 11:07 am]

BILLING CODE 6560-50-M

[FRL-3608-5]

Proposed De Minimis Settlement Under 122(g), Wheeling Disposal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a de minimis administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g). This settlement is intended to resolve the liabilities of three parties for response costs incurred and to be incurred at the Wheeling Disposal Site, Amazonia, Missouri.

DATE: Written comments must be provided on or before July 31, 1989.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, and should refer to: In the Matter of the Wheeling Disposal Site, Amazonia, Missouri, EPA Docket No. VII-89-F-0003.

FOR FURTHER INFORMATION CONTACT: Audrey Asher, U.S. Environmental Protection Agency, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2809.

SUPPLEMENTARY INFORMATION: The three proposed settlers, IHP Industrial, Inc., Performance Contracting, Inc., and St. Joseph Light & Power Company, are parties who contributed asbestos to the site in amounts constituting .010%, .021%, and .052%, respectively, of the total volume of wastes disposed at the site. The asbestos had been buried in drums and placed in trenches. There is no information that asbestos has been released to the environment. There is information that other wastes which were disposed at the site, volatile organic compounds, metals, and pesticides, were released to the environment.

Under the proposed agreement, each settler would pay a portion, equivalent to its fractional share of volume of wastes contributed to the site, of:

1. Past costs—$411,504,
2. Estimated cost of the Remedial Investigation/Feasibility Study—$1,260,000,
3. Estimated cost of the Remedial Design/Remedial Action—$13,420,000,
4. Estimated cost of Operation and Maintenance—$855,000.

In addition to paying a fractional share of total costs for each activity identified above, the settlers will pay an extra amount to cover any possible cost overruns. A multiplier of 2 was used as a premium for items #3 and #4 to cover cost overruns. The result of these calculations is a yield of $25,083; $24,037 of that sum would be paid to the Superfund. The remaining $1,046 is the volumetric share attributable to the proposed settlers for the Remedial Investigation/Feasibility Study and would be paid to the parties who are presently performing the Remedial Investigation/Feasibility Study.

The proposed settlement provides that in exchange for the settlement payment, EPA will covenant not to sue the de minimis parties for response costs or for injunctive relief pursuant to Sections 106 and 107 of CERCLA and section 7003 of

the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973. The proposed settlement agreement also contains a reopener provision if information not currently known to EPA is discovered which indicates that (1) any of the proposed settlers contributed hazardous substances to the site other than asbestos, (2) any of the proposed settlers contributed asbestos in an amount greater than assumed in the settlement agreement, (3) asbestos fibers were released to the air, or (4) any proposed settler no longer qualifies as a de minimis party pursuant to Section 122 of CERCLA. The proposed settlement further provides that subject to the aforementioned reservations, EPA will provide contribution protection to settlers in exchange for the settlement payment.

William Rice,

Acting Regional Administrator.

[FR Doc. 89-15274 Filed 6-27-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3608-6]

EPA List of Facilities Prohibited From Receiving Government Contracts Under 40 CFR Part 15

AGENCY: Environmental Protection Agency.

ACTION: EPA list of facilities prohibited from receiving government contracts under 40 CFR Part 15.

SUMMARY: 40 CFR 15.40 requires the Environmental Protection Agency (EPA) to publish in the **Federal Register** semi-annually a list of all persons and facilities prohibited under 40 CFR Part 15 from receiving federal government contracts, grants, loans, subcontracts, subgrants, or subloans. The following list contains the names and locations of the prohibited facilities, as well as the date they were placed on the list and the effective date of each listing.

DATE: This list is effective as of June 28, 1989.

FOR FURTHER INFORMATION CONTACT: A. A. Varela, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Rm. 112 NE. Mall (LE-130A), 401 M Street SW., Washington, DC 20460. Telephone (202) 475-8777.

SUPPLEMENTARY INFORMATION: Pursuant to section 306 of the Clean Air Act [42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604], section 508 of the Clean Water Act [33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500], and E.O. 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Clean Water Act with respect to federal contracts, grants, loans, subcontracts, subgrants, and subloans. On April 16, 1975, regulations implementing the requirements of the statutes and the Executive Order were promulgated in the **Federal Register** [see 40 CFR Part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979]. On September 5, 1985, revisions to those regulations were promulgated in the **Federal Register** [see 50 FR 36188, September 5, 1985]. The regulations provide for the establishment of a List of Violating Facilities which reflects those facilities ineligible for use in nonexempt federal contracts, grants, loans, subcontracts, subgrants, or subloans.

The List of Violating Facilities is comprised of two sublists. Sublist 1, mandatory listing (40 CFR 15.10), includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Clean Water Act. Sublist 2, discretionary listing (40 CFR 15.11), includes those facilities listed on the basis of continuing or recurring noncompliance with clean air or clean water standards, and:

1. A conviction by a federal court under Section 113(c)(2) of the Clean Air Act, or

2. Any injunction, order, judgment, decree (including consent decrees), or other form of civil ruling by a federal, state or local court issued as a result of noncompliance with clean air or water standards, or

3. A conviction by a state or local court of a criminal offense on the basis of noncompliance with clean air standards or clean water standards, or

4. Violation of an administrative order issued under sections 113(a), 113(d), 167, or 303 of the Clean Air Act or section 309(a) of the Clean Water Act, or

5. A Notice of Noncompliance issued by EPA under Section 120 of the Clean Air Act, or

6. An enforcement action filed by EPA in federal court under sections 113(b), 167, 204, 205, or 211 of the Clean Air Act or section 309(b) of the Clean Water Act due to noncompliance with clean air or water standards.

This Notice reflects:

- The addition of the Apodaca & Sons Plating facility in El Monte, California, to sublist 1 of the List of Violating Facilities. These facilities are subject to Listing on the basis of a criminal conviction obtained against the facilities under section 309(c)(1) of the Clean Water Act. This facility is placed on the List as of the date of conviction, October 3, 1988.

- The addition of the Marathon Development, Inc. facility in Seekonk, Massachusetts, to sublist 1 of the List of Violating Facilities. This facility is subject to Listing on the basis of a criminal conviction obtained against the facilities under section 309 (c)(1) of the Clean Water Act. This facility is placed on the List as of the date of conviction, May 5, 1988.

- The addition of the Middle Keys Construction facility in Middle Keys, Florida, to sublist 1 of the List of Violating Facilities. This facility is subject to Listing on the basis of a criminal conviction obtained against the facility under section 309(c)(1) of the Clean Water Act. This facility is placed on the List as of the date of conviction, May 27, 1988.

This **Federal Register** Notice represents the facilities for which EPA has received and reviewed Listing and Delisting information. Facilities whose owners or operators have been convicted of criminal violations of the CAA or CWA are subject to the federal assistance prohibition automatically upon conviction.

Other additions to and deletions from the List of Violating Facilities will be published periodically as they occur. Facilities on the List also are included in the General Services Administration's "Consolidated List of Debarred, Suspended, and Ineligible Contractors." Subscriptions to this document may be obtained from the U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

List of Violating Facilities

Name and effective date	Location and basis for listing
Sublist 1: Mandatory Listing	
Chemical Formulators	Nitro, West Virginia Facility.
Jan. 29, 1981	Clean Water Act Sec. 309(c)(1).
Waterbury House Wrecking Co.,	Waterbury, Connecticut Facility.
Dec. 19, 1985	Clean Air Act Sec. 113(c)(1).
Fleischman's Yeast, Inc., Division of Burns, Philp & Company, Ltd.	Sumner, Washington Facility.
May 14, 1986, effective date of listing.	Clean Water Act Sec. 309(c)(1).
Nov. 14, 1986, effective date of facility's transfer from Nabisco to Burns, Philp.	
Hope Resource Recovery, Inc.	Long Island, New York Facility.

LIST OF VIOLATING FACILITIES—Continued

Name and effective date	Location and basis for listing
Sept. 18, 1986	Clean Air Act Sec. 113(c)(1).
Sea Gleaner Marine, Inc.	Bellevue, Washington Facility.
Oct. 6, 1986	Clean Water Act Sec. 309(c)(1).
Sea Port Bark Supply	Tacoma, Washington Facility.
Oct. 21, 1986	Clean Water Act Sec. 309(c)(1).
Ocean Reef Club, Inc.	Key Largo, Florida Facility.
Oct. 22, 1986	Clean Water Act Sec. 309(c)(1).
Irwin Pearlman	Pittsburgh, Pennsylvania Facility.
Dec. 30, 1986	Clean Air Act Sec. 113(c)(1).
Salvatore C. Williams	Pittsburgh, Pennsylvania Facility.
Dec. 30, 1986	Clean Air Act Sec. 113(c)(1).
Protex, Inc.	Denver, Colorado Facility.
Feb. 4, 1988	Clean Water Act Sec. 309(c)(1).
Reidy Terminal/ Wisconsin Barge Lines. Aug. 14, 1987	St. Louis, Missouri Facility. Clean Water Act Sec. 309(c)(1).
California Tank Lines/ Chemical Transfer Co. May 18, 1987	Los Angeles, California Facility. Clean Water Act Sec. 309(c)(1).
Gulf States Oil Co. July 22, 1987	Houston, Texas Facility. Clean Water Act Sec. 309(c)(1).
Colorado River Sewage Joint Venture. Aug. 31, 1987	Phoenix, Arizona Facility. Clean Water Act Sec. 309(c)(1).
Shenango Steel Co. March 22, 1988	Neville Island, Pennsylvania Facility. Clean Water Act Sec. 309(c)(1).
Valley Feeds, Inc Sept. 16, 1987	Van Buren, Arkansas Facility. Clean Water Act Sec. 309(c)(1).
Wilgenburg Dairy Nov. 16, 1987	San Marcos, California Facility. Clean Water Act Sec. 309(c)(1).
Apodaca & Sons Oct. 3, 1988	El Monte, California Facility. Clean Water Act 309(c).
Marathon Development May 5, 1988	Seakonk, Massachusetts Facility. Clean Water Act 309(c).
Middle Keys Construction. May 27, 1988	Middle Keys, Florida Facility. Clean Water Act 309(c).

Sublist 2: Discretionary Listing

None.	

Dated: May 16, 1989.

Edward E. Reich,

Acting Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 89-15273 Filed 6-27-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 89-188; PRB-3]

Privatization of Special Call Sign System for Amateur Stations

AGENCY: Federal Communications Commission.

ACTION: Termination of proceeding.

SUMMARY: The Commission has terminated the proceeding (52 FR 4530; February 12, 1987) concerning a special call sign system. This order is necessary to advise amateur station licensees of the disposition of the proposal for a special call sign system in the private sector. The effect of the action is to maintain the *status quo* with respect to the assignment of amateur call signs.

EFFECTIVE DATE: May 31, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted May 31, 1989, and released June 19, 1989.

1. The full text of this Commission document is available for inspection and copying during normal hours in the Private Radio Bureau Public Reference Room, 1270 Fairfield Road (Route 116 West), Gettysburg, PA 17325. The complete text of the Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 1270 Fairfield Road (Route 116 West), Gettysburg, PA 17325, (717) 337-1433 or Suite 140, 2100 M Street NW., Washington, DC 20037, (202) 857-3800.

Summary of Order

2. The Commission has terminated PRB-3, a proceeding looking toward the establishment of a special call sign system in the private sector. The Commission said that its intention was to consider implementation of a special call sign system only if it could be done with no additional cost or workload. But, this was not the case. Thus, the Commission said it could not divert significant Commission resources from essential activities at this time. Various motions and allegations concerning violations of the Commission's *ex parte* rules were dismissed as moot.

3. The authority for this action is contained in 47 U.S.C. 154(i).

4. *It is ordered*, That this proceeding Is Terminated.

5. *It is further ordered*, that the Motion for Sanctions, Motion to Strike, Motion for an Order to Show Cause, and a document entitled "Disclosure in Compliance with Rule Section 1.1214, all filed by Dennis C. Brown and Robert H. Schwaninger *Are Dismissed* as moot.

Federal Communications Commission.

Donna Searcy,

Secretary.

[FR Doc. 89-15202 Filed 6-27-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension

Title: Certificate of Labor Standards Compliance

Abstract: Title 44 of the Code of Federal Regulations, § 308.7 requires State and local governments to certify that contractors and subcontractors are in compliance with the Federal labor standards (29 CFR Part 5) and the provisions of 44 CFR 308.4 when Federal funding is requested under section 201(i) of the Federal Civil Defense Act of 1950, as amended, for construction of emergency operating centers and emergency communications facilities. The information will be used by FEMA to approve or disapprove an advance of funds or final payment to a contractor on any contract involving construction work in excess of $2,000

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 150.

Number of Respondents: 150

Estimated Average Burden Hours Per Response: 1

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including

suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: June 20, 1989.

Gail L. Kercheval,

Acting Director, Office of Administrative Support.

[FR Doc. 89–15262 Filed 6–27–89; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–829–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–829–DR), dated May 20, 1989, and related determinations.

DATED: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice

The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 20, 1989: The parishes of Bienville and Claiborne for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–15264 Filed 6–27–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC. 20573.

Immediate Customs Service, Inc., 149–05 177th Street, Jamaica, NY 11434, Officers: James J. Rea, President, Robert Rea, Sen. Vice President, Michael Rea, Vice President

I.T.T., 20280 S. Vermont Ave. #245, Torrance, CA 90502, Officer: Young M. Kay, Sole Proprietor

Tom Usbay, 75–15 189th Street, Fresh Meadows, NY 11366, Officer: Tom Usbay, Sole Proprietor

Peter Youngsuk Kim, 711 West B Street, Wilmington, CA 90744, Officer: Peter Youngsuk Kim, Sole Proprietor

Peter Youngsuk Kim, 711 West B Street, Wilmington, CA 90744, Officer: Peter Youngsuk Kim, Sole Proprietor

American Freight International Inc., 8169 NW 67th Street, Miami, FL 33166, Officers: Felix R. Garcia, President, Amelia A. Garcia, Secretary/Treasurer

La Mar Line Corporation, 7964 N.W. 14th St., Miami, FL 33126, Officers: Ulises Perez, President/Director/Stockholder, Maria Antonia Perez, Director, Nelson Suarez, V. President/Director/Stockholder, Antonio Elortegui, Secretary/Stockholder

Alliance Shippers Inc. dba Alliance International, 100 Oceangate Ave., P–1, Long Beach, CA 90802, Officers: Ronald Lefcourt, President/Stockholder, Ronald T. Schwed, Secretary/Treasurer/Stockholder

Baltimore International Transport, Inc., 2601 Hawkins Point Rd., Baltimore, MD 21226, Officers: John Leo Alvey, President/Director, Thelma Evelyn Alvey, Secretary/Treasurer/Director, Terri Ann Alvey Moses, Vice President

American Drawback Agency, 7823 S. Harvard, Tulsa, Oklahoma 74136, Shane O'Neal, Sole Proprietor

Trust Air Cargo (U.S.A.) Co., 136 N. Wood Dale Rd., Wood Dale, IL 60191, Officers: Jade R. Wu, President, Russell A. Wu, Secretary

Casas International Brokerage, Inc., dba Casas Brokers, 8775 Customhouse Plaza, Ste. "J", San Ysidro, CA 92073, Officer: Sylvia Maria Casas, President.

Dated: June 22, 1989.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–15242 Filed 6–27–89; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0038, Uniform Tender of Rates and/or Charges for Transportation Services, Optional Form 280. This Form is used to expedite the processing of rate tenders and contains explicit terms and conditions that would preclude misunderstanding between the contracting parties.

AGENCY: Transportation Management Division, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 28,000; responses, 1 per year; average hours per response, 1; burden hours, 28,000.

FOR FURTHER INFORMATION CONTACT: Edward R. Kelliher, 703–557–7981.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202–535–7691.

Dated: June 20, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–15216 Filed 6–27–89; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement and Proposed Funding Preference for Grants for Residency Training in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Grants for Residency Training in General Internal Medicine and General Pediatrics are being accepted under the authority of section 784, Title VII, of the Public Health Service Act, extended by

the Health Professions Reauthorization Act of 1988, (Title VI), Pub. L. 100-607. Comments are invited on the proposed funding preference stated below.

Section 784 authorizes the award of grants for planning, developing and operating approved residency training programs which emphasize the training of residents for the practice of general internal medicine or general pediatrics. In addition, section 784 authorizes assistance in meeting the cost of supporting residents who are participants in any such programs, and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Eligible applicants are accredited schools of medicine and osteopathic medicine, public and private nonprofit hospitals, or other public or private nonprofit entities.

To receive support, programs must meet the requirements of final regulations as specified in 42 CFR Part 57, Subpart FF.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project adequately provides for the project requirements set forth in the regulations;

(2) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(3) The qualifications of the proposed staff and faculty; and

(4) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Proposed Funding Preference for Fiscal Year 1990

To encourage a level of continuity training which more effectively meets the purposes of the grant program, a funding preference will be provided to any approved applicant who demonstrates continuity of care experiences that meet the following criteria:

Each resident must serve a panel of patients and/or families who recognize him or her as their provider of longitudinal and comprehensive (including preventive and psychosocial) health care. This continuity experience must be scheduled principally in ambulatory care settings which actively promote the practice of general internal medicine or general pediatrics. A resident's time in these settings must:

(a) Comprise at least 10 percent of his or her total training time (excluding vacation time) during each year of the program (i.e., at least one half-day per week);

(b) Comprise at least 20 percent of his or her total training time (excluding vacation time) for the entire residency training period; and

(c) Be scheduled in at least nine months of each year of training.

Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applications, a funding priority will be given to the following:

1. Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion to or exceeding their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainees.

2. Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving an underserved population.

3. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

4. Applications that demonstrate sufficient curricular time and offering devoted to assuring competence in quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

These priorities were established in Fiscal Year 1989 and the Administration is extending these priorities in Fiscal Year 1990.

Interested persons are invited to comment on the proposed funding preference. Establishment of the final funding preference is also dependent upon publication of an amendment to the regulations to delete the current project requirements for the continuity of care experience that specifies the percentage of time that a resident must spend in serving patients in ambulatory care settings. All comments received on or before July 28, 1989 will be considered before the final funding preference is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preference will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-28), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Should additional programmatic information be required, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-04, Rockville, Maryland 20857, Telephone: (301) 443-6820.

Completed applications should be returned to the Grants Management Officer at the above address.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and

supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Pub. L. 100–607, section 633(a) requires that for grants issued under sections 780, 784, 785 and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately six months from the first deadline.

In reviewing applications for grants referred to in subsection (a), the Secretary shall: (1) Make a preliminary review of each such application in order to determine whether the application involved is sufficient with respect to the minimum technical requirements established by the Secretary for applications under the program involved; and (2) if the Secretary determines pursuant to the preliminary review that any such application is not sufficient with respect to such requirements—(a) prepare a statement explaining the insufficiencies of the application; and (b) return the application, together with such statement, by a date that permits the applicant involved a sufficient period of time in which to prepare a timely second application for submission pursuant to the solicitation with respect to which the first application is being returned.

The deadline date for receipt of applications is August 16, 1989.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

This program is listed at 13.884 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: June 5, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–15251 Filed 6–27–89; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 54 FR 11080–81, March 16, 1989) is amended to reflect more accurately the functions within the Division of Grants and Contracts, Office of Resources Management, Office of Management, Office of the Assistant Secretary for Health (ORM/OM/OASH).

Office of the Assistant Secretary of Health

Under *Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions, Office of Management (HAU), Office of Resource Management (HAU4), Division of Grants and Contracts (HAU42),* delete "and prepares reports as required" and add "administers logistics policy activities; and prepares reports as required."

Date: June 20, 1989.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 89–15204 Filed 6–27–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–89–1975; FR–2648]

Applications for Fiscal Year 1989 Funds for Public Housing Resident Management Technical Assistance; Correction

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

ACTION: Notice; Correction.

SUMMARY: This notice advises that the Department is changing the "Due Date" in the notice, similarly titled, published on May 11, 1989.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Walter Preysnar, Project Management Division, Office of Public Housing, Department of Housing and Urban Development, Room 4122, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755–6182. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department published a notice on May 11, 1989 (54 FR 20443, 20447), similarly titled, setting out the "Due Date", among other things, in the "Processing Schedule" for applications for funds under this program. The Department has now reconsidered the schedule and has determined that the "Due Date" in the May 11, 1989 Notice would place undue pressure on prospective applicants and that a change in the submission deadline to July 21, 1989 would provide an improved opportunity for participation in the program.

As a consequence, the other due dates set out in the May 11, 1989 notice for the "Processing Schedule" are being correspondingly altered, as follows:

PROCESSING SCHEDULE

Steps	Old due/date	New due/date
RCs/RMCs submit Applications & Budget to Headquarters and Field Offices	6–30–89	7–21–89
FO submits recommendations to RO	7–21–89	8–11–89
RO/FO submits recommendations to Headquarters	8–11–89	8–25–89
Headquarters makes final selections	9–01–89	9–08–89
Congressional Notification/Transmittal of Approval or Disapproval Letters	9–04–89	9–11–89
PHA Notification	9–08–89	9–29–89

Date: June 23, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89–15352 Filed 6–26–89; 11:19 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–09–5101–09–XJAA]

Salt Lake District, UT; Availability of the Draft Environmental Import Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Proposed USPCI Clive Incineration Facility.

SUMMARY: The Salt Lake District, Bureau of Land Management has completed a DEIS for a proposed incineration facility in Tooele County, Utah. The privately owned facility would be constructed and operated by USPCI, Incorporated. It would be designed to thermally destruct hazardous, infectious, and non-hazardous industrial wastes. Up to 130,000 tons of waste would be incinerated yearly.

The DEIS analyzes the environmental impacts of the construction, operation, and closure of the proposed transfer, storage, and incineration facility and linear support facilities for water, railway, electricity, and roadway. The BLM preferred alternative is the proposed Clive site. Two other siting alternatives are also analyzed along with the no action alternative. BLM has also identified public lands in the area that would be required to be exchanged under each alternative for private lands elsewhere in order to allow the facility and all access facilities to be located on private land. Two of the three alternative incinerator sites (Clive and Grassy Mountain) are presently owned by USPCI.

Comments on the DEIS will be accepted through September 5, 1989. Comments submitted after that date may not be responded to. Comments should be submitted to: Mr. Deane H. Zeller, District Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

Copies of the DEIS are available at the above address as long as supplies last. Business hours are 7:45 a.m. to 4:30 p.m. weekdays. Address requests for copies of the DEIS to: Dennis Oaks, EIS Team Leader.

Two public hearings will be held for the purpose of obtaining oral and/or written testimony concerning the DEIS. Meeting dates and locations are as follows:

August 9, 1989, South Auditorium. Tooele County Courthouse, 47 South Main, Tooele, Utah;

August 10, 1989, Campbell Room, Convention Center, Stateline Hotel, Wendover, Nevada.

Both hearings will start at 6:30 p.m. and continue until all who wish to give testimony do so.

James M. Parker,

Utah State Director.

[FR Doc. 89-15243 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-010-09-4410-10]

Meeting of Bakersfield District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Bakersfield District Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bakersfield District Advisory Council will meet in Bishop, California.

DATES: July 14-15, 1989.

ADDRESS: Field Trip to Bodie State Historic Park leaving from 1005 North Main Street, Bishop at 8:00 a.m. Friday, July 14, 1989. Meeting from 8:00 a.m. to 4:00 p.m. Saturday, July 15, 1989 at Bishop City Hall, 377 West Line Street, Bishop.

SUPPLEMENTAL INFORMATION: The Bakersfield Distict Advisory Council is a 10 person council appointed by the Secretary of the Interior to give counsel and advice regarding planning and management of the public lands resources to the District Manager of the Bureau of Land Management, Bakersfield District. The Council will meet in Bishop on Friday and Saturday, July 14-15, and the agenda will deal will land use planning. Resource Management Plans are currently being developed for the Bishop Resource Area and the Caliente Resource Area. The Resource Management Plans (RMP) will determine how the public land is to be used. The agenda will include a field trip to Bodie State Historical Park in Mono County where a large scale mining operation might be proposed. The meeting is open to the public and anyone wishing to make a comment about any public land issue is welcome to speak at the Saturday session. Written comments may be submitted in advance to the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301; (805) 861-4229.

Date: June 19, 1989.

Larry Mercer,

Acting District Manager.

[FR Doc. 89-15218 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-40-M

[AK-919-09-4230-02-ADVB]

Fairbanks Support Center; Northern Alaska Advisory Council Meeting

The Northern Alaska Advisory Council will conduct a field trip to the Utility Corridor 89 inventory camp at Coldfoot, Alaska on July 31 and August 1, 1989. The Council members will drive to Coldfoot on Monday, July 31, and convene to hear public comment on Utility Corridor resource management issues from 7:30 to 8:30 p.m. on July 31, in the lobby of the Arctic Acres Inn, Coldfoot.

For information contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474-2231.

M. Thomas Dean,

Designated District Manager, Northern Alaska Advisory Council.

June 21, 1989.

[FR Doc. 89-15242 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-84-M

[AZ-920-09-4212-12 & 15; AZA-23700]

Arizona; Realty Action; Transfer of Public Land to State of Arizona

June 20, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public that the Bureau of Land Management as directed by the Arizona-Idaho Conservation Act of 1988 (102 Stat. 4571) dated November 18, 1988, will convey certain public land and acquire certain State land. First, a portion of the land in the Santa Rita Experiment Station will be transferred to the State of Arizona to satisfy the remaining Federal debt for land taken for the Central Arizona Project. Second, the remaining Federal land in the Experiment Station, land by Red Mountain and land located in the Havasu National Wildlife Refuge will be transferred to the State in payment for State land to be acquired.

FOR FURTHER INFORMATION CONTACT: Barbara Ahearn, Phoenix District Office, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona 85027 (602) 863-4464.

SUPPLEMENTARY INFORMATION: Pursuant to Title V of the Arizona-Idaho Conservation Act of 1988, the following land has been determined suitable for transfer to the State of Arizona:

Gila and Salt River Meridian

Santa Rita Experimental range

T. 17 S., R. 14 E.,
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 17 S., R. 15 E.,
Sec. 31, lots 1 to 11, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 32, lots 1 to 4, incl., N½, N½S½;
Sec. 33, lots 1 to 4 incl., N½, N½S½;
Sec. 34, lots 1 to 4, incl., N½, N½S½.
T. 18 S., R. 13 E.,
Sec. 24, lots 1 to 3, incl., SE¼SE¼;
Sec. 25, lots 2 to 6 incl., E½NE¼, SE¼.
T. 18 S., R. 14 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½, E½W½;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 18 S., R. 15 E.,
Sec. 3, lots 1 to 4, Inc., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 go 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼ NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 8, all;
Sec. 9, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 20, all;
Sec. 21, all;
Sec. 26, E½NW¼, SW¼NW¼;
Sec. 27, S½N½, SW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½, E½W½;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, SW¼.
T. 19 S., R. 14 E.,
Sec. 1, lots 1 to 5, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S ½N½, S½;
Sec. 3, lots 1 to 4 incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 11 incl., S½NE¼, SE¼ NE¼, E½SW¼, SE¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, lots 1 and 2, N½, N½SE¼;
Sec. 14, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 15, all;
Sec. 16, all;
Sec. 22, E½NE¼, NE¼SE¼;
Sec. 23, W½NE¼, NW¼, N½SW¼, NW¼ SE¼.
T. 19 S., R. 15 E.,
Sec. 3, lots 3 and 4, S½NW¼, SW¼;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 6, incl., S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½;
Sec. 8, all;
Sec. 9, SE¼NE¼, W½, SE¼;
Sec. 10, E½NW¼, SW¼NW¼, SW¼;
Sec. 16, lot 1, N½NW¼, SE¼NW¼;
Sec. 17, lots 1 and 2, NE¼NE¼, W½E½, W½, SE¼SE¼;
Sec. 18, lots 1 to 4, incl., E½.

Containing 50,810.94 acres in Pinal County.

Red Mountain

T. 2 N., R. 6 E.,
Sec. 24, lots 7, 9, 11, 13, 14, 15, lots 17, 18, 20, 22 and 24.

Containing 342.74 acres in Maricopa County.

Havasu National Wildlife Refuge

T. 14 N., R. 20 W.,
Sec. 17, SE¼, E½SW¼, E½W½SW¼;
Sec. 20, lots 3, 4, 5 and part of lot 6 lying east of a line connecting the NW corner of Tract 37 and the SE corner of the SW¼SW¼SW¼ of sec. 17;
T. 16 N., R. 21 W.,
Sec. 3, W½ lying east of Highway 95;
Sec. 10, W½ lying east of Highway 95.
T. 17 N., R. 21 W.,
Sec. 21, E½ lying of Highway 95;
Sec. 27, W½ lying east of Highway 95;
Sec. 34, E½.

Containing approximately 1,500 acres in Mohave County.

The land to be transferred to the State of Arizona will be subject to a reservation to the United States for rights-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 43 U.S.C. 945; and will be subject to all valid existing rights of record. The actual land to be transferred will be based on final appraised values.

The State land that will be acquired for use by various Federal agencies for protection of public resource values are 5,400 acres in Catalina State Park, 11,500 acres in Buenos Aires National Wildlife Refuge, 1,563 acres at Arivaca Lake, 520 acres in Madera-Elephant Head Trail area, 60,000 acres in Black Canyon Corridor, and 16,800 acres near Lake Pleasant, A complete list of the legal descriptions of this land is available at the Phoenix District Office and will be sent upon request.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Ojbections will be reviewed by the State Director who may sustain, vacate, or modify this reality action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,

District Manager.

[FR Doc. 89–15257 Filed 6–27–89; 8:45 am]

BILLING CODE 4310-32-M

California: Realty Action; Noncompetitive Sale of Public Land in Trinity County, Casefile, CA 17123

The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $11,000. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T. 32 N., R. 10 W.,
Section 1: Lot 28
Containing approximately 0.210 acre

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to James K. Wagner. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain reservations to the United States for ditches and canals, and will be subject to the following:

1. A right-of-way to Lawrence L. Lyons for a water pipeline (CA 13181).

2. A right-of-way to Douglas City School for a water pipeline (CA 20352).

Detailed information concerning specific conditions of the sale are available for review at the Redding Resource Area Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Area Manager, Redding Resource Area, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Mark T. Morse,

Area Manager.

[FR Doc. 89-15258 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-40-M

[Lease CACA-24467]

Road Closure Notice in the Big Butte Unit of the Yolla Bolly-Middle Eel Wilderness Area and Realty Action in Mendocino and Trinity Counties, CA

June 19, 1989.

SUMMARY: Under the authority granted in 43 CFR 8364.1, the Bureau of Land Management is designating a vehicle closure of all public lands, roads, and trails within the Big Butte Unit of the Yolla Bolly-Middle Eel Wilderness Area located in Mendocino and Trinity Counties, California. All vehicle use is prohibited except for administrative access and access for private landowners completely surrounded by federal wilderness who have obtained a lease for access issued by the Bureau of Land Management. This closure is effective July 31, 1989.

Any person violating the closure may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, under the authority of 43 CFR 8372.0-7.

On September 28, 1984, the California Wilderness Act included most of the Big Butte Wilderness Study Area into the Yolla Bolly-Middle Eel Wilderness Area. The California Wilderness Act of 1984 and the Wilderness Act of 1964 both emphasize that private inholders shall have reasonable access to their land. The Big Butte Road and a small section of jeep road does provide access to most of the existing landowners within the Wilderness Area.

The wilderness designation has precluded issuing a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA). Section 501(a) states, "The Secretary, with respect to the public lands and, the Secretary of Agricultural, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way * * *" Because of this exception within the right-of-way authority, a lease under the provisions of section 302 of FLPMA will be issued to authorize vehicle access to the private lands within the wilderness area. The lease will include public lands inside and outside of the Yolla Bolly-Middle Eel Wilderness Area and are described as follows:

T. 24 N., R. 12 W.
Section 11, SE¼,NE¼;
T. 25 N., R. 12 W.
Section 12, SW¼SW¼;
Section 23, SE¼SE¼;
Section 24, Lots 3, 6, SW¼, NW¼SE¼;
Section 25, Lot 3, NW¼,NW¼;
Section 26, SE¼NE¼, SE¼;
Section 35, Lots 3, 4, NW¼NE¼; E½NW¼, NE¼SW¼.

SUPPLEMENTARY INFORMATION: After July 31, 1989, the private land owners within the Big Butte Unit of the Yolla Bolly-Middle Eel Wilderness Area shall be required to have a certified copy of their lease in their possession when in a vehicle on the Big Butte Road in the Wilderness Area.

Applications will be accepted only from the private land owners who are completely surrounded by the Big Butte Unit of the Yolla Bolly-Middle Eel Wilderness Area. All applicants should reference this notice and serial number CACA-24467. Applications will be accepted at the Ukiah Bureau of Land Management District Office or the Arcata Resource Are Office, P.O. Box 1112, Arcata, California, 95521. In accordance with 43 CFR 2920.6, the applicants shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing and monitoring the leases. The lessee's shall also pay rent annually in advance of the rental period for use of this road. A formal appraisal has been requested to determine the rent.

This lease will be for ingress and egress to the lessee's property.

FOR FURTHER INFORMATION CONTACT: Alfred W. Wright, Ukiah District Manager at (707) 462-3873 or write to 555 Leslie Street, Ukiah, California 95482.

DATES: For a period of 30 days from date of publication of this notice within the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, CA 95482. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Bureau.

Alfred W. Wright,

Ukiah District Manager.

[FR Doc. 89-15255 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-09-4212-11; N-50460]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

Notice of Realty Action for N-50460 appearing on page 23711 of the Federal Register (Doc. No. 89-13106) published on Friday, June 2, 1989 is hereby corrected. The legal description is corrected as follows:

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.
Sec. 15, NE¼.

The remainder of the Notice of Realty Action was correct as published.

Date: June 19, 1989.

Robert K. Taylor,

Acting District Manager, Las Vegas, NV.

[FR Doc. 89-15259 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-HC-M

[CA-050-09-4410-08]

Availability of Draft Planning Criteria and Preplanning Analysis for the Redding Resource Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to 43 CFR 1610.4-2, notice is hereby given of the availability of draft planning criteria and preplanning analysis for the Redding Resource Management Plan (RMP).

SUPPLEMENTARY INFORMATION: The Redding Resource Area contains approximately 240,000 acres of public land and approximately 160,000 acres of Federal Mineral estate in Butte, Shasta, Siskiyou, Tehama, and Trinity Counties in California. The criteria will guide the development of the RMP. The RMP, including an Environmental Impact Statement, is scheduled to be completed in June 1991. Copies of the draft planning criteria and the preplanning analysis are available upon request at the following locations: Ukiah District Office, 555 Leslie Street, Ukiah, California, 95482; and Redding Resource Area, 355 Hemsted Drive, Redding, California, 96002.

DATE: Comments should be sent to the Redding Resource Area not later than July 15, 1989.

FOR FURTHER INFORMATION CONTACT: Francis Berg, Team Leader, Redding Resource Area, at the Redding address listed above or telephone (916) 246–5325.

Date: June 9, 1989.

Mark T. Morse,

Area Manager.

[FR Doc. 89–15256 Filed 6–27–89; 8:45 am]

BILLING CODE 5310–40–M

[ID–942–09–4730–12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., June 19, 1989.

The plat representing the dependent resurvey of portions of the west and north boundaries, and subdivisional line and the subdivision of certain sections, T, 4 S., R. 31 E. Boise Meridian, Idaho, Group No. 768, was accepted June 15, 1989.

The survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

June 19, 1989.

[FR Doc. 89–15219 Filed 6–27–89; 8:45 am]

BILLING CODE 4310–GG–M

[OR–943–09–4214–10; GP9–247; OR–42920(WASH)]

Partial Termination of Proposed Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a 50-acre portion of the proposed withdrawal for the North Cascades Scenic Highway Zone. The land remains closed to mining by another existing withdrawal.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: Notice of proposed withdrawal, involving U.S. Department of Agriculture, Forest Service, application OR 42920(WASH), was published as FR Doc. 87–17511 on page 28765 of the issue of August 3, 1987. The applicant agency has cancelled the application insofar as it affects the following described land:

Williamettee Meridian

Okanogan National Forest

T. 36N., R. 26 E., unsurveyed, secs. 10, 11, 12 and 13, those portions lying from 300 to 1,000 feet on the southeasterly side and from 200 to 1,000 feet on the southwesterly side and running parallel and concentric with the monumented centerline of State Highway 30 between highway stations 1193+55.32 and 1227+95.79, except those portions lying North of a line extended East and West through highway station 1196+23.05 and South of a line extended East and West through highway station 1215+10.17.

The areas described, after making the aforesaid exceptions, aggregate approximately 50 acres in Skagit County, Washington.

The proposed withdrawal is hereby terminated insofar as it affects the above-described land.

Robert E. Mollohan

Acting Chief, Branch of Lands and Minerals Operations.

Dated: June 20, 1989.

[FR Doc. 89–15260 Filed 6–27–89; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Pacific Northwest Outer Continental Shelf Task Force; Second Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised. The Pacific Northwest OGSD Task Force will hold its second meeting from 1:00 p.m. to 9:00 p.m., July 17, 1989, at the Westwood Lodge, 910 Simpson Avenue, Hoquiam, Washington, 98550 (phone 206–532–8161). The agenda for the meeting will cover the following principal subjects: Environmental studies, sensitive areas for deferral consideration, and lease sale timing. The meeting is open to the public.

The purpose of the Pacific Northwest OCS Task Force is to provide advice and recommendations to the Secretary of the Interior on issues related to potential leasing, exploration, and development of oil and gas for proposed OCS Sale 132 in the Washington/Oregon OCS Planning Area.

Minutes of the meeting will be made available for public inspecton and copying at the Minerals Management Service, Pacific OCS Region, Suite 244, 1340 West Sixth Street, Los Angeles, California 90017. They will also be made available at the Minerals Management Service, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240. For more information, contact John Smith or Ann Copsey at (213) 894–4154 or 7107.

Signed:

J. Lisle Reed,

Regional Director, Pacific OCS Region, Minerals Management Service.

Dated: June 21, 1989.

[FR Doc. 89–15208 Filed 6–27–89; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Section 5A Application No. 55; Amendment No. 2]

Motor Carriers Traffic Association, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Motor Carriers Traffic Association, Inc. (Traffic Association), has filed, under section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions.

DATES: Comments from interested persons are due July 28, 1989. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 55 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard Johnson, (202) 275–7939 or Richard B. Felder, (202) 275–7691. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: We have provisionally approved Traffic Association's agreement as consistent with 49 U.S.C. 10706(b) and Motor *Carrier Rate Bureaus—Imp. Pub.L. 96–296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following subject areas: territorial scope of the agreement; verification of

adoption of amended agreement; separation of profitmaking functions through two different corporations; identification and description of member carriers; right of independent action; rate bureau protests; employee docketing; open meetings; proxy voting; final disposition of cases; general standards; single-line rates; subcommittees; shipper affiliation information; board of directors and officers; amendments of bylaws and rules of procedure; meetings with other rate bureaus; president's agreements with other rate bureaus; and intrastate ratemaking. We have also offered comments and imposed requirements concerning the agreement generally. Traffic Association has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and *Rate Bureau*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative, criteria, and their application to Traffic Association's agreement.

Copies of Traffic Association's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423, and from Traffic Association's representatives:

Mr. J. Raymond Clark, 157 Saint Andrews Drive, St. Simons Island, GA 31522,

and

Mr. B.F. Moffitt, Motor Carriers Traffic Association, Inc., P.0. Box 1500, Greensboro, NC 27402.

A copy of any comments filed with the Commission must also be served on Traffic Association, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that Traffic Association must submit to the Commission as a condition to final approval of its agreement.

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

Additional information is in the Commission decision. To obtain a copy of the full decision, write to, call, or pick-up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428

[Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: June 20, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–15267 Filed 6–27–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 23, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act. Entries are grouped into submission categories. Each entry contains the following information:

(1) The title of the form or collection;

(2) The agency form number, if any and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond;

(6) An estimate of the total public burden hours associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633–4312.

All entries in this notice are for revisions of currently approved collections.

(1) *Request for Considerations as a Replenishment Agricultural Worker*

(2) I–807, Immigration and Naturalization Service.

(3) One-time registration.

(4) Individuals or households. Form is a request for consideration as a replenishment agricultural worker registration card to be filed by an alien is he/she desires to be considered for RAW status.

(5) 5,000,000 annual respondents at one-half hour each.

(6) 2,500,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) *Petition for Temporary Resident Status as a Replenishment Agricultural Worker (RAW).*

(2) I–805, Immigration and Naturalization Service.

(3) Annually.

(4) Individuals or households. The information on this petition will be used by the INS to determine whether a person is admissable into the United States as an immigrant and eligible for RAW status according to the eligibility requirements of the proposed regulations.

(5) 300,000 annual respondents at one-half hour each.

(6) 150,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) *Request for Consideration as a Replenishment Agricultural Worker (A)*

(2) I–807A. Immigration and Naturalization Service.

(3) One-time preregistration.

(4) Individuals or households. This registration card will be used by the INS to establish a list of potentially eligible aliens who will be invited to petition for RAW status.

(5) 100,000,000 estimated annual respondents at .5 hours each.

(6) 500,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) *Change of Address Card.*

(2) I–697 and 697A. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. These forms solicit information needed to update an applicant's address in the Legalization Automated Database. The country, date of birth, and registration number are elements needed to identify specific applicants who have similar names and/or do not provide an A-number, registration number, or provide the wrong number.

(5) 300,000 estimated annual respondents at .083 hours each.

(6) 24,900 estiamted annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Departmental Clearance Officer, Department of Justice.

[FR Doc. 89-15287 Filed 6-27-89; 8:45 am]

BILLING CODE 4410-10-M

Consent Decree in Action Under the Resource Conservation and Recovery Act and Alabama Hazardous Waste Management Act; American Brass, Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *American Brass, Inc. et al.*, Civil Action No. 88-D-268-S, was lodged with the United States District Court for the Middle District of Alabama on June 7, 1989. The consent decree establishes a compliance program to bring the brass foundry facility operated by American Brass in Headland, Alabama into compliance with the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Alabama Hazardous Waste Management Act, 22 Ala. Code, Chpt. 30, and the applicable regulations relating to the treatment, storage and disposal of hazardous waste. The decree calls for American Brass to achieve compliance by eliminating and closing its accumulated furnace slag pile and properly managing the facility's currently generated furnace slag and dust from its baghouse systems. The consent decree also requires payment of a civil penalty of $242,000.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave., NW., Washington, DC 20530 and should refer to *United States* v. *American Brass, Inc.*, D.J. Ref. No. 90-7-1-436.

The consent decree may be examined at the office of the United States Attorney, Middle District of Alabama, 306 U.S. Courthouse and Post Office Building, 15 Lee Street, Montgomery, Alabama 36104 and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. A copy may be obtained by mail by written request to the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $18.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-15220 Filed 6-27-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; Clow Water Systems

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Clow Water Systems, a Division of McWane, Inc.*, Civil Action No. C2-87-270, has been lodged with the United States District Court for the Southern District of Ohio. The complaint filed by the United States alleged that the defendant violated the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, by continuing to operate a hazardous waste land disposal facility despite its lack of legal authority to do so, and by failing to comply with the Act's implementing regulations as well as numerous requirements of a Consent Agreement previously entered into between the United States and the Defendant.

The proposed Decree requires Defendant to achieve and maintain compliance with the Act and its implementing regulations by closing it unpermitted hazardous waste surface impoundment in accordance with a closure plan approved by the United States Environmental Protection Agency ("U.S. EPA"), demonstrate compliance with specified operational regulatory requirements, and to perform corrective action pursuant to section 3008(h) of the statute, 42 U.S.C. 6928(h), to address releases of hazardous wastes and hazardous waste constituents from Defendant's facility. The proposed Consent Decree also requires Defendant to pay a civil penalty of $725,000 for its violations of the Act and a Consent Agreement and Final Order ("CAFO") previously entered, and provides for substantial stipulated penalties in the event that Defendant fails to comply with any Decree requirements.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Clow Water Systems, a Division of McWane, Inc.*, D.J. Reference No. 90-7-1-400.

The proposed Consent Decree may be examined at the office of the United States Attorney, 85 Marconi Boulevard, Room 200, Columbus, Ohio 43215 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1647(D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $3.60 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-15221 Filed 6-27-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Stipulation and Agreement

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Stipulation and Agreement in *In re Storage Technology Corporation*, Case No. 84-B-5377-J and *In re Storage Technology Leasing Corporation*, Case No. 86-B-04222-J was lodged with the United States Bankruptcy Court for the District of Colorado on June 9, 1989. The proposed stipulation and agreement resolves the environmental claims of the United States against Storage Technology Corporation relating to the Lowry Landfill, under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607. The proposed stipulation provides for Storage Technology Corporation to pay the United States $5.4 million. The United States will release Storage Technology Corporation from all past, present and future liability associated with the cleanup of the Lowry Landfill relating to wastes generated by Storage Technology Corporation which have been disposed of at Lowry Landfill.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, written comments relating to the proposed stipulation and agreement of settlement. Comments should be addressed to the

Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Storage Technology Corporation*, D. J. Ref. 90–11–2–93C.

The proposed stipulation and agreement may be examined at the office of the United States Attorney, Federal Building, Suite 1200, 1961 Stout Street, Denver, Colorado 80294 and at the Region VIII Office of the United States Environmental Protection Agency, One Denver Place, 999 18th Street, Denver, Colorado 80202 and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530.

A copy of the proposed stipulation and agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–15222 Filed 6–27–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on May 25, 1989, disclosing that there has been a change in the membership of PCA. Specifically, Capitol Cement Corporation has resigned from PCA effective May 1, 1989. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Continental Cement Company Inc.
Coplay Cement Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Glen Falls Cement Company, Inc.
Hawaiian Cement
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation
Lehigh Portland Cement Company
Lone Star-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
National Cement Company, Inc.
National Cement Company of California, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
Rinker Materials Corporation
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

Canada

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporation
Tilbury Cement Limited

Mexico

Instituto Mexicano del Cemento y del Concreto (IMCYC)
Cementos Acapulco, S.A.
Cementos Apasco, S.A.
Cementos de Chihuahua, S.A.
Cementos Mexicanos, S.A.
Cementos Moctezuma, S.A.
Cooperative de Cementos Cruz Azul
Cooperative de Cementos Hidalgo

Affiliate Members

Cement and Concrete Promotion Council of Texas
Florida Concrete and Products Association
Mississippi Concrete Industries Association
North Central Cement Promotion Association
Northern California Cement Promotion Group
Northwest Concrete Promotion Group
Rocky Mountain Cement Promotion Council
South Central Cement Promotion Association
Southern California Cement Group

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C–E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
F. L. Smidth and Company
Claudius Peters, Inc.
Magotteaux-Slegten Companies
Polysius Corp.
The Fuller Company
W.R. Grace & Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, and March 13, 1989, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 28183), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29379), September 15, 1988 (FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March

20, 1989 (54 FR 11455), and April 25, 1989 (54 FR 17835), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-15223 Filed 6-27-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey by the U.S.-Japan Task Force on Access of U.S. investigators who have done research in Japan since January 1, 1988.

Affected Public: Individuals.

Responses/Burden Hours: 200 responses, one hour each respondent.

Abstract: This modification of NSF Form 1244 is needed to record information from U.S. researchers, who, since January, 1988, have spent two months or more doing research in Japan. Annex II to the *Agreement between the Government of the United States of America and the Government of Japan on Cooperation in Research and Development in Science and Technology* (signed in June 1988) authorized a Task Force on Access, to survey major government-sponsored research and development programs in the U.S. and Japan. Perhaps 200 principal investigators will be affected.

Dated: June 22, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-15197 Filed 6-27-89; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: 1990 Survey of Science, Social Science, and Engineering Graduates.

Affected Public: Individuals.

Responses/Burden Hours: 10,050 respondents, 20 minutes each respondent.

Abstract: The information provided in this survey will enable the NSF to comply with the legislative requirement to collect information about scientific and technical personnel that may be used in policy and planning activities by private industry, educational institutions, and government agencies.

Dated: June 22, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-15198 Filed 6-27-89; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Antarctic Conservation Act Application and Permit Form.

Affected Public: Individuals, For-profit, Federal agencies, Non-profit, Small businesses..

Responses/Burden Hours: 20 responses, one hour each respondent.

Abstract: The National Science Foundation, pursuant to the Antarctic Conservation Act of 1978 (Pub. L. 95-541, regulates via a permit system certain activities in Antarctica. The subject form is used by NSF to collect information needed in permit administration.

Dated: June 22, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-15199 Filed 6-27-89; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Biotechnology R&D Performance in Industry.

Affected Public: Businesses or other for-profit.

Responses/Burden Hours: 500 responses, one hour each respondent.

Abstract: Quantitative information on S&T employment and funding in biotechnology related areas is needed to improve the ability of the Federal government to assess its policymaking and budget formulation activities in these areas. Executive branch agencies and the Congress use responses of industry leaders to make timely decision on S&E policy questions.

Dated: June 22, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-15200 Filed 6-27-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 5, 1989 through June 16, 1989. The last biweekly notice was published on June 14, 1989 (54 FR 25367).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following

amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, 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-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 28, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a

balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 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 application for amendments: June 21, 1987, as supplemented May 19, 1989

Description of amendment request: Presently, the Unit 1 Technical Specification 5.6.3 states "the fuel storage pool is designed and shall be maintained with a storage capacity limited to no more than 160 PWR fuel assemblies and 1803 BWR fuel assemblies." The Unit 2 Technical Specification 5.6.3 states "the fuel storage pool is designed and shall be maintained with a storage capacity limited to no more than 144 PWR fuel assemblies and 1839 BWR fuel assemblies." The proposed amendment would delete the words "a storage capacity limited to" from Technical Specification 5.6.3.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) has reviewed the proposed changes to the Technical Specifications and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the number of assemblies permitted to be stored in each spent fuel pool is not changed. The spent fuel pool criticality, thermal, seismic, and rack material analyses are not affected by the proposed amendment.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because no aspect of plant operation will be altered as a result of the change. As stated above, the total number of fuel assemblies allowed in each spent fuel pool remains the same.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The Company has reviewed this request and determined that it does not affect the criticality analysis, the thermal analysis, the seismic analysis, or the rack material analysis performed for the spent fuel pool. As such, the margin of safety is unaffected. In order to determine if the staff agrees with Carolina Power & Light Company's determination, the staff reviewed its Safety Evaluation of December 15, 1983 in support of the last reracking of the Brunswick spent fuel pool (Amendment No. 61 for Unit 1 and Amendment No. 67 for Unit 2). The introduction to the staff's Safety Evaluation states, in part, that the licensee proposed 160 PWR and 1803 BWR licensed spaces for Unit 1 and 144 PWR and 1839 BWR licensed spaces for Unit 2. Thus, the staff reviewed, evaluated, and approved the total number of licensed spaces versus the total possible storage capacity which in the Brunswick case, at the present time, is different.

Unit 1 now has one less 6x6 BWR rack than originally anticipated to be installed. Therefore, the storage capacity is not the same as the total permitted assemblies that could be put in storage. The rack may or may not be installed according to the licensee.

Unit 2 now has two less 6x6 BWR racks than originally anticipated to be installed. In addition, it has one extra 4x4 PWR rack installed. Although the installed capacity for the PWR racks is 160 PWR assemblies, the licensee is administratively holding the actual storage of PWR assemblies to the 144 TS value. The two BWR racks may or may not be installed according to the licensee. The one extra PWR rack may or may not be removed according to the licensee.

The staff has reviewed the CP&L determination of no significant hazards consideration and is in basic agreement with them as long as the licensee restricts the total number of assemblies placed in storage in each pool per the TS limits, as authorized by the above specified amendments. Accordingly, the Commission proposes to determine that the requested amendment does not involve a 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: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Nuclear Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. 50-456 and 50-457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of application for amendments: March 6, 1989

Description of amendments request: These amendments would change Technical Specifications 3/4.7.6, 3/4.7.7 and 3/4.9.12 to incorporate revised ventilation flow rates and a revised heater dissipation rate, clarify a testing requirement, correct a typographical error, and delete a footnote that is no longer applicable.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequence 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 proposed amendment makes several changes to the Technical Specifications. These changes are the (1) auxiliary building ventilation (VA) flowrates, (2) correction of a typographical error, (3) the deletion of the word "cold" when describing the dioctyl phthalate (DOP) used for VA system testing, (4) the changes in the control room ventilation (VC) flowrates for Byron Station, (5) the deletion of a footnote that is no longer applicable, and (6) the change in heater dissipation rate.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The VA non-accessible area ventilation system will be operated as described in the design and intent of the Updated Final Safety Analysis Report (UFSAR). The VA non-accessible area ventilation system bases is to ensure that radioactive materials, leaking from the ECCS equipment within non-accessible pump rooms following a LOCA, are filtered prior to reaching the

environment. Though UFSAR changes will be required to reflect the proposed flowrates, the bases remain satisfied. The VC proposed flowrate change ensures that a pressure of greater than or equal to 1/8 inch water gauge relative to ambient pressure in areas adjacent to the control room, and .02 inch water gauge relative to the Upper Cable Spreading Room and adjacent areas (except the control room) are maintained. This is consistent with the design and intent of the UFSAR; however, the proposed flowrates will need to be reflected in the UFSAR. The bases for the VC System are satisfied such that the allowable temperatures will be maintained in the control room and the control room will be maintained habitable for operations personnel during and following all credible accident conditions. Deletion of the word "cold" from the description of DOP used in testing has no effect on the VA System operation per UFSAR design and/or analysis and has no significant consequences. The change removes an overly conservative restriction and revises Technical Specifications to allow testing consistent with ANSI N510-1980. The typographical correction does not affect any accident. The deletion of the footnote has no effect on any accident since the footnote is no longer applicable.

The control Room Emergency Make-Up Air Filter Unit heaters were designed to comply with ANSI N-509 and Regulatory Guide 1.52-1976 requirements of limiting the relative humidity (RH) entering the carbon absorbers to 70% RH at the design flowrate. The heater performance was evaluated considering a main steam line break (MSLB) accident and a loss of coolant accident (LOCA). The heaters are not required for the MSLB accident since only a fraction of a percent of iodine removal efficiency for the carbon absorbers is needed to reduce the postulated Control Room thyroid dose below 10 CFR Part 50, Appendix A, GDC-19 limits. For the LOCA, air conditions were assumed to conservatively reflect atmospheric conditions. It was determined that the relative humidity can be limited to approximately 70% with a heater capacity of 21.1 kW. The proposed Technical Specification change is consistent with this determination; therefore, the probability and consequences of an accident remain unaffected.

The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed. The new VA flowrates are a result of the Testing Adjusting and Balancing (TAB) of the VA System and achieved acceptable system performance characteristics per system design as outlined in the UFSAR though the UFSAR flowrates need to be changed. All cooling requirements, as well as pressure requirements, are maintained per the design and intent of the UFSAR as described in the bases for the VA non-accessible area system which is to ensure the system operability such that radioactive materials leaking from the ECCS equipment within the pump rooms following a LOCA are filtered prior to reaching the environment. The VC flowrates are changed due to a need for an increased range after actual air densities were considered for instrument drift. The changed airflow meets the requirement to maintain greater than or equal to +.125 inch Water Gauge (inwg) in the control room and .02 inwg between the upper cable spreading room and adjacent area (except the control room). The bases for the VC System remain satisfied as the allowable temperatures will be maintained in the control room, and the control room will be maintained habitable for operations personnel during and following all credible accident conditions. The deletion of the word "cold" from the DOP description has no effect on system operation per UFSAR design and/or analysis and thus has no effect on the significant hazards considerations. The typographical correction has no effect on any accident. The deletion of the footnote, which is no longer applicable, has no effect on the creation of any accident. The change to required heater capacity is based upon analysis which establishes a minimum heater capacity that envelopes the accident analysis results. Since no new equipment is being added or control changes being performed, the possibility of a new or different kind of accident is not created.

The proposed changes do not involve a significant reduction in the margin of safety. The VA System flowrates as a result of the TAB will still maintain all ECCS pump room pressures as required. The bases for Technical Specification 3/4.7.7 will be met as the system has been balanced, such that the airflows provide negative pressures in the Auxiliary Building and Fuel Handling Building and ensure that ALARA and EQ parameters are maintained in accordance with the UFSAR. This ensures that all radioactive materials leaking from ECCS equipment in the pump rooms following a LOCA are filtered prior to reaching the environment. Thus the VA flowrates will be revised in accordance with Byron and Braidwood specific system performance characteristics and analysis. The VC system flowrate change still ensures that control room pressure remains within the boundary for control room habitability per Technical Specification 3/4.7.6 bases. This provides for the bases being satisfied in that the allowable temperatures in the control room will be maintained and the control room will remain habitable for operations personnel during and following all accident conditions. The deletion of the word "cold" from the DOP description changes has no effect on the margin of safety for Technical Specification 3/4.7.7 and 3/4.9.12 as described in their bases.

The typographical correction has no effect on the margin of safety. The deletion of the footnote, which is no longer applicable, has no effect on the margin of safety. The Technical Specification Bases state that operation of the system with the heaters operating for at least 10 continuous hours in a 31-day period is sufficient to reduce the buildup of moisture on the absorbers and HEPA filters. The proposed change limits the relative humidity entering the absorbers to 70% in accordance with ANSI N-509 and Regulatory Guide 1.52-1976 design requirements. Therefore, the margin of safety is not affected.

Therefore, based upon the above analysis, the staff concludes that the proposed amendment to the Technical Specification does not involve a significant hazards consideration.

Local Public Document Room location: For Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Nuclear Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket Nos. 50-456 and 50-457 Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: May 22, 1989

Description of amendments request: The proposed amendment would revise Technical Specification 5.3.2 to allow the use of either hafnium, or silver-indium-cadmium, or a combination of both, as the absorber material in the rod control cluster assemblies.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequence 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 proposed change does not result in any increase in the probability or consequences of accidents previously evaluated. The probability for an accident is independent of the absorber material used in the Rod Control Cluster Assembly (RCCA). The consequences remain unchanged because the silver-indium-cadmium absorber material meets the mechanical, physical, nuclear, and thermal properties assumed in the accident analysis.

The proposed change does not create the possibility for a new or different kind of accident from those previously evaluated. The physical characteristics of the silver-indium-cadmium RCCA's are comparable to that of the hafnium RCCA's. The physical size and construction of the RCCA's are the same. Both absorbers exhibit similar neutron absorption characteristics, hence flux distribution and shutdown margins will remain within limits.

The weights of the two differing RCCA's are comparable. Rod drop times will remain well within the values assumed in the FSAR. Both absorber materials are compatible with reactor coolant and reactor materials.

The proposed change does not involve a reduction in the margin of safety. All safety limits and limiting conditions for operation will continue to be met. The use of silver-indium-cadmium RCCA's is consistent with all assumptions made in the accident analysis. Silver-indium-cadmium is currently in use at several Westinghouse plants. This absorber material has been shown through experience to be an effective and stable material.

Based on the preceding assessment, the staff believes these proposed amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron Station, the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esquire; Sidley and Austin, National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: June 13, 1989

Brief description of amendments: This amendment request will modify Sections 4.0.3 and 4.0.4, General Surveillance Requirements, of the Technical Specifications for Zion Station. In addition to the proposed changes to the General Surveillance Requirements, changes are also proposed to Section 3.3.1.F, Reactor Coolant System, Operational Components-Relief Valves, and Section 3.9.3.A, Containment Isolation-Containment Isolation Valves. These later changes reflect the new guidance of the proposed General Surveillance Requirements and/or an upgrade to the requirements of Standardized Technical Specifications (STS). The proposed changes are expected to be consistent with the guidance contained in Generic Letter 87-09 dated June 4, 1987 which was issued to address several problems that were related to the General Limiting Conditions of Operations (LCO) of the STS.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequence 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 Commonwealth Edison Company (the licensee) provided the following discussion regarding the evaluation of the significant hazards consideration. Commonwealth Edison has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed changes involve Technical Specifications 3.0.4, 4.0.3 and 4.0.4, plus those Technical Specifications that are affected by these sections. These changes are being made and requested in accordance with NRC Generic Letter 87-09 issued on June 4, 1987.

Changes to Technical Specification, Appendix A, pages 27a, 27b and 27c through 27f, in this proposed amendment involve Specifications 4.0.3 and 4.0.4 and the corresponding Bases sections. Some Action requirements have allowable outage time limits that do not allow sufficient time for the completion of a missed surveillance before the Action requirements would necessitate a plant shutdown. If a plant shutdown is required before a missed surveillance is completed, it is likely that the surveillance would be conducted during the shutdown in an effort to terminate the shutdown requirements. This circumstance is undesirable for two reasons:

(1) increased pressure on plant staff to complete the surveillance could lead to errors that may result in plant upset, and

(2) the plant would be in a transient state involving potential upsets to the plant that could require a demand for the system when the system is removed from service for testing.

The proposed changes will also help clarify the potential conflicts between Specifications 4.0.3 and 4.0.4. The first conflict could arise when a plant shutdown is required as a consequence of an Action requirement. This will require a surveillance to performed, to become due prior to entry into a lower mode. This could result in delays in reaching lower modes as a result of a Technical Specification Action requirement.

The second conflict could arise when Surveillance Requirements can only be completed after entry into a mode or specified condition for which the Surveillance Requirements apply, and an exception to the requirements of Specification 4.0.4 is allowed. However, upon entry into this mode or condition, the requirements of Specification 4.0.3 may not be met because the

Surveillance Requirements may not have been performed within the allowed surveillance interval. Allowing for a delay in the applicability of Action Requirements for Specification 4.0.3 will provide an appropriate time limit for the completion of Surveillance Requirements that are allowed as an exception to Specification 4.0.4.

The proposed changes do not increase the probability or consequences of an accident previously evaluated. In regards to the changes to the General LCO's, the Surveillance Requirements are defined in 10 CFR 50.36 as those requirements that assure the necessary quality of systems and components are maintained such that safety limits are maintained and Limiting Conditions for Operation are met under these changes. The appropriate surveillances will still be performed. The proposed changes will only allow flexibility in performing these Surveillance Requirements prior to a plant shutdown being necessitated in the case of a surveillance being inadvertently missed.

The proposed change to be page 77, which excludes Specification 3.3.1.F from General LCO 3.0.4, does not involve a significant increase in the probability or consequences of an accident previously evaluated since this change will make Zion's Technical Specification the same as NRC approved Standard Technical Specification which allows this exemption.

The proposed changes to pages 199a and 199b, revise Specification 3.9.3.A to be the same as Commonwealth Edison's Byron and Braidwood Station Specifications. This change will not cause a significant increase in the probability or consequences of an accident previously evaluated since it requires the affected penetration and associated system to be declared inoperable within 4 hours and appropriate action to be taken. This change meets example (iv) of 48 FR 14869 i.e., a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a *prior review* and that it is justified in a satisfactory way that the criteria has been met.

None of the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated. No new equipment is being introduced as a result of the changes. These changes do not result in equipment being introduced as a result of changes. These changes do not result in equipment being operated in a manner different from present requirements. No change is being made which alters the function of any plant equipment.

None of the proposed changes involve a significant reduction in a margin of safety. In regards to the changes related to Sections 4.0.3 and 4.0.4 (i.e. allowing an appropriate time period for performance of a missed surveillance), a surveillance required by entry into an Action statement or performance of one precluded by plant conditions would in effect reduce the possibility for a potential plant upset.

The proposed changes to Section 3.3.1.F and 3.9.3, also do not involve a significant reduction in a margin of safety since corrective action will be taken within a specified time limit to ensure that the release of radioactive material to the environment will be consistent with the assumptions used in the analyses of a LOCA.

Therefore, based on the above evaluation, Commonwealth Edison believes that these changes do not involve a significant hazards consideration.

Since the application for amendment satisfies the criteria specified in 10 CFR 50.92 and is similar to an example for which no significant hazards consideration exists, Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission proposed to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Paul C. Shemanski, Acting

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: May 26, 1989

Description of amendment request: The proposed amendment would revise Technical Specification 3.3 and its associated Basis to provide additional operational flexibility by decreasing the refueling water storage tank low level alarm setpoint and by increasing the minimum required concentration of sodium hydroxide in the spray additive tank.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis of the proposed changes:

In accordance with the requirements of 10 CFR 50.92, the proposed changes to Technical Specification 3.3.A.1.k, Technical Specification 3.3.B.1.a and Technical Specification Basis 3.3 are deemed not to involve any Significant Hazards Consideration because operation of Indian Point Unit No. 2 in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

As part of a previously proposed Technical Specification amendment (submitted June 12, 1987), we enclosed a revision to FSAR Section 14.3.5, entitled "Containment Integrity Analysis" (this revision is part of the forthcoming FSAR update). The Containment Pressure versus Time curves presented in this analysis assumed only one operating Containment Spray Pump, three operating Containment Fan Coolers and took no credit for Recirculation Spray. This analysis was approved by the NRC and an SER issued on June 29, 1988 with Technical Specification Amendment 132. The analysis assumed that the RWST was completely drained (340,000 gallons injected) prior to switchover to the Recirculation Phase for the RHR and SI pumps, thus minimizing the contribution of Containment Spray to the containment integrity analysis.

In actuality, operators would begin to initiate the changeover to the Recirculation Phase soon after 246,000 gallons from the RWST had been injected into the containment. Therefore, much more RWST water is available for Containment Spray than necessary for pressure suppression of the containment for the limiting design basis accident.

Since the above shows that 80,000 gallons is not needed to be reserved in the RWST for the Recirculation Phase, the proposed change would reserve 60,000 gallons for the Recirculation Phase. As shown in the proposed Technical Specification 3.3 Basis, the remaining 60,000 gallons would be utilized to provide additional leeway in the alarm setpoints and to provide additional

margin in which to perform the injection to recirculation switchover.

The rational for not completely draining the RWST prior to initiating the Recirculation Phase is twofold:

a) To assure that the SI and RHR pumps will not be damaged due to insufficient water supply prior to switchover, and

b) To assure that an adequate amount of NaOH is provided to the containment via the Containment Spray System pathway during the Injection (246,000 gallons) and the Recirculation (60,000 gallons) Phases.

With respect to Item a, sufficient water is preserved in the RWST to preclude pump damage. With respect to Item b, [it has been determined] that an increase from 30% to 33% in the NaOH concentration in the Spray Additive Tank will compensate for the 20,000 gallon decrease in the RWST water reserved for the Containment Spray pumps to add NaOH into containment from the Spray Additive Tank after switchover. Thus the pH post-LOCA will be the same as the current FSAR analyses.

The proposed changes (i.e., the RWST alarm setpoints and the NaOH concentration) deal only with accident mitigation and do not provide any sort of automatic initiation. Thus, there are no credible equipment failures associated with these proposed changes that would initiate an accident. In addition, since these proposed changes are associated with equipment located outside containment, there are no credible failures attributable to these proposed changes that could directly affect the Reactor Coolant System. Thus, these proposed changes would not significantly increase the probability of an accident previously evaluated nor would they significantly increase in the consequences of an accident previously evaluated.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes (i.e., the RWST alarm setpoints and the NaOH concentration) deal only with accident mitigation and do not provide any sort of automatic initiation. Thus, there are no credible equipment failures associated with these proposed changes that would initiate an accident. In addition, since these proposed changes are associated with equipment located outside containment, there are no credible failures attributable to these proposed changes that could directly affect the Reactor Coolant System. Finally, these proposed changes do not modify the physical configuration of the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

As discussed in Item 1 above, these changes are based on an approved revision to FSAR Section 14.3.5. This discussion shows that 80,000 gallons is not needed to be reserved in the RWST for the Recirculation Phase, the proposed change would reserve 60,000 gallons for the Recirculation Phase. As shown in the proposed Technical Specification 3.3 Basis, the remaining 60,000 gallons would be utilized to provide additional leeway in the alarm setpoints and to provide additional margin in which to perform the injection to recirculation switchover.

The rationale for not completely draining the RWST prior to initiating the Recirculation Phase is twofold:

a) To assure that the SI and RHR pumps will not be damaged due to insufficient water supply prior to switchover, and

b) To assure that an adequate amount of NaOH is provided to the containment via the Containment Spray System pathway during the Injection (246,000 gallons) and the Recirculation (60,000 gallons) Phases.

With respect to Item a, sufficient water is preserved in the RWST to preclude pump damage. With respect to Item b, it has been determined that an increase from 30% to 33% in the NaOH concentration in the Spray Additive Tank will compensate for the decrease 20,000 in the RWST water reserved for the Containment Spray pumps to add NaOH into containment from the Spray Additive Tank after switchover. Consequently, the post-LOCA pH will be the same as the current FSAR analyses. Thus, it has been demonstrated that the margin of safety is essentially unaffected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Therefore, based on the above discussion the licensee has determined that the proposed changes to Technical Specification 3.3.A.1.k, Technical Specification 3.3.B.1.a and Technical Specification Basis 3.3 do not involve any Significant Hazards Consideration.

The staff agrees with the licensee's analysis. Therefore, based on the above, the staff proposes that the proposed amendment will not involve a 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

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: May 25, 1989

Description of amendment request: The proposed changes to modify 3.7 of the Technical Specifications to represent 10 CFR Part 50, Appendix J, NUREG-0123 and the Standard Technical Specifications for General Electric Boiling Water Reactors requirements and to remove the 24 hour duration requirement to permit use of the "Total Time" and "Point-to-Point" methods described in ANS N45.4-1972 and Bechtel Topical Report BN-TOP-1.

Basis for proposed no significant hazards consideration determination: Consumers Power Company has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration. The licensee's basis for this conclusion is that the proposed amendment would not:

1. Alter the containment leakage rate acceptance criteria used to determine the consequences of accidents previously evaluated, thus does not affect the results of the previous evaluations. The proposed changes also do not require any system or component modifications nor a change to the operational mode in which the testing is performed thus concluding no effect in the probability of occurrence of an accident previously evaluated.

2. Integrated leak rate testing will still be performed during cold shutdown conditions which is unaffected by the proposed changes. Methods used to perform the test do not effect containment components or systems and modifications are not needed to implement the changes, thus avoiding the possibility to create a new or different kind of accident or malfunction.

3. The proposed changes do not involve a reduction in the margin of safety because the containment leakage rate limit is not being changed. Surveillance interval for performance of the test remains essentially unchanged (3 per 10 year service period). The changes do remove the 24 hour duration requirement, however, accuracy of the test will not be reduced because verification requirements are still in place to insure that the upper bound 95% confidence limit is achieved per 10 CFR Part 50, Appendix J.

The Staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Lawrence A. Yandell, Acting.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: May 3, 1989

Description of amendment request: The proposed amendment would modify the St. Lucie Unit 1 Technical

Specifications (TS) to permit repair of steam generator tubes by the installation of mechanical sleeves. Currently, the St. Lucie Unit 1 TS do not include provisions for repair using sleeves with mechanical joints for those steam generator tubes with eddy current indications showing greater than 40% through-wall degradation. The current St. Lucie Unit 1 TS language was established before the sleeving repair method using mechanical joints to maintain the tubes in service was developed. The proposed TS changes would specify the requirements for repairing degraded or defective tubes using sleeves with mechanical joints in the St. Lucie Unit 1 steam generators.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

Criterion 1

The repair of degraded steam generator tubes using sleeves will result in tube bundle integrity consistent with the original design basis.

The sleeve configuration has been designed and analyzed in accordance with the rules of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. Fatigue and stress analyses of the sleeved tube assemblies produced acceptable results. Mechanical testing has shown that the structural strength of the sleeves under normal, faulted and upset conditions is within acceptable limits. Leak rate testing has demonstrated that the leak rates of the joints between the sleeve and the existing tube under normal, faulted and upset conditions are well below acceptable rates. The existing Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the event significant leakage from the sleeve would occur. Any leakage through the sleeved region of the tube due to potential localized tube degradation is fully bounded by leak-before-break considerations and ultimately by the existing steam generator tube rupture analysis included in the St. Lucie Unit 1 Updated Final Safety Analysis Report. The proposed Technical Specification change to support the installation of mechanical joint sleeves does not adversely impact any other previously evaluated design basis accident or the results of Loss of Coolant Accident (LOCA) and non-LOCA analyses. The results of the qualification testing, analyses, and plant operating experience demonstrate that the sleeve assembly is an acceptable means of maintaining tubes in service. Furthermore, per U.S. Nuclear Regulatory Commission Regulatory Guide 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present eddy current techniques. Plugging limit criteria are established in the Technical Specifications for the tube in the region of the sleeve and the sleeve. These measures demonstrate that installation of sleeves which span degraded areas of the tube will restore the tube to its original design basis.

The sleeve dimensions and joints were designed to the applicable ASME Boiler and Pressure Vessel Code. An extensive analysis and test program was undertaken to prove the adequacy of the welded sleeve. This program determined the effect of normal operating and postulated accident conditions on the sleeve-tube assembly, as well as the adequacy of the assembly to perform its intended function. Design criteria were established prior to performing the analysis and test program which, if met, would prove that the welded sleeve is an acceptable repair technique. Based upon the results of the analytical and test programs, the welded sleeve fulfills its intended function as a leak tight structural member and meets or exceeds all the design and operating criteria.

Criterion 2

Implementation of the proposed tube degradation repair method does not introduce significant changes to the plant design bases. Repair of tubes does not provide a mechanism to result in an accident outside of the sleeved area. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube would be bounded by the existing tube rupture accident analysis.

The installation of welded tube sleeves does not create the possibility of a new or different kind of accident from any previously analyzed. The installation of welded tube sleeves will be performed in a manner [consistent] with the applicable standards, will preserve the existing design bases, and will not adversely impact the qualification of any plant systems. This will preclude adverse control/protection systems interactions. The design, installation and inspection of the welded sleeve will be done in accordance with ASME Boiler and Pressure Vessel Code criteria. By adherence to industry standards, the pressure boundary integrity will be preserved. As such, the possibility of a new or different kind of accident is not created.

Criterion 3

The effect of sleeving on the design transients and accident safety analysis has been reviewed based on the installation of the maximum number of sleeves expected. The installation of sleeves can be evaluated as the equivalent of some level of steam generator tube plugging. The St. Lucie Unit 1 steam generators are currently licensed to 15 percent steam generator tube plugging (SGTP). Evaluation of the installation of sleeves is based on assuming that LOCA evaluations for 15 percent tube plugging bound the effect of a combination of tube plugging and sleeving up to an equivalent of 15 percent SGTP. For the purpose of assessing the impact on the non-LOCA safety analyses and the design transients, it is assumed that the reactor coolant flow rate used for these analyses and transients is less than that which results from 15 percent equivalent SGTP. Given that the reactor coolant flow rate up to 15 percent equivalent SGTP is greater than the flow rate used for these analyses, the non-LOCA safety analyses and design transients are not adversely impacted by steam generator sleeving.

The safety margins in the analyses of postulated accident conditions and design transients are provided in the assumptions and conservatism in the calculations and computer codes used and in the requirements and recommendations of the NRC. Accordingly, based on the information outlined above, there is no decrease in the safety margins defined in the basis of the plant Technical Specifications.

Implementation of tube repair by sleeving will decrease the number of tubes which must be taken out of service with tube plugs. Installation of tube plugs reduces the Reactor Coolant System (RCS) flow margin, thus implementation of tube repair by sleeving will maintain the margin of flow that would otherwise be reduced in the event of increased plugging. Based on the above, it is concluded that the proposed change does not result in a significant reduction in a loss of margin with respect to plant safety as defined in the Updated Final Safety Analysis Report or the basis for the St. Lucie Unit 1 Technical Specifications.

The installation of a sleeve in a steam generator tube increases the flow resistance through the tube. The increased resistance may result in reduced flow through the sleeved tube. To determine the effect of installing welded sleeves in the steam generators, an analysis was performed. A conservative sleeve length was used in evaluating the effects of the sleeves on the heat transfer and hydraulic capabilities of the steam generators. Using the head and flow characteristics of each of the four primary pumps in conjunction with the primary system hydraulic resistances, the flow rate was calculated as a function of the number of sleeved tubes. The Technical Specification minimum allowable flow rate was used to determine the maximum number of tubes per steam generator which can be sleeved at both hot and cold legs. The change in primary system flow rate based on the maximum number of tubes which can be sleeved per steam generator was calculated to be 2.6 percent.

The effect of the change in flow rate on heat transfer between the primary and secondary side of the steam generator was determined to be negligible. The overall resistance to heat transfer between the primary and secondary sides consists of the primary side film resistance, the resistance to heat transfer through tube wall, and the secondary side film resistance. Since the

primary side film resistance is only a small portion of the total resistance, the effect of the calculated maximum change on flow rate on heat transfer is negligible.

The loss in heat transfer area associated with sleeving was also determined to be small. When the sleeve is installed on the steam generator tube, there is an annulus between the sleeve and the tube except in the sleeve tube weld regions. Hence, there is effectively little primary to secondary heat transfer in the region where the sleeve is installed. However, since negligible heat is transferred in the tubesheet region anyway, the loss in heat transfer area associated with sleeving is also negligible.

Based on the above, [the Florida Power & Light Company has] determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

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: June 1, 1989

Description of amendment request: The proposed amendment would modify Technical Specifications 3/4.1, and 3/4.2, of Appendix A by replacing the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR), which contains the values of those limits. Also, Figure 3.1-3 of the TS would be deleted. In addition, the COLR would be included in the Definitions Section of the Technical Specifications (TS) to note that it is the unit-specific document that provides these limits for the current operating reload cycle. Furthermore, the definition would note that the values of these cycle-specific parameter limits are to be determined in accordance with Specification 6.9.1.6. This Specification would require that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions would be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this Generic Letter.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed revision is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the COLR will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the COLR will allow the staff to continue to trend the values of these limits without the the need for prior staff approval of these limits and without introduction of an unreviewed safety question. The revised specifications with the removal of the values of cycle-specific parameter limits and the addition of the referenced report for these limits does not create the possibility of a new or different kind of accident for those previously evaluated. They also do not involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits.

Consequently, the proposed change on the removal of the values of cycle-specific limits do not involve a significant increase in the probability or consequence of a previously evaluated accident.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the Technical Specifications, they have been incorporated into the COLR which is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

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: June 1, 1989

Description of amendment request: The proposed amendments would change the technical specifications to permit the use of both hafnium (Hf) and silver-indium-cadmium (Ag-In-Cd) design rod cluster control assemblies (RCCAs) within the reactor core.

Basis for proposed no significant hazards consideration determination: In evaluating the proposed changes, the licensee considered neutronic effects,

mechanical effects and both large and small loss-of-coolant accidents.

The licensee performed specific comparisons of Hf and Ag-In-Cd reactivity worth under plant operating conditions. It was determined that since the rod worth behavior is similar between a Ag-In-Cd and Hf RCCA, the core power distributions under rated conditions are essentially the same.

Based on neutronic calculations comparing Hf to Ag-In-Cd and to combinations of both types of RCCA during steady state operation and under accident conditions, it was concluded that the largest change in total rod worth resulting from the substitution of absorber materials was 100 pcm. The corresponding change in N-1 rod worth was limited to 50 pcm, and the largest increase in peaking factors would be 1%. This slight increase in the peaking factors is based on RCCA banks being Hf or Ag-In-Cd but not a mixture of the materials within any one bank.

With respect to mechanical effects, the overall RCCA design and the physical geometry remains the same for Hf or Ag-In-Cd. In addition, the total RCCA/drive rod assembly weight is 31 lbs. less for Ag-In-Cd. With respect to this difference in weight, the drop time limits corresponding to either Hf or Ag-In-Cd design remain within the Technical Specification limit of 2.8 seconds. Generic mechanical response calculations were performed to confirm that the rod drop time of the Ag-In-Cd RCCAs will not exceed that currently assumed for Hf RCCAs.

The licensee considered the following accidents or accident related situations; Large Break LOCA, Small Break LOCA, Hot Leg Switchover to Prevent Potential Boron Precipitation, Reactor Vessel and LOOP Blowdown Forcing Functions, Post-LOCA Long-Term Cooling Subcriticality Requirement, Rod Ejection Large Term Mass and Energy Release, and Containment Integrity. In each instance there was no change to previous analyses, because either no credit was taken for the RCCAs in the analysis, or the most severe conditions assumed for the accident occurred after all rods were fully inserted.

In addition, the licensee considered the following parameters as they would affect the non-LOCA safety analysis, in particular, trip reactivity, nomalized trip reactivity vs. axial position, shutdown margin, ejected rod worths, other rod worth parameters possibly affected by an RCCA change, and rod drop time. It was concluded that the values for the first five parameters noted above will remain within the values assumed in the non-LOCA safety analyses. Mechanical response calculations showed that the rod drop time of the Ag-In-Cd RCCAs will not exceed that currently assumed for Hf RCCAs. The values used in the non-LOCA safety analysis and Technical Specifications will remain bounding.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). An example of an amendment which involves a no significant hazards consideration is example (vi) a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration. Further the staff concludes that the proposed change is essentially a direct substitution of RCCA materials and is considered within example (vi).

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 30, 1987

Description of amendment request: The proposed amendment would revise Technical Specification 3.5.G.3 to clarify the Limiting Condition for Operation (LCO) which requires that certain emergency core cooling equipment be available when work is performed which has the potential for draining the reactor vessel. The revision of this LCO will minimize operator confusion by specifying the minimum emergency core cooling system operability requirements during periods when operations are being performed which have the potential for draining the reactor vessel. Additional restrictions in the Technical Specifications are proposed (Specification 3.5.G.4(d) and 3.5.G.5) which would prohibit operations which have the potential for draining the reactor vessel when the suppression pool water supply is unavailable. Administrative changes are also requested.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis in support of a no-significant-hazards-consideration determination:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee has elected to adopt a more defined Limiting Condition for Operation (LCO) than is presently included in the Technical Specifications. It will apply when work is being performed which has the potential for draining the reactor vessel. The revised LCO defines the core cooling capability that must be available when such work is being performed. The licensee has previously performed a conservative evaluation of a water loss event while maintenance is performed on control rod drives (CRDs). The postulated worst case loss of reactor vessel inventory would be caused by failure of the velocity-limiter section of a control rod which would allow coolant to drain from the vessel through the CRD housing. The maximum leakage flow rate is 1328 gpm which is something less than one-half of the makeup capability of either one core spray pump (3020 gpm) or one Low Pressure Coolant Injection (LPCI) pump (4800 gpm). In addition, the revised LCO requires an independent onsite power source (at least one emergency diesel generator) which provides backup power to the core spray and residual heat removal (LPCI) pumps.

An additional restriction (new Specification 3.5.G.4(d)) must be met before core alterations can proceed if the suppression pool volume is below specified minimum values. The restriction has no effect on 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. The revised LCO is a procedural limitation which will ensure that adequate core cooling systems are available in the event of a postulated loss of reactor vessel coolant inventory.

During core alterations, with the suppression pool below the required minimum value and the reactor cavity flooded, prohibiting operations which have the potential for draining the vessel ensures that a new or different type of accident than previously evaluated will not be created.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. The LCO ensures that adequate core cooling capability and an independent power source are available if needed. The proposed amendment will not reduce safety margins; in fact, the rewording of an ambiguous statement (Specification 3.5.G.3) will help avoid the possibility of operator confusion, thereby indirectly increasing the margin of safety.

The NRC staff has reviewed the licensee's proposed no significant hazards determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the proposed amendment would have no significant hazards considerations.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 14, 1989

Description of amendment request: The proposed license amendment would revise the Duane Arnold Energy Center (DAEC) Facility Operating License No. DPR-49, extending the DAEC Integrated Plan (Plan) 2 years beyond the current expiration date of May 3, 1989. The Plan requires that the Iowa Electric Light and Power Company (IELP/the licensee) follow the schedule of the DAEC plant modifications mandated or proposed by NRC, or identified by the licensee. The proposed amendment does not involve changes to plant systems, components, or Technical Specifications.

The Integrated Plan was originally approved in Amendment No. 91, dated May 3, 1983, and extended by Amendment No. 125, dated July 9, 1985 and Amendment No. 148, dated November 25, 1987. The objective of the Integrated Plan is to integrate all planned DAEC plant modifications over a period of 5 years to assure that individual tasks are scheduled and performed in an efficient and cost/resource-effective manner.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists, as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with 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 extension of the DAEC Integrated Plan beyond its current expiration date of May 3, 1989, is intended to assure continuation of reliable and efficient planning of plant modifications to enhance plant safety. In addition, the extension is purely administrative in nature and has no effect on existing plant systems or equipment. Therefore, the Plan may reduce, but not increase, the probability or the consequences of an accident previously evaluated, will not create a new or different kind of accident from any accident previously evaluated, and will not involve any reduction in a margin of safety.

In the March 6, 1986 Federal Register the NRC published examples of amendments that are not likely to involve a significant hazards concern (51 FR 7751). Example number (i) of that list is a purely administrative change to the Technical Specifications. The incorporation of a license condition requiring continued use of a plan to provide for scheduling modifications and notification of scheduling changes is purely administrative.

Based on the above, the Commission's staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 31, 1989

Description of amendment request: The proposed amendment would delete the 20 second minimum stroke time requirement for the Reactor Recirculation Pump Discharge Valves.

Basis for proposed no significant hazards consideration determination: In accordance with the requirement of 10 CFR 50.92, the licensee submitted the following no significant hazards evaluation:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation:

The proposed change involves removal of the minimum stroke time requirement for the Recirculation Discharge Valves that are required to fully close following a Design Basis Loss of Coolant Accident (LOCA). Removal of the minimum valve stroke time requirement will not affect the probability of occurrence of a LOCA.

The LOCA analysis that assures compliance with 10 CFR 50.46 does not rely on the minimum valve closure time as an input. Rather, the maximum valve closure time is used as a key parameter in the analysis. The maximum valve closure time is unaffected by this proposed change. The minimum valve closure time was originally incorporated into Technical Specifications to ensure that the valves would stroke slow enough and hence would not exceed their maximum design differential pressure following a LOCA. If the differential pressure is exceeded, the valve may fail to fully close, thus invalidating the LOCA analysis.

Analysis shows that even with significantly faster valve stroke times, the valves will not be subject to a greater than design differential pressure due to the expected reactor pressure decay rate following a LOCA along with the setpoints specified in Technical Specification for the pressure permissive relays that actuate valve closure.

The LOCA analysis also takes credit for core heat removal that takes place during recirculation flow coastdown in the unbroken loop the first few seconds following a LOCA. The proposed change will not invalidate this assumption due to the expected reactor pressure decay rate and the pressure permissive setpoint.

Because the proposed change will not affect recirculation discharge valve closure or recirculation flow coastdown, there is no significant increase in the consequences of an accident previously evaluated.

The CNS LOCA Analysis does not rely on the minimum stroke time as an input. The two concerns identified with respect to fast closure of the Recirculation Discharge Valves (i.e., failure to close due to high differential pressure, and impact of fast closure on Recirculation Pump coastdown) are obviated by the CNS LOCA characteristics and the

CNS Recirculation Discharge Valve pressure permissive control logic.

2. Does the proposed license amendment create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation:

Removal of the minimum stroke time surveillance requirement for the Reactor Recirculation Discharge Valves will not allow any new mode of plant operation or create the possibility for a new or different kind of accident from any accident previously evaluated. Removal of the minimum stroke time requirement for the Recirculation Discharge Valves does not create any new unanalyzed failure mode nor will it place the plant in an unanalyzed condition.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Evaluation:

This proposed change will remove a 20 second minimum stroke time from the surveillance requirements for the Recirculation Discharge Valves. This value is not an input for the CNS LOCA analysis.

The maximum stroke time, 26 seconds, is an input to the CNS LOCA analysis, and will remain in the CNS Technical Specifications. As explained above, removal of the minimum valve stroke time for the recirculation discharge valves will not invalidate any part of the CNS LOCA analysis. Therefore, the margin of safety with respect to the accidents analyzed for CNS will not be reduced.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601-0499.

NRC Project Director: Frederick J. Hebdon

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: August 25, 1987 as supplemented May 5, 1989.

Description of amendment request: The amendment request proposes certain changes be made to the Technical Specifications. Table 3.2.7 is being proposed for amendment to increase the maximum operating (closure) time of the Emergency Cooling System high point vent and main steam warmup isolation valves to ten (10) seconds to be consistent with the closure time of the main steam isolation valves. The Emergency Cooling System drain line vent isolation valves would be added to Table 3.2.7. A closure time of ten (10) seconds is specified for these valves to be consistent with the closure time of the valves identified above. In addition, Table 3.2.7 would be revised to designate more accurately the motive power of the isolation valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The only previously evaluated accident associated with the closing time of the valves is the main steam line rupture event. Changing the closure time will have no effect on the probability of a main steam line rupture, as there is no credible relationship between these two actions. The Final Safety Analysis Report accident analysis includes sufficient conservatism so that the increase in valve closure time has no effect on the consequences of a main steam line break.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

As there is no mechanical or dynamic effect resulting from increasing the closure time, there is no increase in the possibility of creating a new kind of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

The allowable Technical Specification closure times of the emergency cooling steam line drain, emergency cooling high point vent and main steam warmup valves have been increased to be consistent with the closure time assumed in the analysis of a main steam line rupture. As discussed above, the Final Safety Analysis Report accident analysis includes sufficient conservatism so that the increase in valve closure time has no significant effect on the consequences of a main steam line break.

The staff agrees with the above analysis and further concludes that the inclusion of the Emergency Cooling System drain line vent isolation valves in Table 3.2.7 does not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety because the valves had been installed earlier to improve the isolation characteristics of the drain lines. Their omission from Table 3.2.7 was an editorial oversight.

The changes made to the Motive Power column of Table 3.2.7 do not change the type of power for any valve operator; they merely identify the power more specifically. The changes are editorial and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a 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: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 28, 1988

Description of amendment request: The proposed changes to Technical Specification pages 103, 110, 228 and 231 would revise the minimum count rate required on the source range monitors (SRM) to permit core alterations. A similar amendment to the Technical Specifications (TSs) was issued on March 15, 1989 to revise the minimum

SRM count rate required for the withdrawal of rods for startup. This change affects refueling activities only. The current Technical Specification specifies the minimum count rate as a function of the signal-to-noise (S/N) ratio below a count rate of 3 counts per second (cps) for startup purposes. This relationship between count rate and the S/N ratio is defined by Figure 3.3.1. The licensee proposes, in its December 28, 1988 application, to extend the applicability of this count rate to S/N relationship to core alteration (refueling) activities. The specification is also revised such that when the reduced count rate is being utilized during refueling activities, at least two of the SRM channels must indicate on or above the curve provided in Figure 3.3.1. Several administrative changes are also proposed to correct the title of a management position and to revise the Bases to establish consistency with the TS.

The SRM system consists of four identical neutron detection channels that provide neutron flux information over a range sufficient to observe the core shutdown source level, the approach to criticality and the overlap with the intermediate range monitoring (IRM) system. The SRM system is not required to ensure that the safety design bases are maintained, and, accordingly, no credit is taken for action by the system in the Final Safety Analysis Report (FSAR) accident analyses. The only events related to the proposed change are those that potentially could occur during refueling; a continuous rod withdrawal, which is an anticipated operational transient, and a fuel assembly insertion error. No credit is taken for the SRM's in either of these analyses. An input assumption for several of the FSAR analyses is that they are initiated from power levels of at least ten-to-the-minus-eight of rated power. As indicated in the licensee's application, the proposed change in the minimum SRM count rate (the SRM downscale setpoint) will continue to ensure that the applicable events would also be initiated from at least ten-to-the-minus-eight of the rated power level. Therefore, the input to these analyses remains valid.

The proposed change is needed because Unit 3 has been shut down since March 1987 and it appears likely that the SRM count rate may not be above the minimum value of three cps on at least two channels when the unit is expected to be refueled. Therefore, the count rate specification is proposed to be revised to include values down to 0.7 cps with an associated S/N ratio. The augmentation of the count rate below three cps with an S/N specification ensures that the statistical neutron monitoring confidence level of 95% is maintained at the lower count rates. Unit 2 is proposed to be revised to provide consistency with Unit 3 TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below:

Standard 1 - The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes reduce the minimum SRM count rate required to permit core alterations. The revised count rate is still within the design range of the SRM and specifying a minimum signal-to-noise ratio assures the SRMs are responding to thermal neutron flux. No hardware changes are required to the SRM system; therefore, malfunction of an SRM will still produce the required rod withdrawal blocks.

The only applicable accidents related to the proposed change are those involving SRMs during refueling: control rod removal error during refueling and fuel assembly insertion error during refueling. However, no credit is taken for the SRMs in either of these accident analyses. Further discussion of these accidents is provided below.

Control Rod Removal Error During Refueling

The nuclear characteristics of the core assure that the reactor is subcritical even in its most reactive condition with the most reactive control rod fully withdrawn during refueling.

When the mode switch is in REFUEL, only one control rod can be withdrawn. Selection of a second rod initiates a rod block, thereby preventing the withdrawal of more than one rod at a time.

Therefore, the refueling interlocks prevent any condition which could lead to inadvertent criticality due to a control rod withdrawal error during refueling.

In addition, the design of the control rod assembly, incorporating the velocity limiter, does not physically permit the upward removal of the control rod without the simultaneous or prior removal of the four adjacent fuel bundles, thus eliminating any hazardous condition.

Fuel Assembly Insertion Error During Refueling

The core is designed such that it can be made subcritical under the most reactive conditions with the strongest control rod fully withdrawn. Therefore, any single fuel bundle can be positioned in any available location without violating the shutdown criteria, providing all the control rods are fully inserted. The refueling interlocks require that all control rods must be fully inserted before a fuel bundle may be inserted into the core.

Standard 2 - The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

No hardware modifications are required to implement these changes. The design functions of the SRM system are not being changed. The only effects of these changes are a reduction in the minimum count rate required for core alterations which remains bounded by the assumptions utilized in the UFSAR, and an administrative change to the *Bases* to reflect the current organization.

Standard 3 - The proposed changes do not involve a significant reduction in a margin of safety.

The *Bases* for Technical Specification 3.3.B and 4.3.B state in part that the requirement of at least 3 counts per second assures that any transient, should it occur, begins at or above the initial value of 10^{-8} of rated power used in analyses of transient cold conditions. In fact, any observable neutron count rate on the SRM is sufficient to ensure the analyses remain valid. Therefore, reduction of the minimum count rate for refueling from the nominal 3 cps to the values listed in Figure 3.3.1 will not significantly reduce this margin of safety because any transient will still begin at or above 10^{-8} of rated power. Further, the SRMs are not required to ensure the margin of safety as analyzed in Section 14 of the UFSAR.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

The licensee has also proposed several administrative changes to correct the title of a management position and to revise the Bases on TS page 110 to reflect the above changes to the SRM minimum count rate. The Commission has provided guidance for the application of the criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (i) "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an

error, or a change in nomenclature." The proposed changes are examples of such an administrative change. Since these proposed changes are encompassed by an example for which no significant hazard considerations exist, the staff has made a proposed determination that the proposed changes involve no significant hazard considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: July 7, 1988

Description of amendment request: The proposed amendment consists of three categories of changes for fuel cycle 8 operation which involve the operating limits for all fuel types, a decrease in the slope of the Average Power Range Monitor scram and rod block setpoints and administrative changes, primarily to the Bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below. The licensee has arranged these changes into three categories, with the first category having six sub parts. The licensee's discussion of each of these categories and sub parts is presented separately and is numbered consistently with the above standards.

Category I - Operating Limits for Fuel

A. Upgraded Safety Limit MCPR

Standard 1 - The Safety Limit MCPR is set such that no fuel damage is calculated to occur if the limit is not violated. It is determined using the NRC approved General Electric Thermal Analysis Basis (GETAB), which is a statistical model that combines uncertainties in operating parameters with uncertainties in the methods used to calculate critical power.

Upgrading the Safety Limit MCPR to 1.04 (1.05 for single recirculation loop operation) has been approved by the NRC for application to D-lattice plants operating with the second successive reload core of high bundle R-factor fuel types. This determination applies to Unit 3 since it is a D-lattice plant and all fuel types to be loaded for Cycle 8 operation (BP/P8X8R, LTA and GE8X8EB) are high bundle R-factor fuel types.

Because the new Safety Limit MCPR is set such that no fuel damage is calculated to occur and thereby accomplishes the same purpose as the previous limit, this change does not increase the probability or consequences of any accident previously evaluated.

Standard 2 - Because the Safety Limit MCPR cannot initiate an accident and imposing the new limit requires no changes in the current mode of operation, this change does not create the possibility of a new or different kind of accident than previously evaluated.

Standard 3 - Upgrading the Safety Limit MCPR maintains the margin of safety established by the current limit. Both limits have received previous NRC approval in NEDE-24011-P-A. Thus, this change does not involve a significant reduction in the margin of safety.

B. GE8X8EB MAPLHGRs

Standard 1 - 10CFR50.46 establishes acceptance criteria for fuel and Emergency Core Cooling Systems (ECCS). MAPLHGR limits are established to ensure that the acceptance criteria are met.

This change provides MAPLHGR limits for the BD319A and BD321A (GE8X8EB) fuel assemblies. The MAPLHGRs have been calculated using NRC approved methods and the results of the analysis (General Electric Company Document NEDE-24082-P-1, previously referenced) demonstrate that the acceptance criteria of 10CFR50.46 are met with substantial margin. This change therefore does not increase the probability or consequences of an accident previously evaluated (LOCA).

Standard 2 - Because MAPLHGR limits can not initiate an accident and imposing the limits does not require any changes to the current mode of operation, this change does not create the possibility of a new or different kind of accident than previously evaluated.

Standard 3 - The acceptance criteria of 10CFR50.46 establish the margins of safety for fuel and the ECCS. Calculations using NRC approved methods described in NEDE-24082-P-1 yield results well within these acceptance criteria. The maximum peak cladding temperature (PCT) for GE8X8EB fuel assemblies is evaluated to be [less than or equal to] 2089 F for a bounding value of MAPLHGR = 14.0 kw/ft, providing 111 F margin to the 2200 F limit. The actual MAPLHGR operating limits for the BD319A and BD321A fuel assemblies are [less than or equal to] 13.2 kw/ft, which results in a PCT for those fuels of [less than or equal to] 1980 F. Since the maximum PCT for previous reloads of P8X8R fuel is 1954 F, the proposed amendment does not result in a reduction in the margin of safety.

C. Constants Used to Determine Tau

Standard 1 - The constants used to calculate the adjusted analysis mean scram time (Tau) are the mean and standard deviation of the scram speed data base used in the determination of NRC approved MCPR adjustment factors. These new constants result in the calculation of a smaller and therefore more restrictive Tau. Plants unable to meet the Tau criterion must increase their operating limit MCPR. Plants that meet the Tau criterion operate with MCPR limit defined in the Technical Specifications.

In summary, the MCPR operating limit is set such that fuel damage is not calculated to occur during a transient. The criterion is applied to verify that the limit is appropriate. Since the new constants result in a more restrictive Tau, this change does not involve an increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Based on the definition of Tau, Tau cannot initiate an accident, and establishing Tau does not require any changes to the current mode of operation; thus, this change does not create the possibility of a new or different kind of accident than previously evaluated.

Standard 3 - The change in the constants used to calculate Tau, results in a more restrictive criterion for applying the appropriate MCPR operating limit. The margin of safety is provided by the MCPR limit, which is increased if the Tau criterion is not met. Therefore, this change does not result in a reduction in the margin of safety.

D.LHGR Limit for GE8X8EB Fuel

Standard 1 - In NUREG-0800, "Standard Review Plan for 4.2, Fuel System Design, Revision 2, July, 1981," the NRC provides acceptance criteria for fuel designs under accident conditions. Evaluations of the GE8X8EB design with the higher (14.4 kw/ft) LHGR limit using NRC approved methods described in NEDE-24011-P-A have been performed. The results of these evaluations are documented in NEDE-24011-P-A, and demonstrate that the NRC acceptance criteria are met with the higher LHGR limit. Because the acceptance criteria in [NUREG-0800] are all met, the proposed change does not increase the probability or consequences of an accident previously evaluated.

Standard 2 - Because the LHGR limit cannot initiate an accident, and imposing LHGR limits does not require any changes in the mode of operation, the possibility of a new or different kind of accident than previously evaluated is not created.

Standard 3 - The margin of safety is defined by the NRC acceptance criteria of NUREG-0800. The NRC has reviewed and approved General Electric evaluations demonstrating that the GE8X8EB design is within the acceptance criteria with a LHGR of 14.4 kw/ft. Therefore, the proposed

amendment does not involve a reduction in the margin of safety.

E. New Operating Limit MCPRs

Standard 1 - The operating limit MCPR is set such that the safety limit MCPR cannot be violated in the unlikely event of a transient. The operating limit MCPR is determined by adding the delta-CPR for the worst transient to the safety limit MCPR. The transient delta-CPR is calculated using NRC approved methods described in NEDE-24011-P-A. The limiting abnormal operational transients have been re-evaluated in detail for standard conditions: generator load rejection without bypass, loss of 100 degree F feedwater heating, rod withdrawal error and feedwater controller failure. The limiting abnormal operational transients, generator load rejection without bypass and feedwater controller failure, were re-evaluated in detail for operation at Increased Core Flow with or without Final Feedwater Temperature Reduction. The feedwater controller failure transient was also re-evaluated in detail for operation in the Extended Load Line Limit Analysis region. The Cycle 8 operating limits are based on the results given in General Electric Document No. 23A5889, previously referenced. Operation above these limits means that no fuel damage is calculated to occur in the event of a transient. Since Cycle 8 operating limits accomplish the same purpose as the previous limits, this change does not increase the probability or consequences of an accident previously evaluated.

Standard 2 - Because the operating limit MCPR cannot initiate an accident and imposing the MCPR limit does not require a change in the current mode of operation, the possibility of a new or different kind of accident than previously evaluated is not created.

Standard 3 - The operating limit MCPR is set to prevent calculated fuel damage during the worst transient. The delta-CPR for the worst transient is determined using NRC approved methods and procedures described in NEDE-24011-P-A. Margin is included in the delta-CPR for the worst transient by assuming conservative input parameters and by conservatively treating uncertainties. Margin is also included in the determination of the safety limit MCPR.

Changing the operating limit MCPR does not reduce the margin of safety included in the delta-CPR and safety limit MCPR calculations.

F. RBM 107% Clamp

Standard 1 - The rod withdrawal error analysis results reported for standard operating conditions in General Electric Document No. 23A5889 are not affected by operation at Increased Core Flow, assuming that the RBM is clamped at 107%. Previously, this operating restriction (RBM clamped at 107% prior to Increased Core Flow operation) has been imposed by procedure. Adding this restriction to the Technical Specifications provides more assurance of safe operation and, therefore this change does not increase the probability or consequences of an accident previously evaluated.

Standard 2 - Clamping the RBM setpoint impacts only the rod withdrawal error analysis which is set forth in General Electric Document No. 23A5889; thus, the possibility of a new or different kind of accident is not created.

Standard 3 - The rod withdrawal error analysis results reported in General Electric Document No. 23A5889 assume the RBM setpoint is clamped at 107%. Since this proposed revision specifies this restriction in the Technical Specifications, greater assurance will be provided that there will be no reduction in a margin of safety.

Category II - APRM Setpoints

Standard 1 - The change in APRM scram and rod block setpoint equations was evaluated using NRC approved procedures and methods. The results of this evaluation are demonstrated in NEDC-31298, previously referenced. Application of this change in APRM scram and rod block setpoint equations to Cycle 8 is confirmed in General Electric Document No. 23A5889, previously referenced.

In NEDC-31298, the impact of the new APRM scram and rod block equations on overpressure protection, stability, loss of coolant accident, containment, reactor internals, and anticipated transients without scram (ATWS) events was evaluated. The results of these evaluations demonstrated that all design limits identified in the FSAR are met.

Because operation with the APRM scram and rod block setpoint equation is well within the bases reviewed and approved by the NRC in the FSAR, this change does not increase the probability or consequences of an accident previously evaluated.

Standard 2 - The impact of changing the APRM scram and rod block setpoint equations has been considered for all transients and accidents identified in the FSAR. The possibility of a new or different kind of accident from any accident previously evaluated is not created.

Standard 3 - NEDC-31298 demonstrates that the change in slope of the APRM scram and rod block setpoint equations is within the limits identified in the FSAR. Analyses documented in General Electric Company Document No. 23A5889 confirm that the operating limit MCPRs set forth in General Electric Company Document No. 23A5889 bound operation with the new equations. Thus, a margin of safety is not significantly reduced.

Category III - Administrative Changes

Administrative changes are requested to 1) add the definition of APLHGR on Page 1; 2) modify the Bases on Pages 13 and 15 to include reference to "Peach Bottom Atomic Power Station, Units 2 and 3 Single-Loop Operation," NEDO-24229-1, May 1980; 3) modify the Bases on Page 140 to incorporate a new paragraph regarding APLHGR operating limits for multiple lattice fuel types; 4) modify the Bases on Pages 15, 17, 18, 33, 140b, 140c and 140d to eliminate redundant information that is subject to periodic revision due to amendment of "General Electric Standard Application for Reactor Fuel," NEDE-24011-P-A. These proposed changes are similar to those previously approved for Peach Bottom, Unit 2, Cycle 8. Page 140d is deleted due to a reduction of material.

Licensee also proposes to delete the MAPLHGR reduction factors for 7X7, 8X8, PTA and 8X8R fuel types from page 133a because these fuel types will not be used in the Cycle 8 core, and to correct a typographical error on page 133b. Specification 3.5.K is incorrectly identified on page 133b as 3.5.K.1.

Standard 1 - The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect operations, plant equipment, or any safety-related activity. Thus, the administrative changes cannot affect the probability or consequences of any accident.

Standard 2 - The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because, as discussed previously, these changes are purely administrative and, therefore, cannot create the possibility of any accident.

Standard 3 - The proposed revisions do not involve a significant reduction in a margin of safety because the changes do not affect any safety-related activity or equipment. These changes are purely administrative in nature and increase the probability that the Technical Specifications are correctly interpreted by adding clarifying information and deleting inappropriate information. Thus, these changes cannot reduce a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 9, 1989

Description of amendment request: The proposed amendments to Technical Specification pages 217, 219 and 222 would reflect the installation of an additional transformer (the no. 343 startup transformer) to supply offsite power to the station. The amendment would eliminate uncertainty as to whether the new transformer is a permissible offsite source, would achieve more consistency with the

Standard Technical Specifications for boiling water reactors and would include the additional transformer in the Bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

Standard 1: The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Having two Unit 3 startup transformers available could increase the availability of off-site power to support the required loads of the engineered safeguards equipment by decreasing the duration of a No. 3 startup source outage in the event of a failure or scheduled maintenance. The No. 343 startup transformer provides acceptable voltages to the plant as confirmed by calculations. Therefore, use of the No. 343 transformer and the proposed Technical Specification revisions do not increase the probability of an off-site power source trip or transient and, in turn, do not increase the probability of an accident. The consequences of an accident are not affected because the No. 343 transformer supplies sufficient power to mitigate the consequences of design basis events in accordance with General Design Criterion 17. Furthermore, without any off-site power available the diesel generators supply sufficient power to mitigate the consequences of an accident.

Standard 2: The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The No. 343 transformer design and installation were in accordance with Peach Bottom licensing design criteria which ensure that its operation does not introduce any new unacceptable voltage conditions and that no new failure modes were created. Furthermore, loss of all off-site power (all grid connections) has been evaluated and is within the plant's safety design basis (see UFSAR Sections 14.5.4.4 and 14.6.3.1). The diesel generators provide sufficient power to support engineered safeguards equipment for one unit and the safe shutdown of the other unit, assuming loss of all off-site power and failure of one diesel generator. In addition, each off-site source alone is sufficient for safe shutdown by supplying each of the 4kV emergency buses.

Standard 3: The proposed revisions do not involve a significant reduction in a margin of safety.

The No. 343 startup transformer is a qualified alternate for the No. 3 startup transformer, and provides additional redundancy in off-site power supply for the engineered safeguards systems. Consequently, the availability of the No. 3 off-site power source could be increased. The proposed Technical Specification revisions do not alter the intent of those Specifications and the revisions do not reduce any safety margins as defined in Technical Specification Bases.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would revise Specification 4.7.A.3 by replacing the word "Monitor" with "Monitoring," by deleting the last sentence, and moving the entire specification to page 176. As currently written, the specification could be misinterpreted to imply that a continuous primary containment leak rate monitor system exists. There is no such system. Leakage is monitored by periodically calculating the makeup requirements of the Containment Air Dilution Inerting System, by recording flow integrator readings on the nitrogen makeup trains, and by operator awareness of abnormal makeup valve manipulation requirements. A significant increase in the amount of nitrogen required to maintain the differential pressure between the drywell and the suppression chamber would be a direct indication that a problem exists, and would prompt an immediate investigation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and had made the following determination:

Operation of the James A. FitzPatrick Nuclear Power 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 changes to Specification 4.7.A.3 are purely administrative in nature and remove a misleading reference to a dedicated continuous leak rate monitoring system. There is no dedicated monitoring system. Containment leakage is determined by periodically calculating the Containment Air Dilution System makeup requirements and by review of the drywell to suppression chamber differential pressure instrumentation. These changes do not involve the modification of any existing equipment, systems, or components; nor do they relax any administrative controls or limitations imposed on existing plant equipment. These changes cannot increase the probability or consequence of a proposed accident previously evaluated.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed changes are purely administrative in nature. The changes do not alter the conclusions of the plant's accident analyses as documented in the FSAR or the NRC staff's SER. They do not create any new failure modes; nor do they place the plant in an unanalyzed condition.

3. involve a signficant reduction in the margin of safety. The proposed changes improve the consistency of the Technical Specifications and reflect present plant practices. These changes improve the clarity of the Technical Specifications by removing a misleading reference. These changes do not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determine. Based on the review and the above discussion, the staff proposed to determine that the proposed changes do not involve a signficant hazards consideration.

Local Public Document Room location: State University of New York,

Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, 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, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would replace the organizational charts presently existing in the Technical Specifications (TS) with more generalized organizational statements and follows the guidance given in Generic Letter 88-06, "Removal of Organizational Charts from Technical Specification Administrative Control Requirements," dated March 22, 1988. Specifically, Figures 6.1-1 and 6.2-1 and references to them in other TS sections would be deleted or modified. Also, other minor editorial corrections would be made to Sections 6.3.2 and 6.4.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power 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 deletion of the organization charts from the Technical Specifications does not affect plant operation. The NRC will still be informed of organization changes through annual updates to the FSAR. The Code of Federal Regulations, Title 10, Part 50.34(b)(6)(i) requires that the licensee's organization structure, responsibilities and authorities and personnel qualification requirements be included in the FSAR. Chapter 13 of the James A. FitzPatrick FSAR provides a description of the organization and organization charts to the same level of detail as currently exists in the Technical Specifications.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed amendment replaces the organization charts in the Technical Specifications with more general requirements. The proposed amendment provides greater flexibility to implement changes in both onsite and offsite organizational structure without the need for a license amendment. These changes cannot create the possibility of a new or different kind of accident.

3. involve a significant reduction in the margin of safety. The proposed change removes the onsite and offsite organizational charts from the Technical Specifications and adds general requirements to Section 6.2 of the Technical Specifications that capture the essential safety aspects of the organizational structure defined by the organization charts. These changes do not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, 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, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would revise Technical Specification Tables 4.1-1, 4.1-2, and 4.2-1 to correct typographical errors, add modifications inadvertently omitted from previous amendments, and improve consistency for the items addressed. The change to Table 4.1-1 removes the functional test and instrument calibration requirements concerning the four reactor pressure switches which were removed when Amendment 122 was issued. The switches were originally installed to establish the pressure setpoint below which a scram and isolation is bypassed. Amendment 122 removed the switch and bypass requirements but did not address removal of the testing requirements. The change to Table 4.1-2 corrects a typographical error by changing the Local Power Range Monitor (LPRM) Signal calibration method from "Trip System Traverse" to "TIP System Traverse," to refer to the Traversing Incore Probe. The change to Table 4.2-1 identifies the reactor water level instrument associated with the Primary Containment Isolation System as "low-low-low" rather than "low-low." This change reflects the isolation setpoint which was incorporated when Amendment 103 was issued but was not included in the amendment request.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes are purely editorial/typographical in nature and would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The changes correct errors of the Technical Specifications in regard to calibration and testing requirements for the PCIS [Primary Containment Isolation System], reactor pressure permissive, and proper calibration methodology for the LPRMS [Local Power Range Monitor System]. They do not involve the modification of any existing equipment, systems or components nor do they alter the conclusions of the plant's accident analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report].

2. create the possibility of a new or different kind of accident from those previously evaluated. The changes are editorial in nature, update the Technical Specifications and improve consistency.

3. involve a significant reduction in the margin of safety. The proposed changes do not alter any established instrument calibration/test frequencies, methods of calibration, or instrument channel designations. The changes do not relax any administrative controls or limitations

imposed on existing plant equipment nor do they involve the modification of any system or component.

The staff has reviewed the licensee's no signficiant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a signficiant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, 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, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) surveillance requirements concerning the automatic initiation pressure setpoints for the existing fire protection pumps to reflect installation of a new diesel driven fire pump and a new site utility fire protection yard loop. The new loop was installed to provide fire protection water to the new training facility sprinkler systems and hose stations. The change to Specification 4.12.A.1.e.4 would raise the electric fire pump automatic start setpoint from 95 psig to 105 psig and the existing diesel driven pump automatic start setpoint from 85 psig to 95 psig. These pressure setpoints would also be reflected in a change to the 3.12 and 4.12 Bases sections, along with information stating that the third fire pump would actuate upon decreasing pressure after actuation of the first two fire pumps, a statement that no credit is taken for the new pump in any analysis, and that the testing or operability requirements of the existing pumps do not apply to the new pump. A change to these Bases would also reflect changing the system pressure which is being maintained by the pressure maintenance subsystem from 100 psig to 115 psig. Changes to Tables 3.12.1 and 4.12.1 would change the "Diesel Fire Pump Room" to the "West Diesel Fire Pump Room."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power 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 installation of the site utility yard loop and the new diesel driven fire pump, its driver and accessories and the revision of the existing pump setpoints do not affect the assumptions used in the FSAR or any other safety analysis reports. The revision of the existing pump setpoints makes the operation of the fire protection system more conservative as the pumps will be started sooner. These changes have no impact on plant safety operations. The changes will have no impact on previously evaluated accidents.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed amendment involves the changing of the existing pump setpoints to a more conservative value. These changes cannot create the possibility of a new or different kind of accident.

3. involve a significant reduction in the margin of safety. The installation of the new site utility yard loop and the diesel driven pump including its driver and accessories do not cause any reduction in safety margins nor do they affect any plant safety system. The changing of the existing fire pump setpoints increases the margin of safety for the Fire Protection System by starting the fire pumps sooner.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, 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, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would increase the frequency of the resistance to ground Technical Specification (TS) surveillance requirement of Section 4.11.E.3 from once per operating cycle to once per year. This would make the test consistent with the TS Bases and present plant practices. Additional proposed changes to Specifications 3.11.E and 4.11.E would correct minor editorial errors to improve the readability of the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power 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 changes to Specifications 3.11.E and 4.11.E are purely administrative in nature and improve the consistency of the Technical Specifications. These changes increase the frequency of the resistance to ground surveillance requirement for the intake deicing heaters from once per operating cycle to once per year to be consistent with Bases 3.11 and with present plant practices. The editorial changes improve the readability of the Technical Specifications. The increased test frequency can not increase the probability or consequence of a proposed accident previously evaluated.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed changes are purely administrative in nature. They do not create any new failure modes; nor do they place the plant in an unanalyzed condition.

3. involve a significant reduction in the margin of safety. The proposed changes improve the consistency of the Technical Specifications and reflect actual plant practice. These changes do not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, 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, New York

Date of amendment request: May 31, 1989

Description of amendment request: The proposed amendment would update Table 3.7-2, "Exception to Type C Tests," to accurately reflect the as-built configuration of the plant and correct related editorial errors for consistency and improved format. The changes affect Technical Specification pages 211, 212, 213, 213a and 213b.

Specifically the proposed change would: (1) change the number of the table from 3.7-2 to 4.7-2 to correct a typographical error introduced in a previous amendment; (2) remove extraneous information and cross-references from the "Local Leak Rate Test Performed" column and insert appropriate information for clarity; (3) insert appropriate valve name and tag numbers to better identify the valves; and (4) remove some penetration and valve numbers and add other penetration and valve numbers to more accurately reflect the plant configuration and redesign of some equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power 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 changes which update and clarify Table 4.7-2 to accurately reflect the as-built configuration of the plant are purely editorial in nature and can not increase the probability or consequence of a proposed accident previously evaluated.

The corrections to Table 4.7-2 do not increase the potential for undetectable containment leakage. The Type C leak testing capability was incorporated for six containment penetrations and they were deleted from the table. Four penetrations were added as exceptions from Type C leak rate testing in accordance with the plants original licensing design basis. These changes do not alter the conclusions of the plant's accident analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report].

2. create the possibility of a new or different kind of accident from those previously evaluated. The changes are purely administrative in nature. They clarify which containment penetration isolation valves are excepted from the 10 CFR Part 50, Appendix J, Type C leak rate testing requirements. Plant modifications which introduced changes to Table 4.7-2 do not involve any unreviewed safety questions. The changes do not create any new failure modes; nor do they place the plant in an unanalyzed condition.

3. involve a significant reduction in the margin of safety. The changes increase the margin of safety by removing the exception to Type C testing for six penetrations. Four penetrations were added, but these exceptions to Type C leak rate testing were part of the original licensing design basis. These changes do not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: April 14, 1989

Description of amendment request: This proposed amendment supersedes a similar proposed amendment submitted on October 1, 1987 which was previously noticed in the Federal Register on April 25, 1988 (53 FR 13457). The amendment would revise the provisions in the Technical Specifications relating to radiological effluents. In particular, this proposed amendment changed ELCO 8.1.1, ESR 8.1.1 and ESR 8.1.2. These changes are related to the design of the effluent monitor hand switches and the time allowed to report an inoperable monitor. Other changes are being made for clarification in accordance with the licensee's application for amendment dated April 14, 1989.

Basis for proposed no significant hazards consideration determination: The licensee has analyzed the proposed amendment request for significant hazards consideration using the standards in Title 10, Code of Federal Regulations, Part 50.92. The licensee has concluded that the proposed amendment request involves no significant hazards consideration, based on the following analysis:

The changes to ELCO 8.1.1.g)1) include a requirement for a four hour check of any relied upon monitor having only a local alarm and a 90 day time limit. Currently, if the halogen or the particulate monitor becomes inoperable, gaseous effluents may continue to be released from the reactor building vent system provided the effluent is continuously monitored with auxiliary sampling equipment. For noble gas, a grab sample taken every 8 hours and analyzed within 24 hours is required when no alarmed monitor is available. These requirements will be maintained.

The local alarming monitors are installed as backup ventilation exhaust monitors and powered from the Alternate Cooling Method (ACM) bus. The requirement to check the local alarm monitors every four hours will ensure any abnormal release is discovered and the problem corrected promptly. The 90 day time limit on use of local alarming monitors will allow monitors which alarm in the Control Room to be repaired without unnecessarily reverting to grab sample mode.

The change to ELCO 8.1.1.g)2) clarifies the action when the required halogen and particulate monitors are out of service. Power operation and effluent releases may continue provided a continuous sample is collected. The sample will be obtained for analysis every 7 days and that analysis will be performed within 48 hours. These changes are in accordance with the intent of the Standard Technical Specifications.

The changes in ELCO 8.1.1.g)3) and 8.1.1.g)4) from "both" noble gas monitors to "the required" noble gas monitor are appropriate because there are more than two noble gas monitors which can serve this function. Only one noble gas monitor is required per ELCO 8.1.1.g)1).

The words "or auxiliary sampling equipment" have been deleted from section 8.1.1.g)3) because the devices previously considered to fulfill this requirement are now considered to be among the devices which may be considered to be the required noble gas monitor. Additionally, the requirement to take eight hour grab samples and analysis within 24 hours is not altered. The grab samples will be taken if the required noble gas monitor becomes inoperable.

The change to ELCO 8.1.1.g)8) is in accordance with commitments made as part of Public Service Company of Colorado's response to NUREG-0737 open items. The restoration time of 7 days and requirement for a special report within 14 days, if not restored in 7 days, is in accordance with the guidance provided in Generic Letter 83-37, Item II.F.1.1.

The clarification of which instruments are to be reported for extended periods of inoperability is also included in ELCO 8.1.1.g)8). This is consistent with the wording in the Standard Technical Specifications and PSC letter from Warembourg to Eisenhut, dated 2/9/84.

The change to ESR 8.1.1.d) is to clarify when a gamma spectral analysis of a sample from the in service gas waste tank is required. The purpose of this test is to maintain an inventory of the tanks' equivalent curies (Kr-88). This inventory is taken as the tanks are taken out of service. Therefore, only when a gas waste tank has been in service for 7 days or more is it necessary to perform this test. 48 hours to complete the analysis of this sample is more definitive than the previous "as soon as practicable".

As stated in LER-87-012-00, the instrument controls for Fort St. Vrain's (FSV) Gaseous and Liquid Effluent Monitors cannot be set to a mode other than operate, designated "MEASURE" at FSV. The switch is spring loaded and will automatically return to "MEASURE". If the switch malfunctions and remains in one of the other two possible positions, either a high radiation alarm will be received in the Control Room or the monitor's background count will be artificially elevated while it continues to measure effluent radiation levels. Thus, if the controls are not operating properly and the mode switch is not in the "MEASURE" position, no unsafe condition would result. The testing of the switch for downscale failure, high count rate, and circuit failure will continue to be performed.

Based on the above evaluation, it is concluded that operation of Fort St. Vrain in accordance with the proposed changes will not (1) involve a significant increase in the probability or the possibility of a new or different kind of accident from any accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Therefore, this change will not increase the risk to the health and safety of the public nor does it involve any significant hazards consideration.

Based on the above evaluation, the licensee has concluded that the operation of Fort St. Vrain in accordance with proposed changes will involve no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Frederick J. Hebdon

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 18, 1989

Description of amendment request: The proposed amendment would revise Technical Specifications 3/4.2 and B 3/4.2 to replace the values of cycle-specific parameter limits with a reference to the Core Design and Operating Limits Report, which contains the values of those limits. Also included in this request are proposed changes to 5.3.1, "Fuel Assemblies" and 5.3.2, "Control Rod Assemblies." The fuel and control rod assemblies will be described in the Core Design and Operating Limits Report and will be evaluated in accordance with NRC approved methodologies. In addition, the Core Design and Operating Limits Report has been included in the definitions Section of the Technical Specifications (TSs) to note that it is the unit-specific document that provides these limits for the current operating reload cycle. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with the Specification 6.9.1.9. This Specification requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC, provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this Generic Letter.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed revision to the License Condition is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the Core Design and Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the Core Design and Operating Limits Report will allow the staff to continue to trend the values of these limits without the need for prior staff approval of these limits and without introduction of an unreviewed safety question. The revised specifications with the removal of the values of cycle-specific parameter limits and the addition of the referenced report for these limits does not create the possibility of a new or different kind of accident for those previously evaluated. They also don't involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits. Consequently, the proposed change on the removal of the values of cycle-specific limits does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a

manner that involves significant hazards considerations.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the Technical Specifications, they have been incorporated into the Core Design and Operating Limits Report that is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The staff has evaluated this proposed amendment and proposes to determine that it involves no significant hazards consideration.

Local Public Document Room Location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 15, 1988 and February 17, 1988.

Description of amendment request: The proposed amendment would delete requirements relating to Chlorine Detection Systems from the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs). Specifically, the proposed amendment would delete TS Section 3/4.3.3.7, Chlorine Detection Systems and the associated Basis Section 3/4.3.3.7. TS Section 4.7.6.1.e.2 would also be modified to eliminate the phrase "Control Room Ventilation Air Intake Chlorine Concentration - High Test Signal." The changes are proposed due to the replacement of the gaseous chlorination system with a liquid sodium hypochlorite system.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.59, this means that the operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed change against the above standards as required by 10 CFR 50.91(a). The Commission has concluded that:

A. The proposed change would not involve a significant increase in the probability or consequences of an an accident previously evaluated because there no longer is any source of chlorine on or near the Davis-Besse site that would pose a threat to control room habitability, and thus require automatic isolation of the Control Room ventilation system. The proposed change would not modify any accident conditions or assumptions.

B. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no source of chlorine that would require automatic isolation of the Control Room ventilation system, and it is not possible to generate and release the quantity of chlorine with the new sodium hypochlorite system that would require automatic isolation.

C. The changes would not involve a significant reduction in a margin of safety because the Chlorine Detection System is no longer needed to isolate automatically the Control Room ventilation system. Furthermore, the proposed change would not affect any operating practices, limits or equipment important to safety.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: March 8, 1988 as clarified May 24, 1988.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) relating to organization, both with respect to offsite and facility (on site). The proposed changes are administrative and editorial revisions to TSs. The amendment proposes to change the title of Chemistry and Health Physics General Superintendent to Radiological Controls Superintendent, reflecting the separation of the Chemistry and Health Physics Department, consistent with Regulatory Guide 1.8 (September 1975); this title change should also be reflected for the Station Review Board member. The proposed changes would delete the Performance Engineering Manager position from the TSs, and instead include this administrative position in the reflected title Performance Engineering Director. Finally, the proposal requests that the title of Senior Vice President, Nuclear, be changed to Vice President Nuclear.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety

The licensee has provided the following analysis in support of a no significant hazards consideration determination:

The proposed changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specifications changes. The proposed changes do not involve a test, experiment or a modification to a system. The proposed changes are administrative in nature and do not increase the probability or consequences of an accident previously evaluated.

Also, the proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not affect any plant equipment or operational procedures which could impact the probability of an accident, nor is the physical plant design being changed.

Finally, the licensee's proposed changes would not (3) involve a significant reduction in a margin of safety because it would not affect any operating practices or limits nor would it affect any equipment or system

important to safety. The proposed changes are administrative in nature and would not reduce the margin of safety.

The NRC staff has reviewed the licensee's proposed no significant hazards determination and agrees with the licensee's analysis.

Furthermore, the Commission has provided guidance concerning the application of criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards consideration (51 FR 7751). As stated, in example (i), "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed changes associated with this amendment are within the scope of this example.

Accordingly, the staff proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 26, 1989

Description of amendment request: The proposed amendment would revise the 18-month inspection interval for functional testing of snubbers to allow for an increased interval up to a maximum of 30 calendar months. This would be accomplished by proportionally increasing the sample size for those inspection intervals which exceed 18 months, thus retaining the requirement that all snubbers be functionally tested every 15 years.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazard exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve a significant hazard consideration.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specification and Bases changes. The effect on the availability of the snubbers due to an increase in the test interval has been shown to be negligible. The Technical Specification requirement that all snubbers be functionally tested at least once every 15 years will be retained by increasing the initial sample size accordingly for those inspection intervals greater than 18 months. This will ensure that system reliability remains essentially unchanged. Furthermore, the proposed changes will allow the required snubber surveillance to be performed during scheduled refueling outages, as was intended, and eliminate the need for mid-cycle shutdowns solely for the purpose of performing the surveillance.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specification and Bases changes. On matters related to nuclear safety, all accidents are bounded by previous analysis. The proposed changes do not add to or modify any equipment or system design nor do they involve any changes in the operation of any plant system.

The proposed changes do not involve a significant reduction in a margin of safety because the Technical Specification requirement that all snubbers be functionally tested at least once every 15 years will be retained by increasing the initial sample size accordingly for those inspection intervals greater than 18 months. The effect on the availability of the snubbers due to an increase in the test interval has been shown to be negligible. Equipment reliability and margin of safety will be maintained. The proposed changes will allow the required snubber surveillance to be performed during scheduled refueling outages, as was intended, and eliminate the need for mid-cycle shutdowns solely for the purpose of performing the surveillance.

The NRC staff has reviewed and agrees with the licensee's evaluation. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazard consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station Vernon, Vermont

Date of application for amendment: May 12, 1989

Description of Amendment request: The proposed amendment consists of changes made as a result of the ATWS rule (10 CFR 50.62), and involves changes 1 and 2.

Change 1 modifies the Technical Specifications to add limiting conditions for operation and surveillance requirements dealing with the standby liquid control (SLC) system, which will be enhanced by requiring an increased concentration of Boron-10.

Change 2 modifies the Technical Specifications to add limiting conditions for operation and surveillance requirements for alternate rod injection (ARI) system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92[c]. A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

Change 1. Vermont Yankee has determined that the requested changes associated with the SLC System do not:

1) Involve a significant increase in the probability or consequences of an accident

previously evaluated because the increase in SLC System control capacity via Boron-10 enrichment effectively increasing the Boron-10 injection rate does not alter the function of the system, method of operation or dual train configuration; the system response time to an ATWS event has been reduced as the increased Boron-10 enrichment of the solution provides faster negative reactivity insertion thus reducing the consequences of the ATWS event; the SLC System is not credited in any of the design basis accident analyses and, as such, is considered to provide only an additional mitigative feature in the event of an accident; the SLC System sodium pentaborate solution concentration and flow rate required by the NRC for reactivity control independent of the control rods are not reduced from the values previously evaluated and presented in the Technical Specifications; the addition of enriched boron provides a shutdown margin greater than the previously calculated shutdown reactivity control capacity, and the change does not affect the possibility of an ATWS.

2) Create the possibility of a new or different kind of accident than previously evaluated because the proposed changes involve a system whose function is to provide an additional mitigative shutdown capability and no system modifications are made; the addition of enriched boron does not effect any system or component which could initiate an accident. Thus, no new or different unevaluated accident is created.

3) Involve a significant reduction in a margin of safety because the addition of enriched boron to the SLC System tank solution concentration actually increases the capa bility of the SLC System to achieve cold shutdown; thus no margin of safety is reduced.

Change 2. Vermont Yankee has determined that the requested changes associated with the ARI System do not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the addition of a specific reference to the ARI System in the Technical Specification does not result in any system hardware modification or new plant configuration for operation. Thus, no FSAR accident consequences previously evaluated are impacted. Further, the ARI System is not postulated to initiate any accident scenarios; thus this change does not affect the probability of previously evaluated accidents.

2) Create the possibility of a new or different kind of accident than previously evaluated because no new plant configuration for operation results from this change. The ARI System is a parallel to the RPT System and is actuated by the same trip circuitry and utilizes the same logic arrangement and sensors. Thus, no new or different unevaluated accident is created by incorporating a specific reference to the ARI System within the Technical Specifications.

3) Involve a significant reduction in a margin of safety because this change involves no physical or procedural modifications. The change provides specific reference in the Technical Specifications to the ARI System by incorporating limiting conditions for operation and surveillance requests consistent with those previously approved for the RPT System; thus no margin of safety is reduced.

Additionally, because these proposed amendments to the Vermont Yankee Technical Specifications are directly associated with compliance with the ATWS rule, they are similar to Example (vii) provided by the Commission (51FR7751, dated March 6, 1986) as one of the types of amendments not likely to involve a significant hazards consideration. Example (vii) denotes an amendment to make a license conform to changes in the regulation when the license change results in very minor changes to facility operations clearly in keeping with the regulations. Additionally, the changes proposed herein also resemble Example (ii), which denotes an amendment that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications, in that stricter operating and surveillance requirements reflect additional conservatism. Based on the above, Vermont Yankee has determined that the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for Licensee: John A. Ritsher, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 12, 1989

Description of amendment request: The amendment would revise the license by eliminating cycle-specific parameter limits from the Technical Specifications and placing them in a Core Operating Limits Report. This report is referenced in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed changes do not involve a significant increase in the probability or consequnces of an accident previously evaluated because the cycle-specific limits will still be determined by analyzing the same postulated events previously analyzed. The removal of the cycle-specific limits from the Technical Specifications has no influence or impact on a Design Basis Accident occurrence. Each accident analysis previously addressed will be examined with respect to changes in the cycle dependent parameters using the NRC-approved reload design methodologies to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed per requirements of 10CFR50.59, ensure that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated. The plant will continue to operate within the limits specified in the COLR and to take the same actions when, or if, the limits are exceeded as required by the current Technical Specifications.

2. The proposed changes do not create the possibility of a new or different kind of accident previously evaluated because no physical alterations of plant configuration, changes to setpoints, or safety limits are proposed. As stated above, the removal of the cycle-specific limits does not influence, impact, nor contribute in any way to the improbability or consequences of any accident. The cycle-specific limits will be calculated using the NRC-approved methods. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when, or if, limits are exceeded.

3. The proposed changes do not involve a significant reduction in a safety margin because they do not affect any operating practices, limits, or safety-related equipment. The margin of safety presently provided by the current Technical Specifications remains unchanged. The proposed amendment still requires operation within the core limits as obtained from the NRC-approved reload design methodologies and appropriate actions to be taken when, or if, limits are violated remain unchanged. The development of the limits for future reloads will continue to conform to those methods described in the NRC-approved documentation. In addition, each future reload will involve a Part 50.59 safety review to assure that operation of the plant within the cycle-specific limits will not involve a significant reduction in a margin of safety.

The NRC staff has revised the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on

this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman, Director.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, (NA-1&2) Louisa County, Virginia

Date of amendment request: May 23, 1989

Description of amendment request: The proposed change would reduce the Technical Specifications (TS) 3/4.2.5 limit on the minimum measured flow rate in the reactor coolant system (RCS) for both NA-1&2.

Both NA-1&2 are currently experiencing RCS flow reductions caused by steam generator tube plugging (SGTP). As expected, the RCS flow has decreased with increased SGTP. Although resolution of the steam generator tube degradation problem is being pursued by both Virginia Electric and Power Company and the industry, lower RCS flow rates due to SGTP are expected. The TS change would provide margin for the anticipated NA-1&2 lower RCS flow rates, while still maintaining operational parameters within the Updated Final Safety Analysis Report (UFSAR) analysis envelope.

The proposed TS change would lower the total RCS flow from 289,200 gallons per minute (gpm) to 284,000 gpm by taking credit for previously unused design margin without requiring an reanalysis of the UFSAR Chapter 15 accident analyses. The reduced RCS flow rate will be offset by the conservatism inherent in the existing calculated Departure from Nucleate Boiling Rates (DNBR) design margin.

The RCS flow limit of TS Table 3.2-1 will therefore be lowered to 284,000 gpm. This reduction will be offset by a retained DNBR margin penalty of 2.9%, which is easily absorbed by the available retained DNBR margin. The total remaining DNBR margin will still be approximately 7%.

There are no other areas which are impacted by the limit change. Flow-rated items such as loop transport times or RTD response times either include substantial margin in the safety analyses when compared to a change of less than 2% or are insensitive to the actual value of the flow (i.e., they are sensitive only to relative changes such as a fractional deviation from the measured full power delta T). Therefore, it is only necessary to absorb the penalty on retained DNBR margin in order to support the flow limit reduction.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided the following discussion regarding the above three criteria.

The proposed change to the [NA-1&2 TS] minimum measured reactor coolant system flow from 288,200 gpm to 284,000 gpm does not involve a significant hazards consideration. The basis for this determination is as follows.

* There is no significant increase in the probability or consequences of an accident previously evaluated. Accident probability is not dependent upon the flow limit and as such is not affected by the limit change. Potential accident consequences remain within the bounds of the UFSAR accident analyses because the flow limit reduction is fully compensated by a penalty on retained DNBR margin. As such there is no increase in potential consequences.

* The possibility of a new or different kind of accident from any accident previously evaluated is not created. The absence of a hardware change means that the accident initiators remain unaffected, so that no unique accident probability is created.

* No significant reduction in the margin of safety is involved. These changes simply reflect the use of part of the available retained DNBR margin in order to offset the flow limit reduction. The margin of safety for accident analysis does not include retained DNBR margin and thus is not impacted by this proposed change.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, (NA-1&2) Louisa County, Virginia

Date of amendment request: June 8, 1989

Description of amendment request: The proposed change would modify NA-1&2 Technical Specification (TS) Section 3.3.3.5, Table 3.3-9, which addresses the auxiliary shutdown panel monitoring instrumentation. The measurement range of the charging flow instrument will be changed from "0-150 gpm" to "0-180 gpm." The need for an expanded range was identified by the control room design review. In addition, Table 4.3-6 will be reoriented from a horizontal to a vertical format to agree with Table 3.3-9. There are no other changes to Table 4.3-6.

During the performance of the Control Room Design Review (CRDR) for NA-1&2, various indicators were cited as requiring modification, including charging flow. The CRDR identified that the existing square root scale of the charging flow instrumentation would make it difficult to read flow accurately and that the range of 0-150 gpm was too narrow. To relieve these problems, the charging flow instrumentation will be changed to a linear output indication and the range expanded to 0-180 gpm.

Expanding the display range and providing the indication in a linear scale will allow the operator to more accurately determine the charging flow rate during high or low flow rate conditions without decreasing accuracy during middle of scale operations. This will provide for a more accurate determination of the charging flow rate during abnormal as well as normal plant conditions.

TS 3.3.3.5, Table 3.3-9, identifies the instrumentation and ranges required in the auxiliary shutdown panel. The charging flow is specified as 0-150 gpm and will be changed to 0-180 gpm as required by CRDR findings as noted above.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the change to TS 3.3.3.5, Table 3.3-9 and has found that it will not involve a significant hazards consideration because the change will not:

(1) result in a significant increase in the probability or consequences of an accident previously evaluated because the change will not alter the setpoints or decrease the accuracy of the [c]harging [f]low indication. Expanding the display range and providing the indication in a linear scale will allow the operator to more accurately determine the charging flow rate during high or low flow rate conditions without decreasing accuracy during middle of scale operations.

(2) create the possibility of a new or different kind of accident because this change will not alter plant operations except to allow for more accurate determination of the [c]harging [f]low rate. Expanding the display range and providing the indication in a linear scale will allow the operator to more accurately determine the charging flow rate during high or low flow rate conditions without decreasing accuracy during middle of scale operations.

(3) result in a significant reduction in the margins of safety because this change will allow for more accurate determination of the [c]harging [f]low rate during abnormal as well as normal plant conditions. This will enhance the margin of safety. The requirements of Specification 3.3.3.5 are not changed nor are the Surveillance Requirements of 4.3.3.5. Only the "Measurement Range" of [Table] 3.3-9 is affected.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. In addition, the Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). One of the examples of actions involving no significant hazards considerations is example (i), "a purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature." The proposed reformatting of Table 4.3-6 is consistent with the standard in example (i). Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al, Docket No. STN 50-530, Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona

Date of application for amendment: December 14, 1988

Brief description of amendments: The amendment revises several portions of the Technical Specifications to incorporate changes in support of Cycle 2 operation.

Date of issuance: June 9, 1989

Effective date: June 9, 1989

Amendment No.: 18

Facility Operating License No. NPF-74: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7623). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of applications for amendments: December 12, 1986 and as supplemented on April 14, 1988.

Brief description of amendment: The amendments establish a range of membership of the Safety Review Committee (SRC) from 8 to 12 members instead of strictly 8 members as previously specified in the TS for each Unit. It also provides an equivalent SRC meeting quorum requirement.

Date of issuance: June 2, 1989

Effective date: June 2, 1989

Amendment Nos.: 123 and 97

Facility Operating License Nos. DPR-51 and NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18945). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 2, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

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: September 27, 1988, as supplemented May 24, 1989.

Description of amendments: The amendments change the Technical Specifications (TS) to: (1) revise TS section 3/4.3.2 to include Limiting Conditions for Operations and Surveillance Requirements to ensure the capability of the main stack monitor signal circuitry to isolate containment purge and vent valves, and (2) revise pages affected by the above proposed TS changes as necessary to correct editorial errors and to conform to other formatting requirements.

Date of issuance: June 12, 1989

Effective date: June 12, 1989

Amendment Nos.: 132 and 162

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1989. The May 24, 1989 letter provided updated TS pages and did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1989

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 Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: July 11, 1988, as supplemented April 11, 1989.

Description of amendments: The amendments change the Technical Specifications (TS) to revise (1) the titles listed in the index section of the TS to be consistent with the titles shown in the text and (2) to revise two titles provided in the text for consistency in the TS between the two units.

Date of issuance: June 13, 1989

Effective date: June 13, 1989

Amendment Nos.: 133 and 163

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5160). The April 11, 1989 letter provided updated TS pages and clarification for these updated TS pages that did not change the initial determination of no significant hazards considerations as published in the **Federal Register.** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois; Docket Nos. 50-456 and 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 25, 1989, supplemented February 3, 1989.

Brief description of amendments: These amendments modify Technical Specifications having cycle-specific limits of reload fuel enrichment by replacing the values of those limits with a reference to a report entitled "Criticality Analysis of Byron and Braidwood Station Fuel Storage Racks" for the value of those limits.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment Nos.: 29 for Byron and 18 for Braidwood

Facility Operating License Nos. NPF-37, NPF-66, NPF-72, and NPF-77: The amendments revised the Technical Specification.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18945). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 5, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron Station, Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

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: April 11, 1989

Brief description of amendments: Revise requirement for frequency of Type A Containment Leak Rate Surveillance Retest prescribed by Technical Specification to conform with 10 CFR Part 50, Appendix J.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment Nos.: 118, 114

Facility Operating License Nos. DPR-29 and DPR-30: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18946). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 5, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 23, 1988

Brief description of amendment: This amendment adds a surveillance requirement to the Technical Specifications requiring periodic testing of the backup nitrogen supply system for operating the pressurizer power operated relief valves.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment No.: 141

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50324). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan .

Date of application for amendment: February 6, 1987, which superseded previous submittals on September 30, 1985, March 4, April 21, and December 17, 1986 plus additional information provided on August 27, 1986.

Brief description of amendment: This amendment revises Sections 11 and 12 of the Big Rock Point Technical Specifications to add operability and surveillance requirements for the alternate shutdown system. This amendment also includes technical specifications for the active fire barriers

and the fire detection instrumentation for the Auxiliary Shutdown Building. All these changes apply to equipment required by Appendix R to 10 CFR Part 50.

Date of issuance: May 31, 1989
Effective date: May 31, 1989
Amendment No.: 97
Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 7, 1986 (51 FR 16924). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 17, 1987, as supplemented November 19, 1987, and April 1 and October 3, 1988

Brief description of amendments: The amendments made editorial, administrative, or other minor changes to the Technical Specifications to add clarification, consistency, and conciseness. Also, license condition 2.C.(8) was deleted from the operating license for Unit 2.

Date of issuance: June 6, 1989
Effective date: June 6, 1989
Amendment Nos.: 97 and 79
Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications and the Unit 2 operating license.

Date of initial notice in Federal Register: May 4, 1989 (54 FR 19268). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 9, 1989, as revised March 20 and May 19 and 23, 1989.

Brief description of amendments: The amendments relocated fire protection requirements from the operating licenses and the Technical Specifications to the Final Safety Analysis Report.

Date of issuance: June 6, 1989
Effective date: June 6, 1989
Amendment Nos.: 98 and 80
Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications and the operating licenses.

Date of initial notice in Federal Register: May 4, 1989 (54 FR 19266) and August 28, 1985 (50 FR 34938). Because the May 19 and 23, 1989, submittals clarified certain aspects of the original request, the substance of the changes noticed in the Federal Register and the proposed no significant hazards determination were not affected. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Dates of applications for amendments: October 8, 1984, January 6 and March 15, 1988, as supplemented or revised August 27, 1985, January 30, June 27, August 13, and September 19, 1986, January 18, May 13, September 16, and December 29, 1988, and May 17, 1989.

Brief description of amendments: The amendments modified the Technical Specifications related to NUREG-0737 "Clarification of TMI Action Plan Requirements" to add specifications dealing with (1) containment high-range radiation monitor, (2) containment pressure monitor, (3) containment water level monitor, (4) containment hydrogen monitor and (5) control room habitability. Requirements dealing with reactor coolant system vents and noble gas monitors are to be incorporated into licensee controlled documents rather than the TS.

Date of issuance: June 6, 1989
Effective date: June 6, 1989
Amendment Nos.: 174, 174, and 171
Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Dates of initial notices in Federal Register: May 21, 1985 (50 FR 20975) April 20, 1988 (53 FR 13037), and June 3, 1988 (53 FR 20394). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1989 and an Environmental Assessment dated May 30, 1989 (54 FR 24055).

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 5, 1989

Brief description of amendments: The amendments modified the Technical Specifications to allow a separate Safety Review Board for each Georgia Power Company nuclear plant.

Date of issuance: June 9, 1989
Effective date: June 9, 1989
Amendment Nos.: 20 and 1
Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 3, 1989 (54 FR 18947). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 9, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: October 14, 1988 as supplmented December 30, 1988 and June 5, 1989.

Brief description of amendment: This amendment revises the TS's to allow operation of future reload cycles of D. C. Cook Unit 1 at reduced primary coolant system temperature and pressure conditions. The reduced temperature and pressure (RTP) conditions will decrease the steam generator U-tube stress corrosion cracking of the type observed at D. C. Cook Unit 2.

Date of issuance: June 9, 1989
Effective date: June 9, 1989
Amendment No.: 126
Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15851). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: November 10, 1988

Brief description of amendment: This amendment revises the Technical Specifications to incorporate the requirements of Generic Letter 88-01 concerning intergranular stress corrosion cracking into the surveillance requirements for Inservice Inspection.

Date of issuance: June 14, 1989

Effective date: June 14, 1989

Amendment No.: 8

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18948). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1989

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 5, 1986

Brief description of amendment: The amendment revises the plant Technical Specifications to implement surveillance requirements for the modified reactor vessel water level instrumentation, and to reflect the replacement of mechanical level switches with new analog instrumentation in accordance with the recommendations made in NRC Generic Letter 84-23 (October 24, 1984). This new instrumentation increases the reliability of instruments installed to meet the provisions of TMI Action Plan Item II.F.2 (NUREG-0737).

Date of issuance: May 30, 1989

Effective date: May 30, 1989

Amendment No.: 66

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34016). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 6, 1989 as supplemented on February 28, 1989

Brief description of amendment: This amendment modified the Technical Specifications to: (1) extend the surveillance interval by 25 percent, but the total interval for three consecutive intervals shall not exceed 3.25 times the specific interval, (2) define the regular surveillance intervals, (3) include the 25 percent extension applicable to all codes and standards referenced within, (4) delay an action statement for up to 24 hours to permit the completion of the surveillance when the allowable outage time limit of the action requirement is less than 24 hours, and (5) eliminate the need to perform surveillance on inoperable equipment.

Date of issuance: June 2, 1989

Effective date: 90 days from date of issuance.

Amendment No.: 122

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 22, 1989 (54 FR 11840). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 2, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 29, 1989 (Reference LAR 89-04)

Brief description of amendments: The amendments revised Technical Specification (TS) to require that at least 23 feet of water be maintained above the top of irradiated fuel assemblies within the vessel during movement of rod cluster control assemblies.

Date of issuance: June 7, 1989

Effective date: June 7, 1989

Amendment Nos.: 39 and 38

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18951). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1989.

No significant hazards considerations comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 19, 1988 (Reference LAR 88-09)

Brief description of amendments: The amendments revised Technical Specification to allow the fully withdrawn position for the shutdown and control rod banks to be redefined as 225 steps or greater, rather than 228 steps, with insertion limits remaining the same.

Date of issuance: June 7, 1989

Effective date: June 7, 1989

Amendment Nos.: 40 and 39.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18949). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1989.

No significant hazards considerations comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: February 22, 1989

Brief description of amendment: The amendment revised the Technical Specifications (TSs) related to the Standby Liquid Control System to ensure compliance with paragraph (c)(4) of the Anticipated Transient Without Scram Rule, 10 CFR 50.62, and to simplify and improve the TS requirements for the system.

Date of issuance: June 8, 1989

Effective date: June 8, 1989

Amendment No. 22

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18952). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: January 27, 1989

Brief description of amendment: This amendment changed the Unit 1 Technical Specifications (TSs) to reflect the completion and tie-in of the Unit 2 Standby Gas Treatment System (SGTS) and the Unit 2 Refueling Area Heating, Ventilating and Air Conditioning (HVAC) System. The changes to the TSs allow the inclusion of Unit 2 equipment that will be relied upon or required to be operable to support the operation of Unit 1 when Unit 2 is issued an Operating License.

Date of issuance: June 14, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit 2.

Amendment No. 23

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9924). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: April 10, 1989

Brief description of amendment: Revised the Technical Specifications to reflect the incorporation of Unit 2 power supplies needed to support common equipment used in operation of Unit 1.

Date of issuance: June 15, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit No. 2.

Amendment No. 24

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18955). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: January 20, 1989 as supplemented February 2, February 15, May 5, and May 23, 1989.

Brief description of amendment: The amendment revises The Technical Specifications to reflect changes proposed as a result of the transition to Westinghouse 15 X 15 Vantage 5 fuel from Westinghouse 15 X 15 low-parasitic (LOPAR) assemblies and 15 X 15 optimized Fuel Assemblies (OFAS).

Date of issuance: June 6, 1989

Effective date: June 6, 1989

Amendment No.: 86

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9927). The letters dated February 15, May 5, and May 23 provide additional clarifying information that do not make significant changes to any Technical Specifications. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: February 6, 1989, supplemented on May 4, 1989

Brief description of amendment: Revised Technical Specification Section 3.3.1, the associated bases, and Tables 4.3.1.1-1 and 3.3.1-1 to increase the surveillance test intervals (STIs) and allowable out-of-service times (AOTs) for the Reactor Protection System in accordance with General Electric Company Licensing Topical Report (LTR) NEDC-30851P-A. The supplemental information clarifies, and does not change, the technical content of the original change request.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment No. 26

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18956). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1989.

No significant hazards consideration comments received: **Yes.** The comment received from the Bureau of Nuclear Engineering of the State of New Jersey was addressed in the Safety Evaluation issued with the amendment.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 26, 1988

Brief description of amendment: The amendment request increased the Technical Specification spent fuel storage capacity limitation presently in the Design Features Section 5.6.3 to 1290 fuel assemblies.

Date of issuance: June 12, 1989

Effective date: June 12, 1989

Amendment No. 27

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 12, 1988 (53 FR 49945). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 1989 and an Environmental Assessment dated June 5, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 25, 1988

Brief description of amendment: This amendment revised Technical Specification Table 3.14-3 by removing the requirements for carbon dioxide fire suppression systems in fire zones 75, 76, 77, 78, 79 and 80. This amendment allows permanent disabling of the carbon dioxide fire suppression systems from those Nuclear Service Electrical Building zones that were required to be operable by Technical Specification 3.14.4.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment No.: 107

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18958). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: November 24, 1986, September 21, 1987, and December 14, 1987.

Brief decription of amendment: The amendment modified paragraph 2.C.(3) of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment No. 108

Facility Operating License No. DPR-54. This amendment revised the license.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18957). The Commission's related evaluation of the amendment is contained in a letter to Rancho Seco Nuclear Generating Station dated May 5, 1989 and a Safeguards Evaluation Report dated May 5, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: September 24, 1986, and April 27, 1989

Brief description of amendment: The amendment revises Technical Specification 4.17, "Steam Generators," and its related bases and tables to permit repairs of steam generator tubes by using tube sleeves.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment No.: 109

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35803). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 8, 1986, revised September 8, 1987.

Brief description of amendment: The amendment removed from the Technical Specification the tabular listing of snubbers, as suggested by Generic Letter 84-13, dated May 3, 1984.

Date of issuance: June 9, 1989.

Effective date: Thirty days after date of issuance.

Amendment No.: 110

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41869). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: January 20, 1989, as supplemented March 20, 1989

Brief description of amendment: The amendment implements the NRC staff recommendations of Generic Letter 85-09, "Technical Specifications for Generic Letter 83-28, Item 4.3," regarding reactor trip breaker testing. Specifically, the changes involve revisions to TS Tables 3.3-1 and 4.3-1 relating to the reactor trip breakers.

Date of issuance: June 6, 1989

Effective date: June 6, 1989

Amendment No.: 78

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18960). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 5, 1983 as supplemented on March 4, 1985 and clarified on May 18, 1989.

Brief Description of amendment: This amendment revises the Technical Specifications for the power protection panels, which were installed to provide an enhanced level of protection for the Reactor Protection System.

Date of issuance: June 2, 1989

Effective date: June 2, 1989

Amendment No.: 112

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49596) and July 1, 1987 (52 FR 24562). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 2, 1989.

No significant hazards considerations comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 10, 1987 as supplemented, March 31, 1989

Brief description of amendment: This amendment revises license condition 2.C.(14) to incorporate the standard condition for fire protection set forth in Generic Letter 86-10. It removes Sections 3/4.3.7.9, 3/4.7.6, 3/4.7.7, and 6.2.2.e from the WNP-2 Technical Specifications. It also modifies the Bases sections and the Index of the Technical Specifications to reflect the above changes.

Date of issuance: May 25, 1989

Effective date: May 25, 1989

Amendment No.: 67

Facility Operating License No. NPF-21: Amendment changed the License, and the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15839). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: March 3, 1989, as supplemented April 20 and June 1, 1989.

Brief description of amendment: The amendment revised certain technical specifications to provide the operating limits established for the fifth cycle of operation, and to accommodate the inclusion of four Advanced Nuclear Fuel 9 x 9 lead fuel assemblies in the reactor core.

Date of issuance: June 7, 1989

Effective date: June 7, 1989

Amendment No.: 69

Facility Operating License No. NPF-21: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1989 (54 FR 13771). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: March 8, 1989

Brief description of amendment: This amendment revises Technical Specification Table 4.3.2.1.-1, "Isolation Actuation Instrumentation Surveillance Requirements," by deleting channel check and channel functional test requirements for certain systems using temperature signals.

Date of issuance: June 6, 1989

Effective date: June 6, 1989

Amendment No.: 70

Facility Operating License No. NPF-21: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18962). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: September 9, 1988

Brief description of amendments: These amendments revised portions of Technical Specification Section 15.3.8, "Refueling," in order to provide more specific and precise requirements regarding the Containment Purge and Vent System. Additionally, minor editorial changes to Technical Specification Tables 15.7.3-2, 15.7.4-2, and 15.7.6-2 were made.

Date of issuance: June 9, 1989

Effective date: June 9, 1989

Amendment Nos.: 122 and 125

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 9, 1989

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 AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may

provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 28, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Public Service Electric & Gas Company, Docket No. 50-272, Salem Generating Station, Unit No. 1, Salem County, New Jersey

Date of Application for amendment: May 5, 1989

Brief description of amendment: The amendment changed the Technical Specifications to delete the requirement that the measured drag force of mechanical snubbers should not have increased more than 50% since the last test.

Date of Issuance: June 5, 1989

Effective Date: May 12, 1989

Amendment No.: 98

Facility Operating License No. DPR-70: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of New Jersey and final no significant hazards consideration determination are contained in a Safety Evaluation dated June 5, 1989.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, Washington, DC 20006

Local Public Document Room Location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

NRC Project Director: Walter R. Butler

Dated at Rockville, Maryland, this 20th day of June, 1989.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 89-15149 Filed 6-27-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al., San Onofre Nuclear Generating Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-10 and Facility Operating License No. NPF-15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessments

Identification of Proposed Action

The proposed amendments would revise Technical Specification 3/4.8.2.1, "DC Sources," to increase the interval for the 18 month surveillance tests to at least once per refueling interval, which is defined as 24 months, in support of the nominal 24 month fuel cycle.

The Need for the Proposed Action

The proposed amendments are required to prevent unnecessary plant shutdowns to perform a surveillance test which cannot be performed during plant operation.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 14, 1989 (54 FR 6791). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated December 29, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 21st day of June 1989.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Senior Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15285 Filed 6-27-89; 8:45 am]

BILLING CODE 7590-01-M

[License No. SNM-1986; Docket No. 70-3057]

Finding of No Significant Impact and Opportunity for a Hearing; Issuance of Special Nuclear Material; Texas Utilities Electric Co. et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1986 to Texas Utilities Electric Company, Texas Municipal Power Agency, and Tex-La Electric Cooperative of Texas, Inc., (the applicants) for the Comanche Peak Steam Electric Station, Unit 2, located in Somervell County, Texas.

Summary of the Environment Assessment

Identification of Proposed Action:

The proposed action would authorize the applicants to receive, possess, inspect, and store special nuclear material in the form of unirradiated fuel assemblies. In addition, the license would authorize the applicants to receive, possess, inspect, store, and use neutron detector assemblies containing enriched U-235. Because the detector assemblies are sealed, storage and use of these materials wil pose no threat to the environment. Therefore, the discussion below will be limited to assessing the potential for environmental impacts resulting from the handling and the storage of new fuel assemblies at Comanche Peak, Unit 2.

The Need for the Proposed Action

The proposed license will allow the applicants to receive and store fresh fuel prior to issuance of the Part 50 operating license in order to inspect the fuel assemblies and to finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license.

Environmental Impacts of the Proposed Action

Once at Comanche Peak, Unit 2, the new fuel assemblies may be temporarily stored in their shipping containers prior to placement in their designated storage locations: the new fuel storage racks and the spent fuel pool racks located in the Fuel Handling Building. Temporary storage will be on the transportation vehicle or in the new fuel receipt area of the Fuel Building. This temporary storage of assemblies in their shipping containers will present no significant environmental impact or significant radiation exposure to plant workers.

Upon removal of the fuel assemblies from the shipping containers, they are inspected and surveyed for external contamination. The fuel assemblies are then transferred to their designated locations. Criticality safety in the storage locations is maintained by limiting interaction between adjacent fuel assemblies. In addition, the design of these storage locations, combined with plant procedures, will ensure acceptable protection of the general public and plant personnel either under normal or abnormal conditions.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For a low-enriched uranium fuel assembly (<4 percent U–235 enrichment), the exposure at 1 foot from the surface is normally less than 1 mR/hr; therefore, it is estimated that the exposure level to an individual from unirradiated fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. Because of the low-radiation exposure levels associated with the requested materials and activities and the applicants' radiation protection procedures, the staff concludes that fuel handling and storage activities can be carried out without any significant occupational dose to workers or radiological impact to the environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated packing material) is expected to be generated during fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

In the event that assemblies must be returned to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR Part 71. The package will meet NRC approval requirements for normal conditions of transport and hypothetical accident conditions. No significant external radiation hazards are associated with the unirradiated assemblies because the radiation level from the clad fuel pellets is low and because the shipping packages meet the external radiation standards in 10 CFR Part 71. Therefore, any shipment of unirradiated fuel is expected to have an insignificant impact.

In the unlikely event that an assembly (either within or outside its shipping container) is dropped during transfer, fuel cladding is not expected to rupture. Even if the cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release to UO_2 aerosol is highly unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

Conclusion

The environmental impacts associated with the handling and storage of new fuel at Comanche Peak, Unit 2, are expected to be insignificant. Essentially no effluents, liquid or airborne, will be released, and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternatives to the Proposed Action

The principal alternative would be to deny the requested license. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at Comanche Peak, Unit 2. Although denial of the special nuclear material license for Comanche Peak, Unit 2, is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG–0775) dated September 1981 related to this facility.

Agencies and Persons Consulted

The Commission's staff reviewed the applicants; request of January 29, 1988, and supplements dated March 25 and July 22, 1988, and May 4, 1989, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM–1986. On the basis of this assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this license may file a request for a hearing. Any request for hearing must be filed with the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the publication of this notice in the Federal Register, and must comply with the procedures set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." Subpart L of 10 CFR Part 2, which became effective March 30, 1989, was published in the Federal Register on February 28, 1989.

Dated at Rockville, Maryland, this 20th day of June 1989.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89–15286 Filed 6–27–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Auxiliary and Secondary Systems; Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on July 12, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Wednesday, July 12, 1989—1:30 p.m.–6:00 p.m.

The Subcommittee will review the adequacy of the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study, and other matters related to fire protection systems.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 301/492–9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 21, 1989.

Gary Quittschreiber, *Chief,*

Project Review Branch No. 2.

[FR Doc. 89–15195 Filed 6–27–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Generic Items; Meeting

The ACRS Subcommittee on Generic Items will hold a meeting on July 12, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Wednesday, July 12, 1989—8:30 a.m. until 12:30 p.m.

The Subcommittee will discuss the Multiple System Responses Program (MSRP).

Oral statements may be presented by members of the public with the concurrence of the Subcommitee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 301/492–9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 21, 1989.

Gary Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–15196 Filed 6–27–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–3 (50–261)]

Carolina Power & Light Co.; Issuance of Amendment to Materials License SNM–2502

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Materials License No. SNM–2502 held by the Carolina Power and Light Company for the receipt and storage of spent fuel at the H.B. Robinson Independent Spent Fuel Storage Installation, located on the H.B. Robinson Steam Electric Plant Unit No. 2 site, Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications in Appendix A. Changes were made to Specification 5.0 and 6.1.1.b of Appendix A to update the revisions to appropriate drawings, to reflect a different method for sealing the thermocouple penetration plug assembly, and to alter the timing of a required leakage test.

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. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated January 11, 1989, and supplementary information submitted on April 28, 1989, and June 2, 1989, (2) Amendment No. 7 to Materials License No. SNM–2502, and (3) the Commission's letter to the licensee dated June 22, 1989. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Local Public Document Room at

the Hartsville Memorial Library, 220 N. Fifth Street, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 22nd day of June 1989.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89-15284 Filed 6-27-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Center for Information Technology Management Alternatives

AGENCY: Office of Management and Budget.

ACTION: Extension of deadline on request for comments: Center for Information Technology Management.

SUMMARY: Office of Management and Budget is extending the deadline for the comment period on alternatives for a center for information technology management to July 28, 1989. As printed in a Federal Register entry dated May 12, 1989, the purpose of such a center would be to provide agencies with advice and assistance regarding the technical management of major government information technology initiatives, not to design or build systems, or provide other functions already available from other sources.

Alternatives being considered include: (1) Using an existing commercial source(s): (2) establishing a center as part of a Federal agency; or (3) establishing a private, not-for-profit entity as a Federally Funded Research and Development Center in accordance with Office of Federal Procurement Policy Letter No. 84-1. OMB is seeking comments on alternatives. As a result of a review of comments received, OMB will determine the need for, and its approach to establishing such a center.

DATE: OMB will accept comments submitted by July 28, 1989.

ADDRESS: Written comments should be submitted to "CITEM" New Executive Office Building, Room 3235, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judith Poorbaugh, Office of Management and Budget, Office of Information Technology Management, 725 17th Street, NW., Room 3235, Washington, DC 20503, (202) 395-7231.

Jay Plager,

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

[FR Doc. 89-15338 Filed 6-27-89; 8:45 am]

BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* RUIA Claims Notification and Verification System.

(2) *Form(s):* N.A.

(3) *OMB Number:* New Collection.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* New Collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Businesses or other for-profit.

(8) *Estimated annual number of respondents:* 500.

(9) *Total annual responses:* 635,000.

(10) *Average time per response:* .017359 hours.

(11) *Total annual reporting hours:* 11,023.

(12) *Collection description:* Section 5b of the RUIA Act, as amended by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100-647) requires that effective January 1, 1990, "when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claim." The collection obtains from such employer(s) information which may be relevant to proper adjudication by the RRB of the employee's claims.

Additional Information or Comments:

Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justing Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washignton, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[RF Doc. 89-15261 Filed 6-27-89; 8:45 am]

BILING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26952; File Nos. SR-Amex-89-03; SR-CBOE-89-01; SR-NASD-89-17; SR-Phlx-89-24; SR-PSE-89-14]

Self-Regulatory Organizations; American Stock Exchange, Inc. et al.

In the Matter of Self-Regulatory Organizations; American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., National Association of Securities Dealers, Philadelphia Stock Exchange, Inc., and Pacific Stock Exchange, Inc.; Order Approving and Notice and Order Granting Accelerated Approval to Proposed Rule Changes Relating to Sales Practice and Suitability Rules Concerning Uncovered Short Options Transactions.

On Feburay 14, 1989, the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Inc. ("CBOE") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 [2] thereunder, proposed rule changes to establish specific written sales practice and suitability criteria and standards concerning uncovered short options transactions.[3]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] On May 19 and 22, 1989, the Amex and CBOE, respectively, amended their proposed rule changes to modify the Special Statement for Uncovered Option Writers. *See* Letter from Ellen T. Kander, Staff Attorney, Amex, to Joseph Furey, Branch Chief, Division of Market Regulation, SEC, dated May 19, 1989; File No. SR-CBOE-89-01, Amendment No. 1. In addition, on March 24, 1989, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Commission a proposed rule change similar to the Amex and CBOE original proposed rule changes. *See* File No. SR-NASD-89-17. On June 14, 1989, however, the NASD amended its original proposal to conform with the amended Amex and CBOE proposed rule changes. *See* File No. SR-NASD-89-17, Amendment No. 1. Further, on May 25 and June 5, 1989, the Philadelphia ("Phlx") and Pacific ("PSE") Stock Exchanges submitted to the Commission proposed rule changes substantially identical to the amended Amex and CBOE proposed rule changes. *See* File Nos. SR-Phlxz-89-24; SR-PSE-89-14. Hereinafter, the terms "self-regulatory organizations" and "exchanges" refer to the Amex, CBOE, NASD, Phlx, and PSE.

The Amex and CBOE proposed rule changes were noticed in Securities Exchange Act Release No. 26621 (March 9, 1989), 54 FR 10769 (March 15, 1989).[4] No comments were received on the proposed rule changes.

The exchanges' proposed rule changes require that member and member organizations transacting business with the public in writing uncovered short options contracts develop, implement, and maintain specific written criteria and standards for approving customer accounts for uncovered short options transactions. The proposed rule changes also require that member and member organizations establish a minimum net equity requirement for approving and maintaining such customer accounts. If a customer does not meet the member or member organization's specific criteria/standards, the customer's account may be approved for uncovered short options transactions only by the member or member organization's Senior Registered Options Principal or Compliance Registered Options Principal. The reasons for approving any such account must be recorded and the records maintained by the member or member organization. The exchanges' proposed rule changes further require that the member or member organization develop, implement, and maintain specific written procedures concerning the member or member organization's supervisory review of customer accounts which have established uncovered short options positions. In addition, the exchanges' proposed rule changes require that member or member organizations furnish to customers a written description of the risks involved in writing uncovered short options transactions, at or prior to the customers' initial uncovered short options transaction. *See* Exhibit A. This written disclosure document must be furnished to customers in addition to the Options Disclosure Document required to be provided to customers trading in options pursuant to existing rules of the exchanges.[5]

The exchanges state that the proposed rule changes are designed to increase customer awareness of the risks entailed in writing uncovered short options contracts and to intensify member or member organization supervision of customer accounts engaged in uncovered short options transactions.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. More specifically, the Commission believes that the exchanges' development and implementation of specific written procedures governing (1) the suitability of customers for writing uncovered short options transactions, (2) the approval of accounts engaged in such uncovered writing, and (3) the establishment of specific minimum net equity requirements for initial approval and maintenance of customer accounts will help ensure that only those individuals who possess the financial resources, investment background and objectives, and risk tolerance suitable for uncovered options writing will be approved for writing uncovered short options tranactions.

In addition, the Commission believes that the distribution to customers of a short succinct written statement which describes the risks associated with uncovered short options writing, at or prior to the customers' initial uncovered short options transaction, will help ensure investor protection because it should increase customer awareness of the potential for significant loss in writing uncovered short options contracts. In this regard, the Commission notes that since disclosure is an important component of investor protection under the federal securities laws, providing investors with a special uncovered short options risk statement may help ameliorate problems associated with uncovered short options transactions (*e.g.*, significant margin calls), especially during volatile markets such as those experienced in October 1987.[6]

The Commission finds good cause for approving the Phlx and PSE proposed rule changes prior to the thirtieth day after the date of publication in the **Federal Register** because the Phlx and PSE proposed rule changes are substantially identical to the amended Amex and CBOE proposed rule changes. Moreover, the Phlx and PSE rule changes are part of an agreement among the options exchanges to adopt new uniform sales practice standards for short uncovered options writing.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 20549. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by July 19, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: June 21, 1989.

Shirley E. Hollis,

Assistant Secretary.

Exhibit A—Special Statement for Uncovered Option Writers

There are special risks associated with uncovered option writing which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all customers approved for options transactions.

1. The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.

2. As with writing uncovered calls, the risk of writing uncovered put options is substantial. The writer of an uncovered put option bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.

3. Uncovered option writing is thus suitable only for the knowledgeable investor who understands the risks, has the financial capacity and willingness to incur potentially substantial losses, and has sufficient liquid

[4] Because the NASD, Phlx and PSE proposed rule changes are substantially identical to the Amex and CBOE amended proposed rule changes this order also serves as the notice and order granting accelerated approval to File Nos. SR-NASD-89-17, SR-NASD-89-17, Amendment No. 1, SR-Phlx-89-24, and SR-PSE-89-14.

[5] *See, e.g.*, Amex Rule 926(a); CBOE Rule 9.15(a).

[6] *See* Division of Market Regulation, *The October 1987 Market Break* (Feburary 1988) at 12-15 through 12-18.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

assets to meet applicable margin requirements. In this regard, if the value of the underlying instrument moves against an uncovered writer's options position, the investor's broker may request significant additional margin payments. If an investor does not make such margin payments, the broker may liquidate stock or options positions in the investor's account, with little or no prior notice in accordance with the investor's margin agreement.

4. For combination writing, where the investor writes both a put and a call on the same underlying instrument, the potential risk is unlimited.

5. If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an option writer would remain obligated until expiration or assignment.

6. The writer of an American-style option is subject to being assigned an exercise at any time after he has written the option until the option expires. By contrast, the writer of a European-style option is subject to exercise assignment only during the exercise period.

Note: It is expected that you will read the booklet entitled CHARACTERISTICS AND RISKS OF STANDARDIZED OPTIONS available from your broker. In particular your attention is directed to the chapter entitled Risks of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

[Rel. No. 34-26953; File No. SR-MSRB-89-3]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Amending the MSRB's Arbitration Code Concerning Payment of Awards

On March 14, 1989, the Municipal Securities Rulemaking Board ("MSRB") submitted a proposed rule change (File No. SR-MSRB-89-3) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend MSRB rule G-35, the Arbitration Code, to require that a dealer, within 20 days after receipt of an arbitration award against it, either pay the award or deposit the award amount in an escrow account; or provide the prevailing party with an irrevocable standby letter of credit.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 26825 (May 15, 1989), 54 FR 22044. The Commission received no comments on the proposal.[1] This order approves the proposal.

The MSRB's Arbitration Code and rule G-17 on fair dealing require dealers to pay arbitration awards promptly, unless a timely motion to vacate the award has been made according to applicable law. In its filing with the Commission, the MSRB stated that it is concerned that a number of dealers do not pay arbitration awards until the very end of the appeal period, even when they do not intend to appeal the award. The MSRB also stated that it is concerned about certain cases in which appeals have been filed solely to delay the payment of awards. The MSRB believes that such situations undermine the arbitration program's goal of providing a relatively quick and inexpensive means of resolving disputes involving municipal securities dealers, and that such situations are inconsistent with the MSRB's statutory mandate to protect investors. Therefore, the proposed rule change would require that a dealer, within 20 days after receipt of an arbitration award against it, either pay the award or, if the dealer is considering an appeal of the award, deposit the award amount in an escrow account established for this purpose by the dealer, or provide to the prevailing party an irrevocable standby letter of credit for the amount of the award.

If the dealer chooses to escrow the amount of the award, the amount of the award would be deposited with the bank in an escrow account pursuant to an escrow agreement subject to instructions consistent with the requirements of the proposed rule change. If an appeal is not filed by the relevant state or federal law deadline, or is filed but later withdrawn by the dealer prior to the entry of a final court order on the appeal, the escrow agreement must provide that the deposited funds would be delivered by the escrow agent to the prevailing party. If a final court order is obtained, the escrow agreement must provide for the delivery of the deposited funds pursuant to the court order.

If a dealer chooses to provide a letter of credit for the amount of the award, the dealer must provide that the amount of the award will be distributed to the prevailing party by the letter of credit issuer under certain circumstances. The letter of credit must provide for payment upon certification by the prevailing party that the dealer has not paid the amount of the award and (1) an appeal has not been filed by appeal date, or (2) an appeal was filed but later withdrawn by the dealer prior to the entry of a final court order, or (3) a final court order on the appeal has been entered in favor of the prevailing party. Any costs incurred in the escrow account or in the application for and issuance of the letter of credit would be borne by the dealer.

The MSRB believes that a dealer should pay an arbitration award promptly, and that the 20-day period stated in the proposed rule change will afford the dealer adequate time to obtain the required funds or make escrow or letter of credit arrangements. The MSRB believes that the proposed rule change will benefit the prevailing party in situations where that party does not receive payment of the award or notice that the funds have been deposited within the 20-day period. In such situations, the prevailing party could contact the appropriate enforcement agency which, instead of waiting for the statutory appeal period to expire, could bring an immediate action against the dealer for failing to comply with the rule.

The Commission agrees with the MSRB that a dealer should promptly pay an arbitration award, and that the 20-day period stated in the proposed rule change will afford the dealer adequate time to obtain the necessary funds or make escrow or letter of credit arrangements. Furthermore, the proposed rule change would foster the arbitration program's goal of providing a relatively quick and inexpensive means of resolving disputes involving municipal securities dealers, and thus would fulfill the MSRB's statutory mandate to protect investors. Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the Commission finds that the proposal is consistent with section 15B(b)(2)(C), which requires MSRB rules to, among other things, "promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *." The Commission also finds that the proposal is consistent with section 15B(b)(2)(D), which states that the MSRB shall, if it deems appropriate—

> provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

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[1] The MSRB solicited comments on the proposed rule change in an exposure draft published in December 1988, and received seven comment letters and one oral comment in response thereto. The MSRB responded to these comments in its filing with the Commission. The comment letters and the MSRB's filing are available for inspection and copying in the Commission's Public Reference Room and at the MSRB's principal offices.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR–MSRB–89–3, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(12).

Dated: June 21, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–15225 Filed 6–27–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26959; File No. SR–NYSE–88–19, Amdt. 2]

Self-Regulatory Organizations; Amendments to Proposed Rule Change by the New York Stock Exchange Relating to Shareholder Approval Policy for Domestic Companies

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission amendments to proposed rules changes 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 rules changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rules Changes

On July 13, 1988, the Exchange filed a proposed rule change relating to modifications to the shareholder approval policy. On December 8, 1988, the Exchange filed Amendment No. 1 to the shareholder approval policy. This Amendment No. 2 reiterates the revisions of Amendment No. 1, extends the grandfather period through the filing of this Amendment No. 2 and revises the original July 13, 1988 filing solely in the following respect:

Additions [Deletion]

* * * * *

312.00 Shareholder Approval Policy

312.01 Shareholder's interest and participation in corporate affairs has greatly increased. Management has responded by providing more extensive and frequent reports on matters of interest to investors. In addition, an increasing number of important corporate decisions are being referred to shareholders for thier approval. This is especially true of transactions involving the issuance of additional securities.

Good business practice is frequently the controlling factor in the determination of management to submit a matter to shareholders for approval even though neither the law nor the company's charter makes such aprovals necessary. The Exchange encourages this growth in corporate democracy.

312.02 Companies are urged to discuss questions relating to this subject with their Exchange representative sufficiently in advance of the time for the calling of a shareholders' meeting and the solicitation of proxies where shareholder approval may be involved. All relevant factors will be taken into consideration in applying the policy expressed in this Para. 312.00 and the Exchange will advise whether or not shareholder approval will be required in a particular case.

312.03 Shareholder approval [prior to adoption] of a plan or arrangement (under (a) below) or prior to the issuance of securities (under (b), [or] (c) or (d) below) will be a prerequisite to listing when:

(a) A stock option or purchase plan is to be established or other arrangements made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the company or broadly-based plans or arrangements including other employees (e.g., ESOPS). In a case where shares are issued to a person not previously employed by the company, as an inducement essential to his entering into an employment contract with the company, shareholder approval may not be required.

(b) A business, a company, tangible or intangible assets or property or securities representing any such interest are to be acquired, directly or indirectly, from a director, officer or substantial security holder of the company (including its subsidiaries, affiliates or other closely related persons) or from any company or party in which one of such persons has a substantial direct or indirect interest if the number of shares of common stock to be issued or the number of shares of common stock into which the securities may be convertible exceeds one percent of the number of shares of common stock or one percent of the voting power outstanding* before the issuance.

An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding* of a company or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

(c) Common stock or securities convertible into or exercisable for common stock are to be issued in any transaction or series of *related* transactions, other than a public offering for cash, (i) if the common stock has or will have upon issuance voting power equal to or in excess of [25%] *20%* of the voting power outstanding* before the issuance of such stock or securities convertible into or exercisable for common stock, or (ii) the number of shares of common stock to be issued is or will be equal to or in excess of [25%] *20%* of the number of shares of common stock outstanding before the issuance of the stock. Exceptions may be made upon application to the Exchange when: (1) The delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and (2) reliance by the company on this exception is expressly approved by the Audit Committee of the Board.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required under the policy of the Exchange and indicating that the Audit Committee of the Board has expressly approved the exception.

(d) The issuance will result in a change of control of the issuer.

(e) [(d)] Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this paragraph. Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

312.04 In the event that some or all of the shares to be issued in a transaction subject to shareholder approval under Para 312.03 must be listed, Exchange procedures will ordinarily permit the filing of applicable listing applications and Exchange approval to precede the shareholder vote subject to notice to the Exchange of the results of the shareholder vote and the issuance of the shares to be listed.

312.05 Where shareholder approval is a prerequisite to the listing of any additional or new securities of a listed company, the minimum vote which will constitute shareholder approval for listing purposes is defined as approval

*"Voting power outstanding" refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the company's security holders for a vote.

by a majority of votes cast on a proposal in a proxy bearing on the particular matter, provided that the total vote cast on the proposal represents over 50% in interest of all securities entitled to vote on the proposal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rules changes and discussed any comments it received on the proposed rules changes. 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 Changes

(1) Purpose

The Exchange has a policy which requires shareholder approval as a prerequisite to the listing of securities issued in connection with certain transactions, as more fully set forth in the Exchange's proposed rule change filing of July 13, 1988 and Amendment No. 1 filed December 8, 1988.

This Amendment No. 2 revises the original filing of July 13, 1988, reiterates Amendment No. 1 and incorporates certain changes resulting from conversations with and at the suggestion of SEC staff.

The proposed rule changes are consistent with Section 6(b)(5).

(2) Statutory Basis

The proposed rules changes are consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act"). This section, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange. Furthermore, the proposed rules amendments are consistent with Section 11A(a)(1)(c)(ii) of the Act in that they will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rules changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rules Changes Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments concerning its proposed rules change.

III. Date of Effectiveness of the Proposed Rule Changes 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 rules changes 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 rules changes that are filed with the Commission, and all written communications relating to the proposed rules changes 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 Branch, 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 July 10, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 23, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15401 Filed 6-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26954; File No. SR-SCCP-87-3]

Self-Regulatory Organizations; Filing of an Amended Proposed Rule Change by the Stock Clearing Corporation of Philadelphia, Relating to Trade Guarantee Policy

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1989, the Stock Clearing Corporation of Philadelphia filed with the Securities and Exchange Commission the amended 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 amended proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Stock Clearing Corporation of Philadelphia ("SCCP") submits this amendment to the proposed rule change regarding the implementation of a policy to guarantee all pending Continuous Net Settlement ("CNS") trades as of midnight plus 1 day after the trade date for locked-in trades and on midnight on the day trades are reported to members as compared for non-locked-in trades. The new calculation for contributions to the Participants Fund which was set forth in the original filing is restated here but has not been further amended by this filing. The full text of the notice of the new policy is attached hereto.

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 proposed rule change will authorize SCCP to guarantee the completeness of all pending CNS trades as of midnight plus 1 day after the trade date for locked-in trades and on midnight on the day trades are reported to members as compared for non-locked-in trades.[1]

The proposed rule change would also authorize SCCP to revise its Participants Fund contribution calculation so as to help offset the increased risks to SCCP or its Participants because of the improved trade guarantee.

At the present time, SCCP guarantees Regional Interface Organization (RIO) trades with other clearing corporations as of the fourth day after trade date. Until T+4 or the applicable settlement date, the Participant incurs the risk for the contra-side of the trade defaulting if SCCP ceases to act for a Participant experiencing difficulty. Pending CNS trades that do not meet specified guarantees are then cancelled and "exited" from the CNS system. It is then the responsibility of the defaulting and non-defaulting firms to settle the transaction on an individual basis.

Under the proposed new Trade Guarantee policy, SCCP will guarantee the completeness of all non-locked-in trades as of midnight on the day the trades are reported to Participants as compared (usually T+1 or T+2) and as of midnight plus 1 day after trade date for locked-in trades executed on the PHLX floor that are settled through SCCP. The latter trades are assured of no comparison problems as the PHLX computer captures both sides of the trade at the time the trade is entered into the system. Nevertheless, SCCP will wait until T+1 to guarantee such trades to conform with the timing of the guarantee provided to other trades.

RIO CNS trades will be guaranteed by the receiving clearing agency in accordance with the above-described policy. SCCP will not, however, guarantee such trades to any clearing agency unless such agency has also adopted a comparable trade guarantee.

In order to help minimize any additional risks to SCCP or its Participants resulting from the new Trade Guarantee, and to more adequately collateralize any CNS system risks, SCCP also proposes modification to the existing formula for calculating SCCP Participant Fund contributions. The new formula will now enable SCCP to collect the current mark to market value of the securities still pending to settlement, whereas under the old system, SCCP only collected the value of the securities on or after the settlement date (T+5).

On the effective date of approval of the proposed Trade Guarantee policy, contributions to the Participants Fund will be assessed to Participants based on the following formula:

Contribution will be based upon the larger of:

(a) A Participant's monthly average of trading activity based on the preceding quarter, $1,000 for every 25 trading units of 100 shares (with a $5,000 minimum and $50,000 maximum contribution.) The first $25,000 must be in cash and the remainder may be in high grade bond; [2] or

(b) A Participant's aggregate dollar amount of all long trades at their execution price for each quarter divided by the number of days in such quarter × 2% (with a maximum $100,000 contribution.[3] In addition to the above adjustments and as a further means of reducing enhanced trade guarantee generated risks, all Participant's Fund contributions will be adjusted daily with respect to any mark to the market exposure (with adjustments of less than $10,000 waivable by SCCP).

SCCP has examined the potential effects of this new formula for calculating Participants Fund Contributions. Only a few participants will be significantly effected and those firms have been made aware of their potential exposure. SCCP has also placed a $100,000 cap on any Participant's contribution in order to limit extreme increases.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it is consistent with the prompt and accurate clearance and settlement of securities transactions and fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by providing an efficient mechanism for the transfer of customer securities accounts with participants of registered clearing agencies.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change have not been solicited or 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 SCCP 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 20549. Copies of File No. SR–SCCP–87–03 will also be available for inspection

[1] This new trade guarantee does not alter the existing policy with respect to specialists. Under this existing policy, which has been in effect since 1982, SCCP guarantees, as of trade date, all trades executed by a specialist with a SCCP participant as the contra-side of the trade and which has been recorded in a SCCP margin account. Such trades are guaranteed to the extent of 1000 shares.

[2] This formula is the current one in use today.

[3] As a starting point, SCCP will base its initial calculation under this formula on a daily average of the last complete one month period (as opposed to quarter) before the effective date of the trade guarantee policy.

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 July 19, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

June 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-15226 Filed 6-27-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2359]

Louisiana and Contiguous Counties in the States of Mississippi and Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 16, 1989, I find that East Baton Rouge, Iberville, Livingston, St. Helena, Vernon, and West Baton Rouge Parishes, in the State of Louisiana, constitute a disaster loan area due to damages from severe thunderstorms and tornadoes which occurred on June 7 and 8, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on August 14, 1989, and for economic injury until the close of business on March 16, 1990, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous parishes of Allen, Ascension, Assumption, Beauregard, East Feliciana, Iberia, Natchitoches, Pointe Coupee, Rapides, Sabine, St. John The Baptist, Tangipahoa, Upper St. Martin, and West Feliciana, in the State of Louisiana; the counties of Amite and Pike, in the State of Mississippi; and the counties of Newton and Sabine, in the State of Texas, may be filed until the specified date at the above location.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations (EIDL) With Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 235912 and for economic injury the number are 677700 for the State of Louisiana; 677800 for the State of Mississippi, and 677900 for the State of Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 19, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-15205 Filed 6-27-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2353; Amendment No. 4]

Texas (and Contiguous Counties in the State of Oklahoma); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated June 15 and 16, 1989, to include the counties of Archer, Clay, Hale, Knox, Marion, Rockwall, Sabine, Shelby, Taylor, Titus, and Trinity, in the State of Texas, as a result of damages from severe storms, tornadoes, and flooding, and to establish the incident period as May 4 through June 15, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Callahan, Castro, Coleman, Crosby, Fisher, Floyd, Foard, Frankline, Haskell, Hockley, Jones, King, Lamb, Lubbock, Nolan, Red River, Runnels, Stonewall, and Swisher, in the State of Texas, may be filed until the specified date at the previously designated location.

Any countries contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business of July 17, 1989, and for economic injury until the close of business of February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: June 20, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-15206 Filed 6-27-89; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 8.95 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act, as further amended by Section 1 of Pub. L. 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 21, 1989.

[FR Doc. 89-15207 Filed 6-27-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147—Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the twenty-ninth meeting of RTCA Special Committee 147 on Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment to be held July 18–20, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005, commencing at 9:00 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of the minutes of the twenty-eighth meeting, RTCA Paper No. 110–89/SC147–343; (3) TCAS Program status reports on FAA TCAS Program and Phase III Limited Implementation Program; (4) report of Pilot Working Group activities; (5) TCAS II change 6 validation summary; (6) review and approval of change 6 to RTCA Document DO–185; (7) other business; and (3) 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, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on June 19, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89–15215 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

Change of Name of Approved Trustee; Continental Bank, National Association

Notice is hereby given that effective at the close of business December 12, 1989, Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, changed its name to Continental Bank, National Association.

Dated: June 20, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89–15281 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–81–M

Approval of Applicant as Mortgagee, First National Bank of Maryland

Notice is hereby given that The First National Bank of Maryland, having offices at 25 S. Charles Street, Baltimore, MD 21201, has been approved as Mortgagee pursuant to Pub. L. 100–710 and 46 CFR 221.43.

Dated: June 22, 1989.

By Order of the Maritime Administrator

James E. Saari,

Secretary.

[FR Doc. 89–15279 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–81–M

Removal From Roster of Approved Trustee; Mercantile Bank National Association

Notice is hereby given that effective March 25, 1988, Mercantile Bank National Association (Charter No. 21073), St. Louis, Missouri 63101, was merged into Mercantile Bank of St. Charles County National Association under the charter of the latter company and ceased to exist.

Therefore, pursuant to Pub. L. 89–346 and 46 CFR 221.21–221.30, Mercantile Bank National Association (Charter No. 21073) is removed from the Roster for Approved Trustees.

This notice shall become effective on date of publication.

Dated: June 22, 1989.

James E. Saari,

Secretary.

[FR Doc. 89–15282 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–81–M

Approval of Applicant as Trustee; Mercantile Bank National Association

Notice is hereby given that Mercantile Bank National Association (Charter No. 21684), with offices at 721 Locust Street, St. Louis, Missouri 63101, has been approved as Trustee as of March 25, 1988, pursuant to Pub. L. 89–346 and 46 CFR 221.21–221.30.

Dated: June 22, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89–15280 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under Section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Russell J. Shew, on behalf of the Center for Auto Safety, petitioned the agency on January 23, 1989, to conduct an investigation for alleged sudden acceleration that would lead to the recall of all 1982 through 1988 General Motors Cadillac vehicles equipped with the 4.1-liter HT–4100 engine, not otherwise included in Engineering Analysis (EA) 88–031 which involves sudden acceleration in 1985–1988 General Motors C-cars. The petitioner did not identify, describe, or imply that any particular vehicular component, subsystem, or system malfunction or failure was responsible for the reports of "sudden acceleration." Based on complaints it has received in recent years, NHTSA has defined "sudden acceleration" as: unintended, unexpected high-power accelerations from a stationary petition or a very low initial speed accompanied by an apparent loss of braking effectiveness. However, in recent complaints to the agency the public has begun to label any instance of unwanted engine power, even if controllable by a brake application, as suden acceleration. In light of this, the petition was evaluated with regard to the possibility of either a sudden acceleration problem or an unwanted engine power problem. More than 90 percent of the subject vehicle population was previously analyzed in Engineering Analysis, EA78–110, which involved sudden acceleration in 1973–1986 General Motors passenger cars, and which was closed on August 5, 1986, with no common defect being identified.

With regard to unwanted engine power, there have been two safety recall campaigns in the subject vehicle population. Safety recall 87V–082 involved the potential for the floor mat to become mispositioned and interfere with the accelerator pedal in 1986 El Dorado and Seville models. Safety recall 82V–060 involved the replacement of a faulty accelerator cable bracket to prevent the cruise control servo rod from binding on the accelerator cable bracket in certain 1982 El Dorado and Seville vehicles.

A review of the complaints on file for

the subject vehicles reveals that there are very few complaints of unwanted engine power. Moreover, the complaint rate for sudden acceleration for these vehicles is relatively low compared to the rates for other vehicles recalled for sudden acceleration (Audi and Nissan in recalls 87V–008 and 87V–098, respectively), and also compared to those vehicles currently under investigation for sudden acceleration.

Based upon this information, there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued at the conclusion of an investigation into either sudden acceleration or unwanted engine power for these vehicles. In addition, in view of its overall enforcement efforts and resources, it would not be appropriate for the agency to commit additional investigative resources to the alleged defect. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93–492: 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8

Issued on June 22, 1989.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89–15241 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 22, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8804, 8805 and 8813
Type of Review: Resubmission
Title: Partnership Withholding Tax Payment (Section 1446) (8813); Annual Return for Partnership Withholding Tax (Section 1446) (8804); Foreign Partner's Information Statement of Section 1446 Withholding Tax (8805)
Description: Federal Form, Compliance Code Section 1446 requires partnerships to pay a withholding tax if they have effectively connected taxable income that is allocable to foreign partners. Forms 8804, 8805 and 8813 are used by withholding agents to provide IRS and affected partners with data to assure proper withholding, crediting to partners' accounts and compliance.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Response/ Recordkeeping:

	8804	8805	8813
Recordkeeping	1 hr. 12 min	1 hr. 5 min.	7 min.
Learning about the law or the form	54 min.	53 min	46 min.
Preparing the form	26 min.	29 min	5 min.
Copying, assembling, and sending the form to IRS	20 min.	17 min	10 min.

Frequency of Response: Quarterly, Annually
Estimated Total Recordkeeping/ Reporting Burden: 120,000 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–15275 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 22, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: Customer Survey on Choice of Tax Forms
Description: The data collected will be used to identify the major reasons that taxpayers do not file the simplest tax form possible. This survey will enable the Service to explore more effective means to bring about a greater use of the appropriate forms that are sent to taxpayers
Respondents: Individuals or households
Estimated Number of Respondents: 2,400
Estimated Burden Hours Per Response: 10 minutes
Frequency of Response: One time survey
Estimated Total Reporting Burden: 400 hours
OMB Number: 1545–0002
Form Number: CT–2
Type of Review: Extension
Title: Employee Representative's Quarterly Railroad Tax Return
Description: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement and on which railroad unemployement repayment taxes are due. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment
Respondents: Individuals or households
Estimated Number of Respondents: 28
Estimated Burden Hours Per Response/ Recordkeeper:
Recordkeeping, 26 minutes
Learning about the law or the form, 13 minutes
Preparing the form, 31 minutes

Copying, assembling, and sending the form to IRS, 17 minutes
Frequency of Response: Quarterly
Estimated Total Recordkeeping/ Reporting Burden: 162 hours
OMB Number: 1545–0718
Form Number: 941–M
Type of Review: Extension
Title: Employer's Monthly Federal Tax Return
Description: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941–M monthy.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Response/ Recordkeeper:
Recordkeeping, 13 hours 52 minutes
Learning about the law or the form, 12 minutes
Preparing, copying, assembling, and sending the form to IRS, 26 minutes
Frequency of Response: Monthly
Estimated Total Recordkeeping/ Reporting Burden: 174,000 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–15276 Filed 6–27–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 22, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

On June 22, 1989, the U.S. Customs Service, Department of the Treasury, requested an expedited approval by the Office of Management and Budget by July 7, 1989. The reason for requesting expected handling is to enable the attached worksheet to be mailed out prior to a late-July/early-August symposium concerning Intellectual Property Rights Protection.

U.S. Customs Service.

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Intellectual Property Rights.
Description: The information will be used to establish subject areas of interest to the public, outline legal protection presently available to U.S. individuals and to outline efforts underway to strengthen these protections and increase enforcement in this area.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 82.
Estimated Burden Hours Per Response/ Recordkeeping: 20 minutes.
Frequency of Response: One time only.
Estimated Total Recordkeeping/ Reporting Burden: 27 hours.

Letter and Worksheet

Dear _____:

The U.S. Customs Service has initiated a nationwide enforcement effort dealing with the protection of intellectual property rights. Our initial implementation will focus on violations affecting high technology industries. The Omnibus Trade and Competitiveness Act of 1988 provides expanded protection for intellectual properties. The "intellectual property" is generally used in the protection of patents, copyrights, trademarks and trade secrets. We believe that protection of intellectual property rights is vital in insuring that U.S. industry compete fairly in international markets.

As you are aware, the New England economy consists of many of the leading hight-tech companies in the country. This offers the Northeast Region of the Customs Service the opportunity to be in the forefront of this nationwide endeavor. Although the Customs Service is committed to increasing our efforts in enforcing intellectual property rights violations, it will require an equal commitment from the industries affected.

In the near future we are planning to host a symposium concerning Intellectual Property Rights Protection. The symposium will outline legal protections presently available to U.S. industries along with efforts currently underway to strengthen those protections and increase our enforcement in this area.

In order to assist the industries most affected, we would like to learn more about your concerns in this area. Please complete the enclosed worksheet and return it within ten days in the self-addressed envelope.

Should you have any questions concerning this letter or the worksheet enclosed, please feel free to contact Program Analyst Ruthann LaBay at (617) 565–6323 or Program Analyst Rick Wilcox at (617) 565–6324.

Sincerely,

Philip W. Spayd,

Regional Commissioner.

Enclosure.

The U.S. Customs Service is studying its efforts to help U.S. companies protect their intellectual property rights (IPRs)—such as trademarks and copyrights—in international trade. As part of the study, we have developed this worksheet to help us assess the Customs Service's ability to keep goods that violate U.S.-held trademarks, copyrights, and ITC Exclusion Orders issued on patent-infringing goods from entering or illegally exiting the county. Please complete the worksheet and return it within ten days in the self-addressed envelope.

Name _____
Title _____
Telephone _____
FAX _____

1. Is your company interested in actively participating with the U.S. Customs Service in an initiative aimed at the protection of your IPRs?
A. Yes _____
B. No _____

2. Is your company:
A. An importer _____
B. an exporter _____
C. both A&B _____
D. a domestic manufacturer only _____

[FR Doc. 89– Filed —89; 8:45 am]

BILLING CODE —M

3. What commodities does your company deal in (general description, i.e. computer software, integrated circuits, etc.)?

4. Check the appropriate response(s):
A. Does your company own:
A. patents _____
B. copyrights _____
C. trademarks _____

B. if your company owns patents, have ITC Exclusion Orders been issued against infringing goods?
A. Yes _____
B. No _____

C. Are your registered copyrights and trademaks recorded with U.S. Customs?
A. Yes _____
B. No _____

5. Does your company hold a governmental security clearance and/or classified export license?

6. Do you know of or suspect any foreign companies duplicating the goods covered by your IPRs and exporting them to the U.S.?
A. Yes _____
B. No _____
C. Unable to determine _____

7A. To what extent have counterfeit or infringing imports hurt your product's reputation with the consumer?
A. Little or none _____
B. Some _____
C. Substantially _____

7B. If substantial, estimate the value of lost sales since January 1, 1984.

8A. Have you provided Customs with information regarding the suspected or alleged production, importation, or exportation of goods and/or technical data infringing on IPRs held by your company?

A. Yes _____
B. No _____

8B. How satisfied have you been with the Customs Service's response?

A. Satisfied _____
B. Dissatisfied _____
C. Not Applicable _____

9. To what extent has Customs interdicted shipments of goods infringing on IPRs held by your company, without advance information from your firm?

10. Does your company use an in-house or outside investigative group to identify foreign-made counterfeit or otherwise infringing copies of goods destined to the U.S.?

A. Yes _____
B. No _____

11. How satisfied, or dissatisfied, are you with the ability of the Customs Service to protect IPRs?

A. Satisfied _____
B. Dissatisfied _____
C. Not Applicable _____

12. Would your company be willing to provide the Customs Service with the resources (testing equipment, specifications, training, etc.) necessary to verify potential violations?

A. Yes _____
B. No _____

13A. Would your company be interested in participating in a symposium sponsored by the Customs Service?

A. Yes _____
B. No _____

If the answer to 13A is "no," please go to question 14.

13B. How many representatives would you send?

13C. Would you like to provide a speaker? If yes, what topic?

14. Would you be willing to meet with a representative of the Customs Service and further discuss these issues prior to the planned symposium?

A. Yes _____
B. No _____

15. Please provide any comments, questions, or concerns:

Clearance Officer: Dennis Dore, (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-15277 Filed 6-27-89; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 95-41). For example, the Contracts Disputes Act of 1978 (P.O. 92-563) and the Prompt Payment Act (Pub. L. 97-177) are required to calculate interest due on claims "* * * at a rate established by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1989 and ending on December 31, 1989, is 9-1/8 per centum per annum.

Dated: June 21, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-15265 Filed 6-27-89; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Notice of Evaluations by the Department of Veterans' Affairs of Scientific Studies Related to the Effects of Exposure to Ionizing Radiation

AGENCY: Department of Veterans Affairs.

ACTION: Notice of evaluations.

SUMMARY: The "Veterans' Dioxin and Radiation Exposure Compensation Standards Act," (Pub. L. 98-542) and implementing regulations, 38 CFR 1.17, require that there be published from time to time evaluations by the Department of Veterans Affairs (VA) of scientific or medical studies relating to the adverse health effects of exposure to ionizing radiation. This notice is concerned with the following scientific studies reviewed in April 1987 by the Scientific Council of the Veterans Advisory Committee on Environmental Hazards, an advisory committee established pursuant to Pub. L. 98-542.

FOR FURTHER INFORMATION CONTACT: Roger H. Shannon, M.D., F.A.C.R., Director, Radiology Service (114), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2134.

SUPPLEMENTARY INFORMATION: In reviewing each of these studies, the following factors were considered:

(a) Whether the study's findings are statistically significant and replicable,

(b) Whether the study and its findings have withstood peer review,

(c) Whether the study's methodology has been sufficiently described to permit replication,

(d) Whether the findings of the study are applicable to the veteran population of interest, and

(e) The views of the Veterans Advisory Committee on Environmental Hazards. (The views of the advisory committee are contained in the minutes of these meetings. Copies of the minutes may be obtained from Frederic Conway (02C), Special Assistant to the General Counsel, Department of Veterans' Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2182.)

Studies Reviewed

(a) Darby, "Some Recent Statistical Analyses of Two Long-Term Studies of Exposure to Ionizing Radiation." (Stats. in Med. 5:539-546 (1986).)

(b) Editorial, "Dermatologic Radiotherapy, the Risk-Benefit Ratio." (Arch. Dermatol. 122:1385-1388 (1986).)

(c) Editorial, "Human Effects Following Exposure to Ionizing Radiation." (Arch. Dematol. 122:1380-1382 (1986).)

(d) Evans, et al., "The Influence of Diagnostic Radiography on the Incidence of Breast Cancer and Leukemia." (N. Eng. J. Med. 315:810-815 (1986).)

(e) Goffman, "The Plutonium Controversy." (JAMA 236:284-286 (1976).)

(f) Ichimaru, et al., "Multiple Myeloma Among Atomic Bomb Survivors in Hiroshima and Nagasaki, 1950-1976; Relationship to Radiation Dose Absorbed by Marrow." (JNCI 69:323-328 (1982).)

(g) Johnson, "Cancer Incidence in an Area of Radioactive Fallout Downwind From the Nevada Test Site." (JAMA 251:230-236 (1984).)

(h) Linos, et al., "Low-dose Radiation and Leukemia." (N. Eng. J. Med. 302:1101-1105 (1980) and Letter to the Editor.

(i) Machado, et al., "Cancer Mortality and Radioactive Fallout in Southwestern Utah." (Am. J. Epidemiol. 125:44-61 (1987).)

(j) Nussbaum, "Survivor Studies and Radiation Standards." (Bull. of the Atomic Scientists 41:62- (1985).)

(k) Zufan, et al., "Epidemiological Investigation of Mutational Disease in the High Background Radiation Area of

Jangjiang, China." (J. Radiat. Res. 27:141–150 (1986).)

Dated: June 23, 1989.

Edward J. Derwinski,

Secretary of Veterans' Affairs.

Evaluations

(a) Darby, "Some Recent Statistical Analyses of Two Long-Term Studies of Exposure to Ionizing Radiation." Stats. in Med. 5:539–546 (1986).)

The author looked at two major studies for agreement or reinforcement. The two studies were the life span study of the survivors of the Hiroshima and Nagasaki bombings and a study of a group of patients who had been treated with x-rays for ankylosing spondylitis. The author looked at the question of the relative risk for leukemia and other kinds of malignant disease, finding substantial constancy of relative risk, with the exception of leukemia and central nervous system tumors. She also noted substantial agreement in the risk per rad for leukemia in the two studies of approximately two cases per million per year per rad. Additionally, she noted a reinforcement between the two studies for the adult age groups in the relative risk for leukemia and solid cancers. The relative risk for solid cancers in both studies looked ostensibly constant as a function of progressing time. The conclusion reached by the author was that statistically the relative risk model appeared to be the most consistent with the data. She further concluded, "the similarity of the findings in two high dose studies, where exposure took place under very different conditions, increases confidence in generalizing from these studies to other irradiated populations and detailed modeling of the radiogenic risk indicates a simple relative risk model for a particular group of cancers."

Commentary: The Veterans Advisory Committee on Environmental Hazards (the Committee) believed that the paper presented strong evidence in support of the relative risk model and that the absolute risk model was not compatible with the data. Relatively wide error bars were noted by the Committee, however, and these were not commented on in the paper. The Committee further observed that this kind of study could only deal with all solid tumors as a group. It believed that while the analysis was relevant in terms of risk analysis it did not assist in answering the issue of probability of developing a radiogenic cancer.

An additional limitation of this analysis is that in both groups of irradiated subjects, the radiation was delivered at a high dose rate. It is also noted that risk estimates can only be derived from high dose studies where the exposure increases cancer mortality rates by 40 percent or more. The study is relevant to risk assessment at high doses and dose rates. It affords no basis for modifying VA's guidelines concerning the adjudication of claims based upon exposure to ionizing radiation.

(b) Editorial, "Dermatologic Radiotherapy, the Risk-Benefit Ratio." (Arch. Dermatol. 122:1385–1388 (1986).)

The editorial was occasioned by a paper on the results of a study of 14,140 patients in Sweden who had received Grenz ray for superficial skin cancer. That study indicated that these ultrasoft x-rays could cause a very small number of cancers in those who received high doses. The editorial commented that the risk of Grenz ray therapy was small and noted the non-stochastic and other effects of radiation therapy.

Commentary: The Committee believed the commentary to be of marginal relevance to the veterans' situation particularly since the veterans' exposure was to radiation of a different quality than that used in the study commented on by the editorial. The doses of the soft x-rays were very high and the results are not applicable for situations other than induction of skin cancer as a consequence of superficial radiotherapy.

(c) Editorial, "Human Effects Following Exposure to Ionizing Radiation." (Arch. Dermatol. 122:1380–1382 (1986).)

The paper discussed a few reports concerning injuries associated with the accident at Chernobyl. The editorial noted the increase in malignancies in the Hiroshima-Nagasaki population and the threat of radiation exposure to overall human health.

Commentary: The Committee considered this paper to be factually erroneous, uninformed and not of any significance. It is more a philosophical reflection of the relation of radiation to culture than a scientific statement. It bears no relevance to the veterans' experience. The Department concurs with this assessment.

(d) Evans, et al., "The Influence of Diagnostic Radiography on the Incidence of Breast Cancer and Leukemia." (N. Eng. J. Med. 315:810–815 (1986).)

This study sought to estimate the numbers of excess cases of leukemia and breast cancer attributable to diagnostic radiotherapy. The authors concluded that there was a small effect of radiation-induced carcinogenisis in relation to tumors of the bone marrow and breast. Induced cases of leukemia were estimated to be 1 percent of all cases of leukemia and somewhat less than 1 percent for induced cases of breast cancer.

Commentary: The Committee believed that some of the age-specific coefficients used to predict radiation-induced breast cancer were outdated and agreed with the criticism expressed in an accompanying series of Letters to the Editor. The study was based upon information on a closed population of 75,000 people in Maine to estimate exposure due to diagnostic x-ray procedures as a function of age. These data were then used to calculate dose to bone marrow and breast. Then using usual risk calculations and the calculated doses, the study reached the conclusion that 1 percent of the leukemias and less than 1 percent of breast cancer occurring in the United States might be associated with diagnostic radiography. The associated commentary analyzed the data and properly pointed out that the over-40 group for whom mammography is recommended are at little or no risk for breast cancer. The paper is relevant to veterans in the sense that they may have greater than average diagnosic x-ray exposure due to injuries received during their period of service and perhaps because of more extensive medical care received through the VA health care system than may be available to the general population. No basis for changing VA's guidelines was presented in this paper.

(e) Goffman, "The Plutonium Controversy." (JAMA 236:284–286 (1976).)

This paper focused on lung cancer. The author contended that plutonium's carcinogenicity had been seriously underestimated and that reliance upon a plutonium based energy economy would result in an excess of 130,000 additional fatalities per year in the United States.

Commentary: The Committee questioned the paper's conclusions and noted that the author in every choice he made took the higher figure with a resultant multiplicative effect. The Committee believed that the paper may be somewhat relevant to the veterans' experience but that the conclusions expressed were not supported by the data. The Department concurs with this assessment.

(f) Ichimaru, et al., "Multiple Myeloma Among Atomic Bomb Survivors in Hiroshima and Nagasaki, 1950–1976; Relationship to Radiation Dose Absorbed by Marrow." (JNCI 69:323–328 (1982).)

This paper deals with the estimated risk for multiple myeloma associated with the Hiroshima-Nagasaki bombings. The data suggest no increased incidence

of multiple myeloma in the 20 to 59 age group at the time of the bombing who received less than 50 rads. Also, the excess did not appear until more than 20 years following the exposure. The authors concluded that their analysis showed that the standardized relative risk adjusted for city, sex, and age at the time of the bombings increased with absorbed radiation dose to the bone marrow. The increased relative risk, the authors noted, did not appear to differ between cities or sexes and was demonstrable only for those survivors whose age at the time of the bombings was between 20 and 59 years. The estimated risk for those individuals was appproximately 0.48 cases per million person years per rad for bone marrow total dose.

Commentary: The Committee noted that the earlier literature generally did not conclusively relate the induction of multiple myeloma to radiation exposure but that more recent data from Japan does not show an apparent excess of multiple myeloma among the heavily irradiated survivors. The Department believes that the number of cases is so small that it is difficult to reach statistically significant conclusions. Among the over 50 rad group, there were a total of 5 cases. The Committee expressed concern that the Department's current guideline of a 5-year minimum latency period may be unreasonably short, a more reasonable minimum latency being 15 years. The Committee expressed criticism that the authors failed to look more closely at the below 50 rad exposure group. The Department is of the opinion that the paper would suggest that the exposure of veterans during the atomic weapons tests was too low to produce a measurable increase of multiple myeloma. A reassessment would be appropriate following a reevaluation of data accumulated between 1976 and 1982.

(g) Johnson, "Cancer Incidence in an Area of Radioactive Fallout Downwind From the Nevada Test Site." (JAMA 251:230–236 (1984).)

This study looked at Mormon populations in southwestern Utah exposed to radioactive fallout from atmospheric testing or from venting of underground nuclear detonations. The control population was the Mormon population for all of Utah. In looking at cancer incidence the author found 109 more cases of cancer than expected, with leukemia being the most prominent early (1958 through 1966). The excess of leukemia persisted into the later period examined, 1972 through 1980. Also observed were excess cases of lymphoma, thyroid cancer, breast cancer, gastrointestinal tract cancers, melanoma, bone cancer, and brain tumors.

Commentary: The Committee criticized the author for not having complete references to the sources upon which a number of statements in the paper were based. The Committee also believed that there were no organized data in the paper regarding the integrated exposure in residential communities in southwest Utah which might relate to personal doses actually received. Another criticism of the Committee was the failure to verify the cases by checking with the Utah Cancer Registry or with physicians, hospitals or the State Registrar of Vital Statistics. This failure may have resulted in an exaggeration of the excess solid cancers. Other criticisms included that the opportunity for media bias resulting in overreporting or exaggeration of reports of disease was very high and yet was not discussed in the paper. An additional criticism was the nonrandom selection for the individuals selected for interview and the town selected for examination. The Committee offered the opinion that the study was seriously flawed by methodological problems. The Department concurs with the Committee's assessment and further notes that while there was a claim that there was a subgroup with a history of acute radiation effects from fallout, no medical records of acute radiation fallout effects were reported on although this was a population with ready access to good medical care. Furthermore, the Department notes that the claim is made that in the period from 1967 to 1975, there was a 60 percent increase in cancer in the fallout group compared to the control group. The Department notes in this regard that there was only a 6 to 8 percent increase in malignancies through 1982 in the survivors of the Hiroshima-Nagasaki bombing. The Department concludes that the paper is not scientifically designed and cannot withstand strict scientific scrutiny.

(h) Linos, et al., "Low-dose Radiation and Leukemia." (N. Eng. J. Med. 302:1101–1105 (1980) and Letter to the Editor.

This paper presented a case control study on 138 patients with leukemias and the exposures that they had received from diagnostic x-rays with matched controls. The authors concluded that there was no statistically significant increase in the risk of developing leukemia after radiation doses of 0 to 300 rads (3 gy) to the bone marrow when the amounts were administered in small doses over long periods of time.

Commentary: A series of letters followed this study. The principal criticism expressed was that analyses were based on a small number of cases and that the authors had mixed together types of leukemia known to be induced by exposure to ionizing radiation with those that are not. The Committee agreed with the criticism that the study was of too low statistical power for the study's negative findings to be conclusive. The Department believes that the study is relevant to the veteran population in that it demonstrates that fractionated exposure even at high doses does not result in a detectable increase in leukemia—the malignancy most easily detectable after radiation exposure.

(i) Machado, et al., "Cancer Mortality and Radioactive Fallout in Southwestern Utah.," (Am. J. Epidemiol. 125:44–61 (1987).)

The study looked at three counties in southwestern Utah, an area where fallout levels were recorded to be higher, on the average, than elsewhere. The authors found no evident site-specific excess of any forms of cancer except leukemia. Mortality from all cancer sites combined was significantly lower in southwestern Utah than in the remainder of the State. Also, there were no significant changes between the pre- and post-fallout periods in comparisons of mortality in southwestern Utah with the rest of the State or with the United States. The study did find a significant excess of childhood leukemia. The authors did not see this excess as conclusive but rather as hypothesis generating.

Commentary: The Committee believed this to be a well-designed and well-conducted study. It did believe, however, that more work should have been done to determine whether the leukemia and mortality incidence was real. The Department concurs with this assessment. The paper notes that there were only 12 childhood deaths from leukemia in southwest Utah during 1950 to 1980 and so there is the problem of small number statistics. Bader (N. Eng. J. Med. 300:1491– (1979)) pointed out that in King County (Seattle), Washington, that although there were 217 childhood leukemia deaths from 1950 to 1952, in 1959 there were only 2 deaths and in 1963 there were 20. For successive 3 year periods the leukemia deaths were 25, 19, and 41. Thus, even with larger numbers, successive periods show a twofold difference in rates. It would appear that the increase in odds for leukemia and the decrease in odds for

solid tumors may simply represent statistical variation.

(j) Nussbaum, "Survivor Studies and Radiation Standards." (Bull. of the Atomic Scientists 41:62– (1985).)

The principal thesis of this article was that cancer risks from low level radiation exposure are significantly higher than would be expected on the basis of internationally accepted standards for radiation protection. The author questioned the reliance upon the atomic bomb survivor data noting that the data collection did not begin until 1950. He noted that during the interval between 1945 and 1950, the survivors had experienced harsh weather conditions and inadequate food and medical supplies and poor sanitation services. He suggested, therefore, that those surviving until 1950 experienced the equivalent of the healthy worker or "survivor" effect with the result that the death rate among these individuals should have been significantly lower than the national average for Japan. Since it was not, the author questioned the conclusion that the only correlation with exposure was increased mortality due to cancer. The author also criticized other studies and put forward several studies which are contended to be supportive of the author's thesis that radiation is far more dangerous than officially acknowledged.

Commentary: The Committee noted that the author failed to note the existence of a number of studies and reviews which refute or question the papers that the author relied upon. Consequently, the Committee did not believe that the paper was credible and that it had little relevance to the veteran population of interest. The Department agrees with this assessment.

(k) Zufan, et al., "Epidemiological Investigation of Mutational Disease in the High Background Radiation Area of Jangjiang, China." (J. Radiat. Res. 27:141–150 (1986).)

This paper concerns an Epidemiological investigation of whether or not there is a higher rate of mutation-based disease (cancer, hereditary disease, and congenital defects) in inhabitants exposed to high levels of background radiation versus those that were exposed to normal levels of background radiation in a control area. The annual individual external exposure to environmental gamma radiation was 330 millirad per year in the high background radiation area and 114 millirad per year in the control area. The interim conclusions reported by the authors were: (1) no statistically significant differences were noted for total nor site specific cancer mortality rates between the two areas; (2) the rates for hereditary disease and congenital defects were almost identical in the two areas; and (3) a higher frequency of Down's Syndrome was noted in the high background area which may be due to the age of the mothers at the time of birth as well as the age distribution of the children examined. The authors noted that further study was needed before conclusions could be arrived at.

Commentary: The Committee had difficulty assessing this paper because of the incomplete presentation of data. The Department agrees with this assessment and notes that while the study was well formulated, it does need to be extended to gain credibility and/or ability.

Summary Comments and Conclusions

This group of 11 papers again indicates how difficult it is to produce incontestable epidemiological evidence. In spite of many projects being well covered and much effort being applied to their planning, implementation and interpretation, few ultimately withstand expert scrutiny and fewer shift the balance of existing precepts. Our solid knowledge is hard earned. For the most part, the questions that were elusive in the first pass of research remain difficult and yield to answers reluctantly.

Nevertheless, some advances have been suggested, if not established, such as the probably radiogenic qualities of multiple myeloma, the resilience of the body exposed to low doses of ionizing radiation, and some of the possible responses of the skin to radiation exposure.

Several items demonstrated the difficulty of dealing with stochastic effects which we know occur but which we cannot so easily identify in the pool. The uncertainty creates problems of judgment and, as some of the papers show, opens the issues at hand to a wide range of political and emotional interpretations that further compound the quest for oblectivity.

[FR Doc. 89–15252 Filed 6–27–89; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 123
Wednesday, June 28, 1989

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).

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 2:30 p.m., Monday, July 3, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

9. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: Salary administration for the Office of Employee Benefits.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 26, 1989.

William W. Wiles,
Secretary of the Board

[FR Doc. 89-15431 Filed 6-26-89; 2:55 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 26139, June 21, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 26, 1989.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Consideration of exception from the Board's policy on partisan political service by an employee of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: June 26, 1989.

Jennifer J. Johnson,
Associate Secetary of the Board.

[FR Doc. 89-15434 Filed 6-26-89; 3:27 pm]
BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Thursday, July 6, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last item is closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Head-On Collision Between Iowa Interstate Railroad Extra 470 West and Extra 406 East, Altoona, Iowa, July 30, 1988.
2. Marine Accident Report: Fire On Board the Bahamian Passenger Ship SCANDINAVIAN STAR, Gulf of Mexico, May 15, 1988.
3. Reconsideration of Probable Cause: Aircraft Accident—Grand Canyon Airlines, Inc., and Helitech, Inc., Midair Collision, Grand Canyon National Park, June 18, 1986.
4. Opinion and Order: Administrator v. Thorn, Docket SE-8153; disposition of respondent's appeal.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,
Federal Register Liaison Officer.

June 23, 1989.

[FR Doc. 89-15343 Filed 6-26-89; 8:57 am]
BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 54, No. 123
Wednesday, June 28, 1989

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV-89-040]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Relaxation of Outgoing Quality Regulations and Changes in the Terms and Conditions of Indemnification for 1989 Crop Peanuts

Correction

In rule document 89-14135 beginning on page 25439 in the issue of Thursday, June 15, 1989, make the following corrections:

1. On page 25442, the table heading "INDEMNIFIABLE GRADES" should be flush with the left margain and the heading "Maximum Limitations" should be centered immediately above the table.

2. On the same page, in the table, in the fourth column, in the 10th line, the entry corresponding with "Runner U.S. Splits (not more than" should read "2.00".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 570

[Docket No. R-89-1440; FR-2647]

RIN 2501-AA83

Urban Development Action Grants (UDAG) Program; Changes to Project Selection System

Correction

In rule document 89-11736 beginning on page 21388 in the issue of Wednesday, May 17, 1989, make the following correction:

On page 21390, in the second column, in the third column of the table, under the heading "Maximum points" the third entry should read "33".

BILLING CODE 1505-01-D

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

Correction

In rule document 89-9654 beginning on page 16336 in the issue of Friday, April 21, 1989, make the following corrections:

1. On page 16343, in the first column, in the eighth line, "herein" should read "therein".

2. On page 16344, in the third column, in the fourth complete paragraph, in the fifth line "necessary" should read "necessity".

BILLING CODE 1505-01-D

federal register

Wednesday
June 28, 1989

Part II

Environmental Protection Agency

40 CFR Parts 51 and 52

Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Air Quality, New Source Review; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL 3603-7]

Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 25, 1983, EPA proposed amendments to its regulations addressing the construction of new and modified stationary sources of air pollution (48 FR 38742). The EPA proposed changes in eight areas of those regulations and provided additional guidance in three other areas. Today's notice announces final action on that part of the August 25 proposal dealing with "Federal enforceability" of emissions controls and limitations at a source. Essentially, EPA is retaining the existing Federal enforceability requirement. However, EPA is clarifying its regulation to specify that stationary source operating permits issued by a State may be treated as federally enforceable in certain situations, provided that the State's operating permit program has been approved by EPA and incorporated into the State implementation plan (SIP) under section 110 of the Clean Air Act (Act).

DATES: This action is effective on June 28, 1989.

ADDRESS: The public docket for this rulemaking, A–82–23, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying, as provided by the Act.

FOR FURTHER INFORMATION CONTACT: For Federal enforceability issues (except operating permits), Mr. David Solomon, EPA, New Source Review Section, Office of Air Quality Planning and Standards (MD–15), Research Triangle Park, North Carolina 27711; (919) 541–5375, (FTS) 629–5375. For operating permit issues, Mr. Kirt Cox, EPA, Air Quality Management Division, Office of Air Quality Planning and Standards (MD–15), Research Triangle Park, North Carolina 27711: (919) 541–5399, (FTS) 629–5399.

SUPPLEMENTARY INFORMATION:

I. Introduction

In August 1980, EPA extensively revised its regulations concerning the preconstruction review of new and modified stationary sources under the Act, 42 U.S.C. 7401–7642, in response to *Alabama Power Company* v. *Costle,* (the *Alabama Power* case) 636 F.2d 323 (D.C. Cir. 1979) (see 45 FR 52676, August 7, 1980). Five sets of regulations resulted from those revisions. One set, 40 CFR 51.166 (formerly 40 CFR 51.24), specifies the minimum requirements that a prevention of significant deterioration (PSD) [1] program must contain in order to warrant approval by EPA as a revision to a SIP under section 110 of the Act. Another set, 40 CFR 52.21, establishes the Federal PSD program, which is currently applied in many States as part of the SIP. Another set, consisting of two regulations, 40 CFR 51.165 (a) and (b) (formerly 40 CFR 51.18 (j) and (k)), specifies the elements of an approvable State permit program for preconstruction review in, or affecting, nonattainment areas. The fourth set, 40 CFR Part 51, Appendix S, embodies the nonattainment area Emissions Offset Interpretative Ruling (Offset Ruling), previously revised in January 1979 (44 FR 3273). The fifth set, 40 CFR 52.24, embodies the construction moratorium which applies in certain nonattainment areas.

In the fall of 1980, numerous organizations petitioned the U.S. Court of Appeals for the D.C. Circuit to review various provisions of those PSD and nonattainment preconstruction regulations. The court consolidated those petitions with a collection of challenges to the 1979 revisions to the Offset Ruling in *Chemical Manufacturers Association (CMA)* v. *EPA,* No. 79–1112 (D.C. Cir.). In June 1981, EPA began negotiations with the industry petitioners to settle the *CMA* case. The EPA entered into a comprehensive settlement agreement with the *CMA* petitioners in February 1982. Subsequently, the court granted a stay of the case pending implementation of the settlement agreement.

In the settlement agreement, EPA committed to propose certain amendments set forth in Exhibit A to eight parts of the regulations pertaining to new source review (NSR or preconstruction review) [2], to provide guidance in three additional areas, and to take final action on the proposals. On August 25, 1983, EPA published a notice of proposed rulemaking in accordance with that agreement (48 FR 38742). Among other things, EPA proposed to delete from certain provisions the requirement that controls or limitations on a source's emissions must be "federally enforceable" (i.e., enforceable by EPA) in order to be considered in determining whether a new or modified source will be "major" and therefore subject to PSD or nonattainment permitting requirements (applicability determination). The EPA also proposed to delete the requirement in § 51.18(j)(3)(ii)(e) (now § 51.165(a)(3)(ii)(e)) that emissions reductions obtained by one source from another (offsets) in order to obtain a nonattainment permit be federally enforceable.[3]

In the August 25, 1983 notice of proposed rulemaking, the Administrator stated that EPA would review comments on the proposed amendments carefully and with an open mind in order to make an independent judgment on their merits prior to taking any final action. The EPA has since received extensive public comment, including that presented at a public hearing held on September 29, 1983.

Today EPA is taking final action on the proposed changes to the "Federal enforceability" provisions. Essentially, as discussed in detail below, EPA is retaining the existing "Federal enforceability" requirements without change. However, EPA is amending the definition of "federally enforceable" and 40 CFR 52.23 to specify that State-issued operating permits are federally enforceable under certain circumstances. In another notice being published today, EPA is also taking final action on the remaining August 25, 1983 rulemaking proposals. Accordingly,

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[1] A PSD program refers to requirements that must be met in an area designated as being in attainment of a national ambient air quality standard (NAAQS) or unclassifiable (see 40 CFR 51.166 and 52.21). Areas that are designated as nonattainment for a NAAQS must meet certain other requirements aimed at ultimate attainment of the NAAQS (see, e.g., 40 CFR 51.165(a) (formerly 40 CFR 51.18(j)) and 52.24).

[2] An NSR, or preconstruction review, is required as part of a SIP under 40 CFR Part 51, Subpart I (formerly 40 CFR 51.18 and 51.24) to ensure that construction or modification of a source will not cause violations of the State's control strategy or interfere with attainment or maintenance of a NAAQS. An NSR program includes permit programs satisfying the Act's requirements for review of major stationary sources in nonattainment and PSD areas (40 CFR 51.165(a) and 51.166) under circumstances described in more detail later in this notice. In addition to the major source NSR provisions, which are the focus of this rulemaking, virtually all States have a general NSR program applying to most minor sources.

[3] A basic requirement of nonattainment NSR of a potential major source is that the applicant for a nonattainment construction permit must show that its new emissions will be offset by emission reductions elsewhere (42 U.S.C. 7503(1)).

today's final actions fulfill EPA's commitments under Exhibit A of the *CMA* settlement agreement.

II. Background of Federal Enforceability Requirements

The five sets of PSD and nonattainment regulations promulgated in 1980 aim their substantive preconstruction review requirements at new "major stationary sources." Each set of rules defines a "major stationary source" as any stationary source that would have the potential to emit certain specified amounts of air pollutants (e.g., 40 CFR 51.165(a)(1)(iv) and 52.21(b)(1)). In each case, "potential to emit" is then defined as the "maximum capacity of a stationary source to emit a pollutant under its physical and operational design," but any limitation [4] on the capacity of a source to emit a pollutant is treated as part of its design only if the control or limitation is federally enforceable (e.g., id. at §§ 51.165(a)(1)(iii) and 52.21(b)(4)). The regulations then define "federally enforceable" as "enforceable by the Administrator" (e.g., id. at § 52.21(b)(17)).[5] The definition of "federally enforceable" adds that limitations that are enforceable by the Administrator include (but are not limited to) limitations imposed by: (1) The SIP itself, (2) a Federal PSD construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with Subpart I of 40 CFR Part 51 or 40 CFR 51.166, (3) a new source performance standard (NSPS) promulgated under section 111 of the Act (see 40 CFR Part 60), or (4) a national emission standard for hazardous air pollutants (NESHAP) promulgated under section 112 (see 40 CFR Part 61). In practice, EPA previously has declined to consider most other types of limitations as being "federally enforceable," including limitations that are enforceable by the Administrator under statutes other than the Clean Air Act.

In effect, those definitions require EPA and State authorities, in calculating the potential to emit of a proposed new source for a particular pollutant, to assume that the source would emit the pollutant at the maximum rate that the source could physically emit it, unless the source were subject to a limitation on its operation that EPA could enforce directly.

Each of the five sets of regulations also aims its substantive NSR requirements at "major modifications," a term which includes any significant net emissions increase at a major stationary source. The accounting system for determining such significant increases closely parallels the one described above for determining whether new sources exceed specific emission thresholds [6] (e.g., id. at § 52.21(b)(2)). Specifically, the regulations define a "net emissions increase" as the amount by which the sum of: (1) The increase in "actual" emissions from the proposed change, and (2) any contemporaneous and otherwise "creditable" increases and decreases in "actual" emissions at the source would exceed zero (e.g., id. at § 52.21(b)(3)(i)). The regulations then provide that a contemporaneous decrease in emissions is creditable only to the extent that it "is federally enforceable at and after the time that actual construction on the particular change begins" (e.g., id. at § 52.21(b)(3)(vi)(b) (emphasis added)).

Since a proposed new unit at an existing source has yet to produce emissions, each set of regulations also defines the actual emissions of any such change as its potential to emit (e.g., id. at § 52.21(b)(21)(iv)). The definition of "potential to emit," as noted above, contains a requirement for Federal enforceability of controls and limits.

Finally, for sources already in operation, each set of regulations provides that actual emissions, when they cannot be determined, may be presumed to equal any source-specific allowable emissions for the unit (e.g., id. at § 52.21(b)(21)(iii)). The definition of allowable emissions, like the definition of potential to emit, also requires, in many cases, Federal enforceability of any applicable limitations (e.g., id. at § 52.21(b)(16)).

The general purposes of the Federal enforceability requirements were: (1) To corroborate, through the procedures for obtaining SIP revisions or federally approved construction permits, that any voluntarily imposed limits on a source's capacity to emit are, in fact, part of its physical and operational design, and that any claimed limitations will be observed; (2) to ensure that an entity with strong enforcement capability has legal and practical means to make sure that such commitments are actually carried out; and, generally, (3) to support the goal of the Act that EPA be able to enforce all relevant features of SIP's that are necessary for attainment and maintenance of NAAQS and PSD increments (see 48 FR 38748, August 25, 1983).

III. Proposed Amendments to the Federal Enforceability Requirements

Shortly after the Federal enforceability requirements were promulgated, several parties to the *CMA* settlement agreement, representing industry, challenged requirements for Federal enforceability in the "potential to emit" and "net emissions increase" definitions, in court and in administrative petitions for reconsideration. They claimed that the Federal enforceability requirements were unnecessary and unduly burdensome. Specifically, they claimed that each approved SIP already prohibits construction of a new major stationary source or major modification without a PSD or nonattainment construction permit. Accordingly, any company that builds a project that emits, or has the potential to emit, pollution in excess of the applicable thresholds for classification as "major," without first obtaining such a permit, would be in violation of the law and therefore subject to subsequent enforcement action by EPA. Thus, they argued, EPA does not need the Federal enforceability requirement to deter a source operator from using a non-Federal control or limit to escape PSD or nonattainment NSR and then violating those controls or limits since, even if EPA could not enforce the limitations, it could enforce the prohibition against construction or modification without a PSD or nonattainment permit and shut down the source.[7]

The petitioners also pointed out that, to obtain a federally enforceable limitation, a company would have to apply to the State agency for the change

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[4] As used in the rules and throughout this notice, "limitations" on a source's capacity to emit include such things as pollution control equipment, restrictions on operating hours, and restrictions on types or quantity of fuels to be used (see 40 CFR 51.165(a)(1)(iii)).

[5] The EPA's primary enforcement authority in such cases derives from section 113 of the Act, which authorizes EPA, under certain conditions, to enforce violations of a SIP and of certain orders and emissions standards. The EPA may also enforce, under section 304(a) of the Act, against any person: (1) Who violates any emissions standard or limitation (or order issued) under such standards or limitations, (2) or who constructs any new or modified major stationary source without a proper PSD or nonattainment construction permit, or (3) who violates any conditions of such a permit.

[6] For PSD purposes, pollutants currently included in this review are: (1) The pollutants for which a NAAQS, NSPS, or NESHAP exists; and (2) their precursors (e.g., 40 CFR 52.21(b)(2)(i) and (b)(23)(i)). For nonattainment purposes, they are the pollutants for which NAAQS exist and their precursors (see 45 FR 52711 (August 7, 1980)(col. 3); 40 CFR 51.165(a)(1)(v)(A)).

[7] The industry parties apparently assumed EPA would be aware of any actual violations of limitations and thresholds, but did not elaborate on that or on how monitoring of actual emissions would be as effective in preventing violations as the current regulations.

and then await whatever public procedures and EPA scrutiny were required. As a result, industry contended, a company could experience substantial expense and delay just in obtaining the necessary limitation.

In the August 25, 1983 notice of proposed rulemaking, EPA stated preliminarily that the Federal enforceability requirement might be unnecessary to some extent and that it would consider deleting it. The proposal was based on the possibility of delay and consequent expense that could arise from processing certain construction permit limitations or revising the SIP to make the applicable limitations federally enforceable. However, EPA emphasized that it still intended to achieve the purposes for which Federal enforceability was originally designed (48 FR 38748, August 25, 1983). Nonetheless, EPA was inclined at that time to think that the purposes of the Federal enforceability requirements could also be served by a requirement that limitations be enforceable by State or local governments, provided that such limitations were discoverable by EPA and the public (id). Accordingly, EPA proposed to: (1) Delete the word "federally" from the term "federally enforceable" in the definitions of "potential to emit," "net emissions increase," "allowable emissions," and "major modification,"[8] and from § 51.18(j)(3)(ii)(e) (now § 51.165(a)(3)(ii)(e)) (regarding offsets);[9] and (2) to replace the definition of "federally enforceable" with an expanded definition of "enforceable" (including discoverable limitations enforceable under State or local law).

IV. Summary of Comments on August 1983 Proposal[10]

A. Comments Generally Supporting the Proposal

As expected, many industry representatives expressed strong support for the proposed deletion of the Federal enforceability requirements. Most of these comments also supported the proposed new definition of "enforceable," although two industry associations suggested that no definition of "enforceable" was necessary.

In addition to the arguments discussed in the preceding section, the industry commenters made several general assertions in support of the proposal. First, they argued that since State and local operating permits and other requirements are still enforceable by the non-Federal authorities, source operators would comply with the State and local limitations even without Federal enforcement. Second, several commenters claimed that Federal enforceability requirements are inconsistent with the requirement in section 101 of the Act that State and local authorities be given primary responsibility for preventing and controlling air pollution. Third, all the industry commenters asserted that elimination of the Federal enforceability requirement would substantially reduce red tape and the delays and costs of obtaining a federally enforceable permit or SIP limitation. Fourth, several commenters claimed that Federal enforceability in the definition of "potential to emit" is inconsistent with the decision of the D.C. Circuit Court of Appeals in the *Alabama Power* case, 636 F.2d 323 (1979). In that case, the court clarified that a source's potential to emit must be based on actual emissions or "design capacity" for emissions of a source, including the effects of pollution control equipment required by law to be included in the design. The commenters argued that this focus on actual emissions or design implicitly requires EPA to give credit, in calculating a source's emission potential, for any controls or limitations required by State or local law or permits, even if they are not federally enforceable.

Fifth, several commenters argued that citizen enforcement of State and local permit limitations under the citizen suit provisions of section 304 of the Act would be preserved, even without the additional requirement of Federal enforceability, provided that the State/local permit processes are "coherent" and the permits themselves remain on file.[11]

One commenter also suggested, contrary to the position EPA took in the proposal, that offset credits should be considered enforceable (by a State, if not by EPA) even if the source providing the offset is not bound to reduce its emissions by a permit or other State limitation, provided that the offset source stipulates to the State that it will reduce its emissions and that the SIP allows such stipulations. The commenter argued that a State could enforce such a stipulation under its authority to prevent violations of the SIP.

B. Comments Opposing the Proposal

Several State air quality programs and environmental groups strongly opposed the proposed deletion of the Federal enforceability requirements on several grounds. First, the association of State and Territorial Air Pollution Program Administrators (STAPPA) commented that even though State and local governments have primary pollution control responsibility, they need the support of a credible Federal enforcement program to be most effective.

Two commenters asserted that Federal enforceability is the only effective means of assuring, during applicability determinations, that limitations are really intended to be observed and for assuring that offsets and limits are actually implemented. These commenters apparently felt that State and local enforcement is often less vigorous and effective than Federal enforcement, especially in light of the economic and other pressures some businesses can exert on State and local enforcement authorities. One commenter felt that the procedures involved in obtaining a federally enforceable limitation or offset are the only effective means of assuring that EPA and the public have a chance to identify and evaluate the intended limitation in advance.

With regard to offsets, one commenter pointed out that section 173 of the Act requires offset commitments to be "legally binding" and that when Congress enacted section 173, in 1977, it implicitly ratified EPA's Offset Ruling which required Federal enforceability. Thus, the commenter concluded, legally binding commitments probably refer to federally enforceable commitments.

Finally, the same commenter argued that citizen enforcement of offset transactions under section 304 would only be effective, as a practical matter, if the records of all such transactions are centrally located (i.e., at EPA's Regional Offices) in a standardized system, as they are under the existing

[8] The definitions of "major modification" exempt from applicability determinations certain increases in operating hours and switches in fuel or material used, unless the increase or switch is barred by a federally enforceable limit (e.g., 40 CFR 52.21(b)(2)(iii)(e)(1)).

[9] Although external offsets are not used to avoid nonattainment NSR, the purposes of requiring Federal enforceability of such offsets are essentially the same as for requiring Federal enforceability of limitations used to avoid such review.

[10] A more detailed "Summary of Comments" has been placed in the public docket for this rulemaking.

[11] Two industry commenters also alleged that the 1980 Federal enforceability requirements were procedurally invalid because, in their view, EPA did not provide adequate prior notice or opportunity to comment on the concept and lacked adequate record support for the requirement. The EPA disagrees with those comments and believes that the 1980 requirements were a logical outgrowth of the preceding proposal (44 FR 51924, September 5, 1979) and were amply supported by the rulemaking record at the time. However, those comments are now moot. Any possible procedural defects in the 1980 rules regarding Federal enforceability have been cured by this rulemaking.

Federal enforceability regulations. This commenter also criticized the proposal as it would affect Federal enforcement efforts, since enforcement actions against sources already constructed could be more difficult than action taken prior to construction.

V. Decision and Response to Comments

After consideration of the comments and reevaluation of the preliminary statements made in the August 1983 proposal, EPA has decided to retain the Federal enforceability requirement in all the provisions discussed above. In addition, to provide full internal consistency within the Federal enforceability provisions of 40 CFR Part 51, Appendix S (known as the "Offset Ruling"), EPA is, in a separate document also being published in today's **Federal Register**, amending section IV.C.3. of the Offset Ruling to clarify that emissions offsets involving reduced operating hours or source shutdowns must, like all emissions offsets, be federally enforceable (see Appendix S, section II.A.6.(v)(b)). In light of today's decision, EPA will not add the proposed new definition of "enforceable" to the regulations. However, as discussed below, EPA is clarifying that State operating permits may be treated as federally enforceable under certain conditions. This clarification will reduce any problems which may arise from the Federal enforceability requirements. The clarification is formally indicated by slight amendments to the definition of "federally enforceable" and to 40 CFR 52.23.

A. Federal Enforceability Is Necessary to Ensure That Limitations and Reductions Are Implemented

Since sources may avoid the protective requirements of PSD and nonattainment NSR by relying on State or local limitations or reductions, it is essential to the integrity of the PSD and nonattainment program that such State or local limitations be actually and effectively implemented.[12] The EPA continues to believe, as it did in 1980 (45 FR 52688–89), that Federal enforceability is both necessary and appropriate to ensure that such limitations and reductions are actually incorporated into a source's design and followed in practice.

The EPA agrees with those commenters, including STAPPA, who asserted that Federal enforceability is necessary to support State and local enforcement efforts. Although EPA believes that most State and local governments are committed to effective enforcement of their permit programs, it is true—as STAPPA and some environmental commenters pointed out—that the level of State and local enforcement is uneven, and that some States and localities have been unwilling or unable to enforce their programs effectively. It follows that, in the absence of a Federal enforcement capability to back up State and local efforts, there would be somewhat less incentive for sources to actually observe non-Federal limitations or, in the case of offsets, to make the reductions for which credit has already been given. The EPA cannot agree, contrary to the suggestions of some source operators, that State and local enforcement alone would always provide enough incentive to source operators to ensure adequate compliance.

The EPA also believes, as suggested by some environmental commenters, that, absent Federal enforcement capability, some State and local governments would be more susceptible to economic and other pressures from industry that could actually make State and local enforcement less effective than it currently is.[13] Conversely, the presence of a Federal ability to enforce limitations and reductions can give State and local bodies more leverage in dealing with sources to ensure compliance and should make such bodies more effective in their enforcement efforts.

The EPA also agrees with those commenters who pointed out that the processes by which federally enforceable limits or offset reductions are imposed (e.g., public notice and comments, notification to EPA) are the best and most reliable ways to ensure, in advance, that a source actually intends to observe a limitation or make a reduction in the future. Whether the limitation is contained in a SIP revision or a State permit issued under regulations approved by EPA and included in the SIP, public notice and opportunity for participation prior to construction is virtually guaranteed. At that point, EPA, or anyone else, can analyze the record to determine: (1) Whether a proposed limitation or reduction will produce the benefits claimed, (2) whether the applicant is seriously committed to the limitation, and (3) whether practical means to monitor compliance exist. Even though EPA has confidence that most State and local procedures would allow for some sort of public scrutiny even if Federal enforceability were deleted and the proposed expanded definition of "enforceable" adopted, there would be no assurance that every permit or limitation would receive effective scrutiny.

Similarly, as one environmental group pointed out, the current Federal enforceability requirement facilitates citizen enforcement of offsets (and, implicitly, other limitations) under section 304 of the Act, since all permits and commitments meeting the definition of Federal enforceability must undergo some public scrutiny and are kept in standardized files in EPA's Regional Offices. By contrast, without such a requirement, as under the proposed definition of "enforceable," the only records of many such transactions would be scattered around various State and local offices and would be more difficult to obtain. At a minimum, this could make citizen enforcement more difficult and costly and, therefore, less effective as a means of ensuring that limitations and reductions are actually implemented.[14]

For the reasons discussed above, EPA disagrees with those industry commenters who claimed that nonfederally enforceable State and local permits, if discoverable, would be an adequate substitute for Federal enforceability. The absence of potential Federal enforcement could result in: (1) Less incentive for sources to observe limitations; (2) more pressure on, and incentive for, State and local authorities to relax enforcement; and (3) decreased opportunities for effective citizen enforcement. Mere discoverability of permit limitations would not necessarily correct any of these problems, although it could create somewhat greater

[12] Similarly, it is important to the statutory goals of the nonattainment permit program (e.g., that all new construction is accompanied by offsets to assure "reasonable further progress" toward attainment, section 173(1)(A)) that external offsets from outside sources be actually implemented.

[13] The EPA also recognizes, as pointed out by the California Air Resources Board, that absent a nationwide, Federal enforcement presence, industry would be inclined to build, or move, sources to States with the least effective enforcement efforts. Such a possibility would give businesses more leverage over the State governments and could foster a competition among the States to actually relax enforcement efforts. The legislative history of the 1977 Act confirms that Congress intended the PSD requirements (by setting minimum criteria to be met in all States) to reduce such competition (H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 140 (1977)).

[14] In addition, it is not certain that nonfederally enforceable State permit limitations or other commitments could be enforced under section 304 at all. That section allows citizen suits against any person who violates any limitation under the Act or any order issued by a State with respect to such a limitation, or who proposes to construct or does construct a major new source without a PSD or nonattainment construction permit (42 U.S.C. 7604(a)(1)). While violations of federally enforceable permit limitations may be subject to section 304 citizen suits, violations of nonfederal limitations or offsets arguably might not be.

incentives for compliance than would exist without it. Moreover, discoverability could itself pose practical problems, for both EPA and citizens, in those situations where the State or local permit process is incomplete or poorly organized or recorded.

The EPA also believes, contrary to some commenters' suggestions, that EPA's authority to enforce the prohibitions in most SIP's and in the Act (see sections 110(a)(2)(I), 165(a)(1), 167, and 304(a)(3)) against construction of major sources without a PSD or nonattainment permit (see also sections 113 and 167 of the Act) is not a completely satisfactory substitute for the current Federal enforceability requirements.[15] The commenters claimed that if any sources escaped PSD or nonattainment permit requirements solely because of a nonfederally enforceable State or local limitation, and later violated that limitation, then EPA could treat that source as major and enforce the construction prohibitions to maintain the integrity of the PSD and nonattainment programs (see 40 CFR 51.166(r)(2)) (formerly 40 CFR 51.24(r)(2)).[16] However, the exercise of this authority depends in large part on EPA's ability to show that the new source or modification is actually emitting a pollutant at levels above the relevant annual threshold. This is much more difficult in practice than showing that an instantaneous emissions limitation in a federally enforceable permit has been exceeded. This is often difficult to do as a practical matter and may be even more difficult in situations involving nonfederally enforceable permits or limitations where EPA had little or no notice of, or opportunity to participate in, that process. In addition, courts may be less willing to order strict compliance with the PSD and nonattainment construction prohibitions in those situations (e.g., to shut down the major source until the appropriate permit is obtained), given the impact that such an order could have on the source operator's investment and operation. In short, EPA does not believe that the ability to enforce PSD and nonattainment construction prohibitions, in these cases, in the absence of current Federal enforceability, would be a sufficient deterrent to prevent violation of nonfederally enforceable limitations or to maintain the integrity of the PSD and nonattainment programs.[17]

In summary, EPA has concluded that the specific purposes for which the Federal enforceability requirement was originally intended, and to which EPA recommitted itself in the August 1983 proposal, cannot be fully or adequately achieved in the absence of Federal enforceability. The EPA recognizes that those purposes—i.e., corroboration prior to construction or modification that limitations will be included in a source's design and observed in operation, and the presence of a strong enforcement authority capable of holding a company to its commitments—can sometimes be achieved by State or local authorities implementing nonfederal limitations. However, in general, State and local enforceability alone will not fully assure that those purposes are met across the nation. Rather, State and local enforcement, supplemented by potential Federal enforcement of limitations, is a much more effective and efficient method of achieving those goals and protecting the integrity of the PSD and nonattainment NSR programs.

The EPA also recognizes, however, as several commenters pointed out, that the Federal enforceability requirements could result in some lengthy and expensive delays in obtaining federally enforceable permits or SIP revisions. However, some delays can be minimized by streamlined processes for certain SIP revisions, including the direct final rulemaking process (47 FR 27073, June 23, 1982). The latter procedure can often be used by EPA to process and publish noncontroversial SIP revisions in less than 6 months. More significantly, today's action clarifies that States have the option of implementing a program pursuant to which State operating permits could be treated as federally enforceable. Pursuant to this approach, States have the option of adopting certain permit processing procedures such that operating permits issued under them would be considered federally enforceable, with no need for the individual permits to be submitted as SIP revisions. Such a program can reduce the potential for delay which exists in the present system, while serving to enhance the permitting process generally.

B. Federal Enforceability Is Consistent With the Requirements of the Act and the Alabama Power Case

Several industry commenters claimed that Federal enforceability is inconsistent with various provisions of the Act and with the decision in the *Alabama Power* case. The EPA disagrees.

First, EPA disagrees with those commenters who claimed that Federal enforceability is inconsistent with section 101(a)(2) of the Act, which states that regulation of air pollution sources is the primary responsibility of States and local governments. The EPA has always recognized this and encouraged and assisted the States in exercising their responsibility. The fact is, however, that the Federal enforceability requirements do not supersede or interfere with State and local governments' responsibility or their ability to take the primary role in regulating sources. Rather, as STAPPA recognized, the Federal enforceability requirements supplement and provide necessary support to State/local enforcement efforts. Indeed, as discussed above, Federal enforceability may promote more effective State/local enforcement by giving sources more incentive to comply and providing the States and localities more leverage over industrial sources. In any case, consistent with the primary role of State/local governments, EPA generally would not get involved in enforcing limitations unless those other bodies failed to enforce adequately.

Moreover, the Act itself, far from requiring EPA to remove itself from the enforcement of limitations or offsets, expressly authorizes EPA to enforce violations of SIP's by any person (which includes many source limitations under the definition of federally enforceable), with due deference to State/local primacy (see sections 113 and 167 of the Act). Thus, Congress intended that EPA play an important role in the enforcement of SIP requirements, and the Federal enforceability requirements are consistent with that intent.

The EPA also disagrees with those commenters who claimed that the Federal enforceability of limitations in the potential to emit definition is inconsistent with Congress' intent in using that term in section 169 of the Act.[18] Those commenters pointed out

[15] The EPA did suggest in the August 1983 proposal that that authority would help make the Federal enforceability requirements unnecessary (48 FR 38747). However, EPA did not suggest that this could be a complete substitute for the existing requirements.

[16] In some such cases, the State probably could enforce the PSD and nonattainment construction prohibitions as well. However, as discussed above, States may be less willing or able to do so in the absence of potential EPA enforcement than they now are.

[17] The comment of one industry source that stipulations by a source to reduce emissions for offset purposes should be considered enforceable by a State is now moot, since EPA has decided to retain the Federal enforceability requirement.

[18] The definition of "major emitting facility" in section 169, which is based on a source's potential to emit, on its face applies only to the PSD program.

Continued

that the court in the *Alabama Power* case found that a source's potential to emit must be based on its design capacity, including pollution control equipment required by law to be installed and used at the source (636 F.2d at 354). However, the court declined to express any opinion on whether, and to what extent, legal limitations on the operation of a source should be included in a source's design capacity (id. at 355 n.73). The industry commenters suggested, nonetheless, that Congress intended any legal limitations, including operational limits, whether or not enforceable by EPA, to be included in a source's design capacity.

However, EPA does not believe that anything in the court's opinion, or in the language, or in the legislative history, of section 169 requires that every legal limitation, of any type, be included in a source's design capacity. In fact, the court implicitly left it to EPA's discretion (in the first instance) to determine what type of operational limits, if any, should be credited to a source (id.). The EPA believes that it is within its discretion in requiring Federal enforceability of an operational limit before including it in a source's design, consistent with the court's analysis of "potential to emit" (see 45 FR 52688, August 7, 1980).

In the *Alabama Power* case, the court concluded that whether a source is major depends on its maximum actual emissions or its design capacity, which includes anticipated functioning of pollution controls (636 F.2d at 353). It then referred to pollution controls required by law as examples where the functioning of such controls can be anticipated. Essentially, the court said that EPA must predict a source's future maximum emissions in determining design capacity and that pollution controls required by law are a reasonable means of predicting such future emissions. Although the court did not otherwise indicate how EPA should make such predictions, the court was evidently referring to predictions of actual emissions (id.). The EPA believes, therefore, that Congress (and the court) intended, or would have intended, such predictions to be reliable and reasonably accurate projections of future emissions.[19] As discussed above, EPA does not believe that nonfederally enforceable limitations are as likely to be as uniformly observed as federally enforceable limits and that requiring Federal enforceability is the best and most effective way to ensure maximum compliance by sources with limits. Thus, EPA believes that the Federal enforceability requirement is the most appropriate and reliable way to predict maximum future emissions and that it is, therefore, consistent with section 169 to define "potential to emit" to include that requirement (see 45 FR 52688).[20]

Similarly, EPA believes (as one commenter pointed out) that the Federal enforceability requirement in 40 CFR 51.165(a)(3)(ii)(e), requiring all emissions offsets used to satisfy the nonattainment preconstruction review requirements to be federally enforceable, is consistent with the requirement of section 173 that such offsets must be "legally binding." The 1977 legislative history of the Act supports that interpretation of section 173. It is clear that Congress was well aware at the time that EPA was then operating under an early (1976) version of an Offset Ruling (41 FR 55524, December 21, 1976) (see, e.g., 42 U.S.C. 7502 note (1982) H.R. Rep. No. 95–294, supra, at 13–14, 208). Congress implicitly ratified the 1976 Offset Ruling approach by giving each nonattainment State the option of choosing to remain under that Offset Ruling indefinitely, and by requiring that that Offset Ruling remain in effect [21] in every State, unless and until the State revised its SIP to comply with the nonattainment provisions in sections 172–173 (See 42 U.S.C. 7502 note; H.R. Rep. No. 95–294, supra, at 208; H.R. Rep. No. 95–564 (Conf. Rep.), 95th Cong., 1st Sess. 156 (1977)). The 1976 Offset Ruling, in turn, required that offsets be enforceable by EPA as well as by States and private parties (41 FR 55530). As one commenter correctly observed, since there is no indication in the legislative history that Congress intended to revise that early Federal enforceability requirement in the Offset Ruling, it is likely that the reference to legally binding offsets in section 173 was based on that same concept. Thus, 40 CFR 51.166(a)(3)(ii)(e) is consistent with section 173.[22]

Moreover, Federal enforceability is often even more appropriate and more important for offsets in nonattainment permits than it is for limitations that are used by a source to avoid nonattainment permits. In the latter situations, even if the limitations were not federally enforceable, EPA would still have potential power to enforce construction prohibitions against sources that subsequently become major by virtue of their failure to observe such limitations. By contrast, without Federal enforceability of offsets, EPA would have no such leverage against an external offset source where that source fails to make the promised emissions reduction. For the same reasons that State and local enforcement are not, in general, an adequate substitute for Federal enforceability in the context of making applicability determinations, they are even less satisfactory in the context of offsets.

C. Response to Other Comments

One industry commenter, although urging EPA to drop the Federal enforceability requirement in general, argued that EPA should retain Federal enforceability in the definition of "major modification." That definition exempts certain fuel switches and increases in operating hours from being considered as modifications, even if they would increase emissions from the source,

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However, those terms are equally applicable to NSR under the Offset Ruling, nonattainment requirements under Part D of Title I of the Act, and the construction prohibitions of sections 110(a)(2)(I) and 173(4) (see 45 FR 52689, August 7, 1980). Therefore, EPA's "potential to emit" definition is the same in all the PSD and nonattainment regulations, and EPA's analysis of what Congress (and the court) meant by potential to emit applies to all those regulations.

[19] In fact, the two examples the court gave (636 F.2d at 353) of controls required by law—i.e., NSPS and SIP provisions—are included in EPA's definition of "federally enforceable." Moreover, as the court indicated, Congress meant for major sources to be those that actually emit certain amounts of a pollutant, either at present or in the future (id.). It would not make sense for a source to be given credit for future emission limitations if there is no reasonable expectation that those limitations will actually be observed.

[20] For essentially the same reasons Federal enforceability is an appropriate part of the definition of allowable emissions," which may be used to define a new unit's actual emissions in applicability determinations (e.g., 40 CFR 52.21 (b)(21)(iii)). Since Congress meant for the statutory PSD and nonattainment requirements to apply only to sources actually emitting major quantities of pollutants, (see the *Alabama Power* case, 636 F.2d at 352–53), it follows that any method used to estimate actual emissions (other than direct measurement) should be as reliable and accurate as possible. Federal enforceability of emissions limitations is the best available means of estimating actual emissions for a new unit which has yet to produce any emissions.

[21] Congress intended that EPA have authority to amend the Offset Ruling (see 42 U.S.C. 7502; H.R. Rep. No. 95–294, supra, at 211), as EPA did in 1979 and 1980. A few areas are subject to that Offset Ruling.

[22] For essentially the same reasons that Federal enforceability of external offsets is consistent with the Act, Federal enforceability of internal emission reductions as an element of avoiding nonattainment or PSD permits is also consistent with the Act. Under the definition of "net emissions increase" (e.g. 40 CFR 52.21(b)(3)), a modification at a source may escape classification as "major" if its creditable (i.e., federally enforceable) emission decreases are large enough. If emission offsets in nonattainment permits must be federally enforceable, it makes sense that internal reductions used to escape such permit requirements should be no less enforceable.

unless those changes were prohibited by a federally enforceable (construction) permit condition. The industry commenter apparently feared that deletion of the requirement for Federal enforceability of such prohibitions in that definition, as proposed in the 1983 notice of proposed rulemaking, would work against industry since it would require many more fuel switches and operating hour changes to be counted as modifications than under the current rules. In fact, the commenter suggested that EPA increase the number of changes exempt from the modification definition by completely eliminating any reference to prohibited changes.

The EPA has decided not to amend the definition of major modification. The EPA believes that all NSR definitions should be as consistent as possible and that deleting the requirement for Federal enforceability in the definition of major modification would be inconsistent with its decision to retain Federal enforceability elsewhere. Moreover, the proposed revision of that definition could have created confusion and uncertainty as to which State and local prohibitions were enforceable. The EPA also agrees with the commenter that deletion of the word "federally" potentially could increase the number of prohibited fuel switches and other changes dramatically and could largely defeat the purpose for which the exemption was originally intended.

On the other hand, EPA must reject the commenter's suggestion that the definition be revised to exclude all fuel switches and operating hour changes from being considered modifications. One of the purposes of the Federal enforceability provision in the current definition is to support the prohibitions against such changes in SIP construction permits by making a violation of such a prohibition grounds, if the modification is major, for requiring a new PSD or nonattainment permit. The EPA believes this provision provides valuable added incentive to sources to comply with their permit limitations, and EPA is not persuaded that it should give up that leverage.

Another industry commenter suggested that if EPA deleted the Federal enforceability requirements and substituted a broader definition of "enforceable," as proposed, that the definition be narrowed to include only enforceability under Federal, State, or local air pollution control laws. Since EPA has decided not to adopt the proposed definition of enforceable, that comment is now moot.

D. General Enforcement Issues

Although EPA today concludes that it is appropriate to retain the Federal enforceability requirement, EPA agrees with the suggestions of some commenters that its authority to enforce prohibitions against construction of major sources which lack PSD or nonattainment permits through the "source obligation" regulations (e.g. 40 CFR 52.21(r) (1)–(4)) is an important deterrent to sources which might otherwise construct without a PSD or nonattainment NSR permit. Moreover, EPA believes that these regulations are significantly enhanced by the presence of the Federal enforceability requirement. If the permit obtained by a source is to be given status as federally enforceable in order to avoid NSR, it must have met the notice, source information, practical enforceability, and other strictures set forth in this document.

These same qualities of a federally enforceable permit make it much easier to determine, at a later date, whether the terms or intent of the permit have been violated and, if so, what enforcement action is appropriate. There are three options available to EPA for when a federally enforceable State permit has been or will be violated.

One option is simply to enforce, under section 113, the limitations in the permit which enabled the source to avoid NSR in the first instance, with the result that the source retains its minor status. This is appropriate where, despite the permit violations, it appears that the source intends to adhere to the emissions limitations in the future. However, EPA retains the right to enforce the PSD or nonattainment NSR violation as well.

The second option is to invoke the "source obligation" regulations, e.g., 40 CFR 52.21(r)(4), and treat the source as major by requiring it to obtain a PSD or nonattainment major source permit. This course is appropriate where the source, through a change in business plans, or through the belated realization that its original plans cannot accommodate the design or operational limitations reflected in its minor source permit, can no longer adhere to the limitations in that permit, and so exceeds them. As discussed in the preamble to the 1980 regulations, this option is also appropriate where the source (after receipt of its minor source permit) notifies the permitting authority in advance of its changed plans or expectations and the need for a future relaxation of the limitations in its current permit, without actually violating those limitations before obtaining a major source permit (see 45 FR 52689). Under either set of circumstances, pursuant to the "source obligation" regulations, EPA treats the source "as though construction had not yet commenced" for PSD and nonattainment permitting purposes.

The EPA believes that the exceedance or relaxation of a minor source permit, and the subsequent obtaining of a major source permit through compliance with the "source obligation" regulation, may not routinely involve penalties or additional sanctions other than those provided in section 113 for any period in which the source actually exceeded the limitations in its minor source permit. The EPA today clarifies, though, that a third general enforcement option is necessary and available under the Act and EPA's regulations in certain situations.

This third enforcement option is appropriate where EPA determines that a source obtained a permit containing limitations allowing it to escape preconstruction review as a major new source or major modification, not for the purpose of adhering to those limitations for an appreciable period of time in accordance with some legitimate business plan, but primarily with an intent to construct, and possibly begin operation of, a major new source or major modification without first obtaining a PSD or nonattainment permit. In such circumstances, EPA enforces the "source obligation" regulations, as in option two above, and requires the source to obtain a PSD or nonattainment permit "as though construction had not yet commenced." In keeping with the retrospective orientation of the "source obligation" regulations, however, EPA also looks to the beginning of actual construction on the new source or modification for purposes of additional enforcement action under sections 113 and 167 as well. Thus, under these circumstances, EPA treats the original permit obtained by the source, which previously allowed it to enjoy minor status, as not "federally enforceable" from the time construction begins on the new source or modification in question. It follows that EPA also treats the source's "potential to emit," as defined in 40 CFR 52.21(b)(4), as not being limited by the restrictions in the original permit. The net result is that EPA deems the new source or modification to have been major ab initio, and EPA considers seeking injunctive relief, civil penalties, and criminal sanctions, as appropriate, against the source under sections 113 and 167 from the beginning of actual construction.

The EPA today also wishes to briefly discuss the need and appropriate circumstances for resort to the third enforcement option. As a general matter, it is abundantly clear that Congress intended the NSR provisions in Parts C and D to require preconstruction review of major new sources and modifications. See, e.g., sections 160(5), 165(a), 165(e)(1) and (2), 110(a)(2)(I), 172(a)(1), 172(b)(6), and 173. The evident air quality planning and technology-forcing purposes of the Act's NSR provisions make the reasons for Congress' choice of statutory framework equally obvious. It is much easier, both in technical and practical terms, to consider the air quality impacts and pollution control requirements of a major new source of air pollution before it has been constructed and has begun operation rather than after. Nevertheless, there is a need to accommodate sources which, for legitimate business reasons, have constructed and begun operation as minor sources, but later discover that they now do, or in the future will, emit air pollutants at levels that will require them to be treated as major. In those circumstances, postconstruction review is unavoidable, and the "source obligation" regulations in 40 CFR 52.21(r)(4) and elsewhere are designed to fulfill this need.

At the same time, in keeping with the general legislative purpose, it is necessary that EPA take steps to prevent owners or operators from turning the statutory scheme on its head by using federally enforceable minor source permits in a manner inconsistent with the statute and with EPA's intention. In particular, EPA must discourage sources that would manipulate the NSR system by improperly obtaining minor status for a new source or modification. This could occur, for example, where the owner or operator's purpose is, from the start, to construct a new source or modification that would not be economically viable for any appreciable period of time if it were restricted to emitting at minor levels. If the source could construct, and even begin operation, under a minor source permit, and shortly thereafter obtain a postconstruction PSD or nonattainment permit when it is convenient to exceed minor emissions levels, with no possibility of other sanctions, it might encourage many owners or operators to proceed in this fashion. The result would be that the exception—postconstruction review in narrow, unavoidable circumstances—could swallow the general rule of preconstruction review.This result was not intended by Congress or EPA, and cannot be allowed.

It is not possible to set forth, in detail, the circumstances in which EPA considers an owner or operator to have evaded preconstruction review in this way, and thus subjected itself to enforcement sanctions under sections 113 and 167 from the beginning of construction. This is ultimately a question of intent. However, EPA will look to objective indicia to establish that intent. For example, if an application for a Federal PSD permit is filed at or near the same time as a State minor source permit, EPA will carefully scrutinize the transaction. The EPA will also look carefully at the economic realities surrounding a transaction. For instance, where it appears obvious that a proposed source or modification, by its physical and operational design characteristics, could not economically be run at minor source levels for an appreciable length of time, EPA will take notice. Examples include the construction of an electric power generating unit, which by its nature can only be economical if it is used as a base-load facility, that is proposed to be operated as a peaking unit, and the construction of a manufacturing facility with a physical capacity far greater than the limits specified in a minor source permit. The EPA may consider how a project's projected level of operation was portrayed to lending institutions, and may examine other records concerning projected demand or output. Significant discrepancies between operating levels as portrayed in these documents and operating restrictions in a minor source permit would justify consideration of enforcement action.

The EPA wants to emphasize, that under the third enforcement option, it does not generally seek monetary penalties, or any remedies other than those provided in the "source obligation" regulations, except in those cases where it believes it could show to the satisfaction of a court that a source owner or operator had obtained a minor source permit with the purpose of obtaining, after construction, a major source permit, so as to evade preconstruction review. The EPA in no way seeks to discourage or intends to penalize those owners or operators who accept emissions limitations in pursuit of legitimate business purposes, and who in good faith later seek a relaxation of those limitations. As discussed above, the "source obligation" regulations and section 113 enforcement sanctions (for any period in which minor source permit limits are actually exceeded) provide a complete remedy in those situations.

There is no need to revise the text of the NSR rules to explicitly provide for this third enforcement option. The "source obligation" regulations do not by their terms preclude—or even address—the issue of civil penalties or other enforcement action under sections 113 and 167. Similarly, it is not necessary to specify in the definitional provisions that a minor source permit obtained in order to evade the Act's preconstruction review requirements is invalid for the purpose of "federally enforceable" limitations on a source's "potential to emit," and cannot be used as a shield against enforcement action. Implicit in any regulatory scheme is the unwillingness to countenance fraud, misrepresentation, or other misuse, particularly where the result would contravene the underlying statutory or regulatory purposes. Today's action clarifies the purposes served by the EPA regulations in question and outlines the circumstances in which their misuse may lead to enforcement action.[23]

VI. State Operating Permit Program

A. Introduction

As noted above, today's final action includes clarification of EPA's policy on implementing its definition of Federal enforceability. Under this policy clarification, all terms and conditions contained in State operating permits will be considered federally enforceable, provided that the State's operating permit program is approved by EPA and incorporated into the applicable SIP under section 110 of the Act, and provided that the operating permit meets certain requirements.[24] This clarification of the Federal enforceability definition can minimize the time and expense required to obtain federally enforceable limitations. The EPA believes that by encouraging States to adopt federally enforceable operating permit programs, EPA has largely satisfied certain objections to the current definition of "federally enforceable" voiced by industry commenters.

[23] Today's action also serves to clarify that EPA never intended that the source obligation regulations would serve to insulate a source owner or operator from penalties or other enforcement sanctions in cases of fraud or other misuse involving minor source permits. Any contrary interpretation that might be drawn from the preamble to the 1980 regulations (see 45 FR 52689) is thus inaccurate, and is hereby rejected.

[24] Various local air pollution programs operate air quality programs under their own regulations, which are approved into the SIP. The reader should understand that "State" operating permit programs encompass those local programs with jurisdiction over only part of a State as well as to statewide programs.

As discussed above, EPA recognizes that its previous application of the definition of "federally enforceable" could sometimes cause delay or expense in obtaining a limitation or control that EPA considers federally enforceable. That application of the definition treats, as federally enforceable, PSD construction permits issued under 40 CFR 51.166 (formerly 40 CFR 51.24) or 52.21, as well as all construction permits issued under regulations approved pursuant to 40 CFR 51.160–165 (formerly 40 CFR 51.18).[25] Under § 52.23, "[f]ailure to comply with * * * any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources" is a violation of the implementation plan and may result in enforcement action under section 113 of the Act.

The EPA has always been concerned with the prompt processing of SIP revisions and permits. For example, to minimize delay in processing certain types of SIP revisions, EPA previously set up a streamlined process called direct final rulemaking (47 FR 27073 (June 23, 1982)). That process can shorten EPA's time for processing SIP revisions, in noncontroversial cases, to less than 6 months. The EPA will continue to use that procedure to process source-specific SIP limitations whenever possible.

The EPA is today emphasizing a more fundamental way to minimize delay and expense. Specifically, EPA is expressly expanding its definition of "federally enforceable" to include limitations and controls imposed in State operating permits, provided that the applicable State operating permit program has been approved by EPA as meeting certain conditions and has been incorporated in an appropriate SIP, and that the permit in fact conforms to the requirements of the approved program.

B. Discussion

State operating permit programs, although in common use in many States, have not been required to be included in the SIP,[26] although some States have voluntarily submitted various types of operating permit programs to EPA for approval and inclusion in a SIP. The EPA has authority to approve such programs into SIP's under section 110(a)(2) (B) and (D) of the Act. A few of these programs (e.g., Oregon's, 49 FR 36843 (September 20, 1984) and 51 FR 12324 (April 10, 1986) and Idaho's, 51 FR 22811 (June 23, 1986)) provide for sophisticated permit review and procedural safeguards. The EPA has already concluded that permits issued under those programs are federally enforceable. In addition, some States have operating permit programs that are not included in a SIP.

Traditionally, with a few exceptions such as Oregon and Idaho, EPA has not considered State operating permits, per se, to be federally enforceable.[27] However, EPA believes it has the authority to enforce limitations in certain types of operating permits and to consider operating permits as federally enforceable if they are issued pursuant to permitting programs (approved into the SIP) that meet the following criteria:

(1) The State operating permit program (i.e., the regulations or other administrative framework describing how such permits are issued) is submitted to and approved by EPA into the SIP.[28]

(2) The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provides that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

(3) The State operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" (e.g. standards established under sections 111 and 112 of The Act).

(4) The limitations, controls, and requirements in the operating permits are permanent, quantifiable, and otherwise enforceable as a practical matter.

(5) The permits are issued subject to public participation. This means that the State agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit.

States are free to continue issuing operating permits that do not meet the above requirements. However, such permits would not be "federally enforceable" for NSR and other SIP purposes. The EPA anticipates that some States may choose to continue current practices rather than alter their permit programs so as to render operating permits federally enforceable, particularly with respect to small sources. Other States may wish to subject only certain types or classes of permits to these requirements. For example, a State may decide to not follow public participation procedures for, and not submit to EPA, large numbers of permits for very small sources, because the State has no intention of using such permits as external emissions offsets, to qualify as a minor source or "net out" of NSR, or to demonstrate attainment of the NAAQS. The EPA expects that States will, for purposes of clarity and administrative efficiency, indicate within the federally enforceable permits that they are being accorded such status.

The above five criteria are modeled on the requirements for issuance of federally enforceable construction

[25] Sections 51.160–163 [formerly § 51.18 (a)–(i)] specify criteria for all new sources under section 110 (a)(2)(D) and (a)(4) of the Act that NSR programs must meet to be included in a SIP. Sections 51.165 (a) and (b) (formerly § 51.18 (j) and (k) , respectively, establish additional criteria that must be met for approval of construction permit programs under Part D of the Act for major new sources in nonattainment areas. However, EPA may also approve construction permit programs meeting §§ 51.160–51.163 that do not satisfy § 51.165(a) or (b), including construction permit programs for nonmajor sources. Permits issued under programs approved pursuant to §§ 51.160–51.163 are federally enforceable.

[26] Section 110(a)(2)(D) of the Act does require that a SIP include a "program to provide for * * * regulation of the modification, construction, and operation of any stationary source including" permitting programs for major sources. Similarly, section 172(b)(6) requires that a nonattainment SIP "require permits for the construction and operation of new or modified major stationary sources." However, those statutory provisions regarding operation of a source are satisfied by the requirement in EPA's rules that the terms of a PSD or nonattainment construction permit remain in effect throughout the life of the source (unless modified lawfully) (40 CFR 52.21(w)(1)) (see also section 173 of the Act (treats nonattainment permits to construct and operate as if they were one)).

[27] Although certain operating permits have not been considered federally enforceable, some of the terms and conditions appearing in such permits may be federally enforceable through other means. For example, if the terms of an operating permit are the same as those in a federally enforceable construction permit or the same as the limitations in a SIP or an NSPS, those terms are federally enforceable by virtue of EPA's authority to enforce the construction permit, the SIP, and the NSPS, but not the operating permit.

[28] EPA wishes to make it clear that no State is required to include operating permit programs in its SIP. Participation is voluntary.

permits. The first two general requirements outlined above are necessary so that EPA can invoke sections 113 and 167 of the Act and 40 CFR 52.23 to enforce the terms of the operating permit. These provisions essentially allow EPA to enforce against violations of an applicable SIP. By making the operating permit program part of the SIP and legally requiring, in the SIP, that permittees comply with such permits, any violation of such a permit will be enforceable under the SIP and subject to EPA enforcement.[29] In addition, by providing that an operating permit which does not conform to a SIP-approved program and EPA's underlying regulations may be deemed not "federally enforceable" by EPA, sources and States are placed on notice that EPA may find that such nonconforming permits cannot be used as external emissions offsets or to "net out" of PSD or nonattainment permitting requirements, or be considered as part of a State's demonstration of reasonable further progress toward attainment and maintenance of the NAAQS. Thus, for example, a State may issue an operating permit placing emissions limitations on an existing emissions unit at a source for the purpose of accommodating a new emissions unit at the source without triggering PSD review of the new emissions unit. If EPA later determines that permit conditions do not comport with EPA standards for enforceability, it may notify the permit-issuing agency and the source that EPA intends to enforce against the source for violations of PSD requirements regarding the new emissions unit if the operating permit conditions for the existing unit are not changed to EPA's satisfaction. For example, should EPA find that the limitations on the existing unit are not, in practical terms, enforceable (e.g., because of excessively long averaging times), EPA may deem those limitations not federally enforceable for purposes of the netting transaction, thereby triggering PSD review of the new unit.

The third condition is appropriate for two reasons. First, operating permit conditions that are at least as tight as existing SIP limitations will be consistent with, and promote the purposes of, section 110(a)(2)(B) of the Act, which requires all approvable SIP's to include "such * * * measures as may be necessary to ensure attainment and maintenance" of national ambient standards.[30] Moreover, section 116 provides that where an emissions limitation is in effect under an applicable SIP, a State "may not adopt or enforce any emissions standard or limitation which is less stringent."

The permitting process may not be used to create exemptions from any requirement contained in the SIP. Any such waiver or variance must be created through a formal SIP revision. The EPA also recognizes that, in some cases, individuals could differ as to whether a particular limitation is "as stringent as" another limitation. The EPA encourages review authorities to express new limitations in terms similar to those in the SIP (e.g., with respect to averaging times) to facilitate comparison with the existing SIP limitation. Where compelling reasons weigh heavily in favor of expressing the new limitation in different terms than the current SIP limit, the burden to demonstrate the equal or greater stringency of the new limit rests with the State. Such demonstrations must accompany the proposed and final versions of any applicable permit action.

The fourth condition for Federal enforceability—that the permit limitations be enforceable as a practical matter—is an essential element in EPA's implementation of the existing Federal enforceability requirement. If permit limitations, whether in operating or construction permits, were not practical to enforce, the purposes for which Federal enforceability was intended could not be met. Thus, all emissions units must be reasonably described, and verifiable, enforceable emissions limits must be assigned to them. For example, an emissions limit expressed only in tons of pollution per year would not be considered practically enforceable. Useful guidance as to what makes a permit condition enforceable is, however, contained in a document issued by EPA on September 23, 1987 entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." That guidance contains a checklist which lists key areas to consider in determining enforceability. These areas include applicability, compliance date, specificity of conduct, any incorporation by reference, recordkeeping requirements, and exemptions and exceptions.

Similarly, the fifth condition—that EPA and the public be notified and given opportunity to comment on the issuance of operating permits—is consistent with EPA's current practice for construction permits (e.g., 40 CFR 51.161 (formerly 40 CFR 51.18(h))) and would make enforcement by EPA and private citizens much more effective and practical. Public notice and opportunity for comment are important parts of an operating permit program, but the form of such notice is subject to debate. Some States regard individual newspaper notices for permit applications as needlessly expensive and time consuming, especially since they process many permit applications but few are controversial. Several States have addressed these concerns through the use of State administrative registers, notice and distribution mailing lists, or monthly multiple application notices. In reviewing SIP submittals for operating permit programs, EPA will consider these and other techniques for meeting the twin goals of procedural completeness and administrative efficiency as long as ample opportunity is provided for comment on permits prior to their final issuance.

It is important that EPA maintain an effective oversight of permit decisions made pursuant to these programs. The EPA is not now implementing a formal review program with procedural tools such as a veto provision to address inappropriate permitting actions (see, e.g., 40 CFR 123.44 with respect to certain permits issued under the Clean Water Act). However, EPA will comment on proposed permits as may be reasonable. The EPA stresses that, in order to implement this review, States will be required to provide draft permits to EPA for comment. In addition, the State must provide EPA with copies of all final permits upon their issuance. If permits are issued inconsistent with the SIP as discussed above, EPA will consider those permits to be invalid and will pursue such enforcement action as may be appropriate. It should be noted that EPA's intent is to review these permitting actions in parallel with, and within the same schedule as, routine State procedural steps. The EPA intends to work with State programs to minimize any delay or intrusiveness from this activity.

The EPA realizes that the above five program criteria are general and do not address many details of implementation. This is, in part, desirable: the EPA invites States to develop programs that are consistent with their program needs and resources. The EPA will consult with States on the approvability of their

[29] Section 52.23 also provides that a violation of a condition in a permit issued pursuant to an approved regulation for review of new or modified sources is also a violation of the SIP.

[30] Requiring federally enforceable permit limitations to be at least as stringent as other SIP limitations is also consistent with the existing rules for NSR construction permits which require that such permits not result in violations of the SIP control strategy or interfere with attainment or maintenance of the ambient standards (e.g., 40 CFR 51.160(a) (formerly 40 CFR 51.18(a))).

particular plan proposals. (It should be noted that an operating permit program will not become effective for the purposes described in this document until it is specifically so approved.) The EPA plans to issue further, more detailed, guidance as needed to assist States in developing and implementing approvable programs.

C. Policy and Regulation

The EPA believes that the definition of "federally enforceable" is broad enough to include operating permit limitations under the conditions discussed above, since it includes "all limitations and conditions which are enforceable by the Administrator" (id.). However, for the sake of clarity, EPA is amending the definition of federally enforceable to specify that operating permits issued under programs approved by EPA and incorporated into a SIP are federally enforceable.[31]

Similarly, even though 40 CFR 52.23—confirming that violations of SIP regulatory provisions and certain permits are subject to enforcement by EPA under section 113 of the Act—is broad enough to cover operating permit violations (under the previous conditions), EPA is also amending that section to clarify its applicability to operating permits. On the other hand, EPA does not believe that it is necessary to amend the "source obligation" regulations at 40 CFR 51.166(r)(2) (formerly 40 CFR 51.24(r)(2)) and 52.21(r)(4). As discussed previously, those sections require any source that was not subject to PSD permit requirements because of any enforceable limitation, and that later becomes "major" solely because of a relaxation in such a limitation, to undergo NSR as if it had not yet been constructed. This is in addition to possible enforcement action for violation of federally enforceable permit terms or circumvention of the preconstruction review requirements of the NSR program. The source obligation regulations extend, as written, to any source that used a federally enforceable operating permit limitation to avoid PSD NSR and later obtained a rescission or relaxation of that limitation. However, EPA will review each existing PSD SIP for any State seeking EPA approval of its operating permit program to ensure that the SIP contains a provision meeting the requirements of 40 CFR 51.166(r)(2) with respect to operating permits. In such cases, if the current SIP provision does not extend to operating permits, EPA would require an appropriate SIP revision as a prerequisite to approval of the operating permit program.

The EPA will respond to questions from the public on all of the operating permit issues discussed in this notice. In particular, EPA will respond to views on the need for further guidance specifying in greater detail the substantive and procedural elements that should be contained in an approvable operating permits program. In this regard, EPA points out that any State program that contains essentially the same provisions indicated above as conditions "1"–"5" would almost certainly be approved by EPA. Useful examples of a State operating permit program are offered by Oregon and Idaho. Those programs provide that the proposed source and its projected emissions and pollution control techniques must be described in detail. The programs also provide for notice to the public of permit applications and an opportunity to comment prior to permit issuance. The process is not available for permits that would constitute relaxations of the SIP. Copies of each permit are submitted to EPA (e.g., Oregon Administrative Rules, Chapter 340–20). The EPA is not now suggesting that every State program would need to be substantially the same as Oregon's or Idaho's, only that those programs could be used as models for an operating permit program that EPA likely will approve for federal enforceability purposes.

The EPA will also consult with States on methods by which existing operating permits could be made federally enforceable under a subsequently approved State operating permits program. The EPA suggests that in these cases, where a State can show that the existing operating permits were issued pursuant to a program later approved by EPA, the State could also submit such permits in bulk as revisions to the SIP. Such revisions could be processed in much less time than if each permit were processed separately.[32]

VII. Miscellaneous

A. Under Executive Order 12291, EPA must determine whether a regulatory action would be a major rule and therefore subject to the requirement for preparation of a Regulatory Impact Analysis. This action is not a major rule because it merely retains the current regulatory requirements, while offering States a more efficient means of complying with those requirements. It, thus, will not have any significant new economic impacts.

As required by Executive Order 12291, this action has been submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB on this action and any EPA written responses have been placed in the docket for this proceeding.

B. Since today's action merely retains or clarifies the existing regulations and does not promulgate significant changes to any rules, section 317 of the Act regarding an economic impact assessment does not apply.

C. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this action will not have a significant adverse impact on a substantial number of small entities, primarily because it retains the existing rules and creates no new burdens. Accordingly, no regulatory flexibility analysis is required.

D. The EPA has determined that this final EPA action has nationwide applicability. Accordingly, under section 307(b) of the Act, judicial review of this final action may be obtained only by filing a petition for review in the U.S. D.C. Circuit Court of Appeals within 60 days from the date of this notice. This action is not subject to judicial review in any subsequent civil or criminal proceedings for enforcement.

E. As provided by section 307(d)(1) of the Act, this rule is not subject to section 553(d) of the Administrative Procedure Act. Section 553(d) requires that substantive rules not take effect until 30 days after their publication unless they relieve a restriction or an agency finds good cause to make them effective sooner. Nevertheless, there is good cause to make this action effective immediately since it merely retains existing regulations while offering a more efficient means of implementation. Persons affected by the "Federal enforceability" requirements need not change their activities or plans in any way as a result of today's action, and a 30-day waiting period would serve no purpose.

F. Under Executive Order 12612, EPA must determine if a rule has federalism implications. Federalism implications refer to substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels

[31] The subject proposal of August 25, 1983, although not specifically addressing this particular regulatory language, described the subjects and issues involved in detail. Today's regulatory clarification to reflect the policy on Federal enforceability is a logical outgrowth of the 1983 proposal for which EPA concludes that further notice and comment are unnecessary.

[32] Alternatively, a State might simply choose to wait until it has an approved operating permit program included in its SIP and then either renew or reissue existing permits under the approved program.

of government. For those rules which have federalism implications, a Federalism Assessment is to be made.

The Executive Order also requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Executive order provides for preemption of State law, however, if there is a clear congressional intent for the agency to do so. Any such preemption, however, is to be limited to the extent possible.

This final rule essentially retains the current rule as written. The action provides an opportunity for certain State operating permits to be considered federally enforceable, thus increasing State options for addressing the applicability of NSR rules to modified existing sources. Previously, the federally enforceable limits recognized by EPA for existing sources generally consisted of more time-consuming SIP revisions.

List of Subjects in 40 CFR

Part 51

Administrative practice and procedures, air pollution control, intergovernmental relations, reporting and recordkeeping requirements, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, hydrocarbons, carbon monoxide.

Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

Date: June 12, 1989.

William K. Reilly,

Administrator.

For reasons set forth in the preamble, Parts 51 and 52 of Chapter I of Title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for Part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 160–169, 171–178, and 301(a) of the Clean Air Act, 42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

2. Section 51.165 is amended by revising paragraph (a)(1)(xiv) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(xiv) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

3. Section 51.166 is amended by revising paragraph (b)(17) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

4. Appendix S is amended by revising paragraph II.A.12 to read as follows:

APPENDIX S—EMISSION OFFSET INTERPRETATIVE RULING

* * * * *

II. * * *

A. * * *

12. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.21 is amended by revising paragraph (b)(17) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

3. Section 52.23 is amended by revising the first sentence to read as follows:

§ 52.23 Violation and enforcement.

Failure to comply with any provisions of this part, or with any approved regulatory provision of a State implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. * * *

4. Section 52.24 is amended by revising paragraph (f)(12) to read as follows:

§ 52.24 Statutory restriction on new sources.

* * * * *

(f) * * *

(12) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed

pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

[FR Doc. 89-14681 Filed 6-27-89; 8:45am]

BILLING CODE 6560-50-M

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40 CFR Parts 51 and 52

[AD-FRL-3511-2a]

Requirements for Implementation Plans;Air Quality New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 25, 1983, EPA proposed amendments to its regulations addressing the construction of new and modified stationary sources of air pollution which appear at 40 CFR 51.24 (now 40 CFR 51.166), 52.21, Appendix S to Part 51, 51.18(j) (now 51.165(a)) and 52.24 (see 48 FR 38742). That document presented eight areas of proposed rulemaking and additional guidance in three other areas. The EPA proposed those amendments and provided guidance in order to meet the terms of a settlement agreement between EPA and various industries and trade associations challenging the particular regulations in *Chemical Manufacturers Association (CMA)* v. *EPA*, D.C. Cir. No. 79-1112 (settlement agreement entered into February 22, 1982).

On October 26, 1984 (49 FR 43202), EPA took action on the component of the August 25, 1983 proposal dealing with fugitive emissions. This document constitutes final action on six of the seven other remaining issues in the August 25 proposal: (1) The definition of "significant" as it affects Class I area protection, (2) the innovative control technology waiver for sources which would impact Class I areas, (3) secondary emissions, (4) the crediting of source shutdowns and curtailments as emissions offsets in nonattainment areas, (5) banking of emissions offsets under 40 CFR Part 51, Appendix S, and (6) the requirement for health and welfare equivalence for netting. In addition, final action with respect to the other remaining issue, the Federal enforceability requirement, is being published in parallel with this document.

DATES: This rule takes effect on June 28, 1989. Under section 307(b)(1) of the Clean Air Act (Act), 42 U.S.C. 7607(b)(1), petitions for judicial review must be filed on or before August 28, 1989, in the U.S. Court of Appeals for the D.C. Circuit.

ADDRESSES: Material relevant to this rulemaking may be found in Public Docket A-82-23. This docket is located in U.S. EPA's Central Docket Section (LE-131), Waterside Mall, M-1500, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 3:00 p.m. on weekdays and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Solomon, New Source Review Section, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711; (919) 541-5375; FTS 629-5375.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 7, 1980, EPA extensively revised its regulations concerning the preconstruction review of new and modified stationary sources "new source review" (NSR)] under the Act, 42 U.S.C. 7401-7642, in response to *Alabama Power Company* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979) (see 45 FR 52676). Five sets of regulations resulted from those revisions. The first set, 40 CFR 51.166 (formerly 40 CFR 51.24), specifies the minimum requirements that a prevention of significant deterioration (PSD) air quality permit program under Part C of the Act must contain in order to warrant approval by EPA as a revision to a State implementation plan (SIP). The second set, 40 CFR 52.21, delineates the Federal PSD permit program, which currently applies, as part of the SIP, in the roughly 20 States that have not submitted a PSD program meeting the requirements of 40 CFR 51.166. The third set, 40 CFR 51.165(a) and (b) (formerly 40 CFR 51.18 (j) and (k)), specifies the elements of an approvable State permit program for preconstruction review for nonattainment purposes under Part D of the Act. It elaborates on section 173 of the Act, 42 U.S.C. 7503. The fourth set, 40 CFR Part 51, Appendix S, embodies the "Emissions Offset Interpretative Ruling" (Offset Ruling), which EPA revised previously in January 1979 (44 FR 3274). The fifth set, 40 CFR 52.24, embodies the construction moratorium which EPA implements in certain nonattainment areas.

In the fall of 1980, numerous organizations petitioned the U.S. Court of Appeals for the D.C. Circuit to review various provisions of those PSD and nonattainment preconstruction regulations. Subsequently, the court consolidated those petitions into *CMA*, a collection of challenges to the 1979 revisions to the Offset Ruling. In June 1981, EPA began negotiations with the industry petitioners to settle the *CMA* case. The EPA entered into a comprehensive settlement agreement with those petitioners in February 1982. Subsequently, the court granted a stay of the case pending implementation of the agreement.

In the settlement agreement, EPA committed to propose certain amendments (set forth as Exhibit A of the agreement) to eight portions of the NSR regulations and to provide guidance in three additional areas, and to take final action on those proposals. Accordingly, EPA published a notice of proposed rulemaking in the August 25, 1983 **Federal Register** (48 FR 38742). The EPA noted that it would review the comments carefully and with an open mind and that it would take a new look at the proposals in order to make an independent judgment on the merits. The EPA received extensive public comment regarding the August 25, 1983 document, including that presented at a public hearing. In light of the public comments and on the basis of further evaluation, EPA has determined that it is appropriate to retain various portions of the regulations that had been proposed for deletion or revision, while making final certain other portions of the proposed changes.

The EPA addressed fugitive emissions in a separate **Federal Register** notice that was published on October 26, 1984 (49 FR 43202). This document constitutes final action on six of the remaining seven issues in the August 25, 1983 proposal.

With respect to the other remaining issue, Federal enforceability, EPA is today announcing, in a separate **Federal Register** item published in conjunction with this one, its decision to retain the Federal enforceability requirement.

Accordingly, today's final actions fulfill EPA's commitments under Exhibit A of the *CMA* settlement agreement.

II. Final Action on Proposal

A. Definition of "Significant"

1. Background

In revising the NSR regulations on August 7, 1980, EPA introduced provisions which use the term "significant." One of those provisions

defines a "major modification" subject to the PSD requirements as any change at a major stationary source that would result in a "significant net emissions increase" in any one of certain pollutants (e.g., § 52.21(b)(2)(i) (45 FR 52735)). The other provisions require an applicant for a PSD permit to meet certain requirements for control technology and air quality impact assessment for each pollutant regulated under the Act that the proposed project would emit in a "significant" amount (e.g., § 52.21(j) (45 FR 52740)).

In revising the PSD regulations, EPA also introduced a definition of "significant" (e.g., § 52.21(b)(23) (45 FR 52739)). The first paragraph of that provision defines "significant" in terms of rates of emissions. For example, a rate of 40 tons per year (tpy) or more is "significant" for sulfur dioxide (SO_2). Another paragraph of the definition, however, also defines "significant" in terms of ambient air impacts in Class I areas:

> Notwithstanding (the first paragraph), significant one means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 10 kilometers of a Class I area, and have an impact on such an area equal to or greater than 1 microgram per cubic meter ($\mu g/m^3$), (24-hour average). * * *

(e.g., Section 52.21(b)(23)(iii) (45 FR 52739)).

In the *CMA* case, certain industry petitioners challenged the ambient-based threshold for "significant" emissions embodied in the paragraph quoted above. They contend that EPA, in promulgating it, violated section 165(e)(3)(A) of the Act, which prohibits EPA from requiring "the use of any automatic or uniform buffer zone or zones" respecting the assessment an applicant must perform of existing air quality within the impact area of it proposed project (42 U.S.C. 7475(e)(3)(A)—see Brief for Industry Petitioners on Fugitive Emissions (February 11, 1981) at 54; American Mining Congress Petition for Reconsideration, at 35–36).

In the August 25, 1983 rulemaking proposal, EPA proposed deletion of the ambient-based portion of the definition of "significant." It did so roughly on the grounds advocated by industry: That the definition constitutes a sufficiently low threshold for review as to arguably create a virtually uniform buffer zone with respect to air quality analyses (48 FR 38749).

2. Public Comment

a. *Comments Generally Favoring the EPA Proposal.* Various industry commenters agreed with the basis of the proposal that the 10 kilometer provision in the existing rules violates the section 165(e)(3)(A) proscription of buffer zones. Several industry commenters also stated that the general significance levels provide adequate protection, and that their use would be more workable and appropriate. An industry trade group stated that field instruments cannot detect changes in SO_2 or particulate matter as small as 1 microgram per cubic meter ($\mu g/m^3$) and that a threshold that small would prompt NSR over very broad areas in the west. Another commenter observed that sources subject to NSR would be required to analyze the impact of smaller sources that had avoided review.

b. *Comments Generally Opposing the EPA Proposal.* A Federal agency opposed the proposal since it would remove a requirement for analysis of potential adverse impacts on air quality related values in Class I areas, which Congress intended to receive the highest protection. These comments were supported by environmental groups. The Federal agency stated that applicability thresholds keyed to significant emissions rates do not provide adequate protection. First, they are based on tpy, and do not specify a maximum hourly or daily rate. Second, the agency stated it can be easily shown that sources with total emissions less than the significant rates can contribute to ambient concentrations greater than 1 $\mu g/m^3$ and, in cases of SO_2, may cause exceedances of the short-term Class I increment.

Third, that commenter noted further that, under the proposal, new source growth and modifications having emissions of total particulate matter or SO_2 less than the significance levels would neither establish baselines in affected Class I areas, nor consume PSD increments in areas where baselines had not been previously established. Conceivably, increases in particulate and sulfur oxides concentrations could reach national ambient air quality standards (NAAQS) levels in Class I areas from the cumulative effect of such sources without any review of the contributing sources under the PSD program.

With regard to industry's buffer zone argument, that commenter stated that the 10 kilometer distance in the definition of "significant" is really a technical analysis zone, not a prohibited no-growth buffer zone. Other commenters agreed that the 10 kilometer criterion was not a proscribed buffer zone, since it does not prohibit construction of a major source or determine in any automatic or uniform manner whether a proposed source may be permitted.

This commenter noted that if the 10 kilometer distance criterion were deleted, the 1 $\mu g/m^3$ impact criterion should be retained for sources at any distance from a Class I area, since it will assure establishment of a baseline when such impacts occur. Other commenters also urged that the 10 kilometer provision be dropped, but the 1 $\mu g/m^3$ threshold be retained, on the grounds that a source's distance from a Class I area is irrelevant to achieving the stated purposes of the Act and protecting air quality in Class I areas.

Two State air quality programs agreed that the general tpy significance levels will not protect a Class I area. One stated that, using EPA's recommended modeling criteria, a major source within 2 kilometers of a Class I area with complex terrain could probably consume the entire Class I 24-hour SO_2 increment by increasing SO_2 emissions 39 tpy. That program added that it is important to remember that 1 $\mu g/m^3$ is a 20 percent consumption of the 24-hour PSD increment for SO_2. An environmental group noted that an impact on air quality related values in a Class I area is a function of the amount of the pollution actually reaching an area rather than amount of pollution emitted from a source, and whether pollutants reach an area is influenced by the mode of emissions (stack versus fugitive) as much as by the amount of pollution. This group stated further that small changes as low as 1 $\mu g/m^3$ in ambient concentrations can have very significant effects on the acidity of water and on visibility in an area and that the 1 $\mu g/m^3$ threshold could be easily reached by a relatively modest shift of ground level fugitive emissions to stack plumes. In all of this, it is important to remember, the group concluded, that the Act's purposes focus on protecting and remedying the actual adverse effects of air pollution in Class I areas.

Finally, another commenter expressed concern that in unusual terrain the significance levels would not provide adequate protection for Class I areas, and a private commenter stated that his modeling showed that an existing 10 tpy emissions rate from a source within 10 kilometers of a national park exceeded the 1 $\mu g/m^3$ threshold.

3. EPA Analysis

Public comments and reconsideration of the legal issues have persuaded EPA to retain the current definition of "significant." A review of legislative

history indicates that Congress was concerned only about the potential for a "mandatory no-growth buffer zone" around Class I areas. The subject regulation does not violate this congressional directive. Rather, it merely triggers the requirement to get a PSD permit before constructing, so as to provide for additional protection for Class I areas. The commenting government agency adequately refuted the argument that the current requirement establishes a "no-growth" buffer zone by supplying several examples of sources which were permitted for locations within 10 kilometers of a Class I area.

The EPA concludes that the subject provision is a useful tool in implementing the important congressional purpose of protection of Class I areas. The general significant emissions rates do not assure this and EPA reaffirms that, standing alone, they are adequate only for Class II and III areas. It should be noted that the substantive comments favoring deletion of the requirement rely on the questionable premise that the tpy significance numbers would provide adequate Class I protection. Even one of those comments, from a State air quality program, indicates that this might not be enough under some circumstances and recommends a screening procedure based on increment consumption. Finally, promulgation of the proposal could prompt pressure to lower the tpy significance numbers, since those values would then have to protect Class I increments as well as the less stringent Class II values.

B. Innovative Control Technology Waiver

1. Background

When revising the PSD regulations in August 1980, EPA established, for the first time, a procedure for granting innovative control technology waivers of certain PSD requirements (see 45 FR 52735, 52741). The EPA patterned this procedure after the innovative control technology waiver in section 111 of the Act 42 U.S.C. 7411, for new source performance standards (NSPS). The regulations, however, entirely disallow such a waiver if a proposed project would impact any Class I area (e.g., 40 CFR 52.21(v)(2)(iv)(*b*)).

In the *CMA* case, certain industry petitioners challenged that disallowance provision. They contend primarily that the provision is arbitrary because it disallows the waiver even if an impact is insignificant or temporary (Fugitive Emissions Brief, at 55).

In the August 1983 rulemaking proposal, EPA preliminarily agreed with industry that the current formulation of the waiver is overly stringent with respect to Class I areas. Accordingly, EPA proposed to delete the current disallowance provision and to insert a new provision authorizing a waiver only if the requirements relating to Class I areas have been satisfied as to all periods during the life of the source or modification (48 FR 38750).

2. Public Comment

This part of the proposal attracted relatively little interest, with those commenting generally supporting the proposal. One commenter stated that it would be beneficial to allow this waiver, since it would provide an opportunity to achieve greater emission reductions at the same or lower cost. A State air quality program supported the proposal but would modify it to ensure that sources receiving waivers would not cause a violation of the air quality increment and would not be eligible for any special variance procedures for Class I areas provided by 40 CFR 52.21(p) (4)–(7). A local air pollution control agency opposed the proposal generally, stating that Congress intended that Class I areas receive maximum protection.

3. EPA Analysis

The EPA has decided to promulgate the deletion of this restriction as proposed. The EPA concludes that the limitation on the innovative control technology waiver is not necessary. As stated in the proposal, any applicant whose project would affect a Class I area can nevertheless obtain a PSD permit, if the applicant shows that the project would not cause or contribute to a violation of an increment for the area and the Federal land manager (FLM) fails to show that the project would adversely impact any air quality related values of the area (e.g., 40 CFR 52.21(p)(3)). In fact, even an applicant whose project would violate a Class I increment might be able to obtain a permit through special variance procedures under paragraphs (p)(4)–(7) of the regulations. In contrast, an applicant whose project would merely affect a Class I area cannot get the innovative control technology waiver under any circumstances. It is, therefore, inappropriate to deny an innovative control technology waiver to a source merely because it would affect a Class I area.

The EPA, in creating the original disallowance, sought to counter-balance an exemption that the waiver provision extends to applicants. Under paragraph (v)(2)(iii), an applicant does not have to show that the proposed project would not cause or contribute to an increment violation while operating under the waiver (45 FR 52727). As a result, but for the disallowance, a project under a waiver could violate a Class I increment or adversely affect an air quality related value. The EPA agrees, however, that the waiver provision can be refined to exempt an applicant from providing most of the air quality impact analysis that it would otherwise have to provide with respect to the waiver period and still protect Class I areas fully.

To assure adequate protection of Class I areas, EPA is inserting a provision that allows the permitting authority to grant a waiver only if the provisions relating to Class I areas (i.e., subsection (p)) have been satisfied with respect to all periods during the life of the source or modification. This provision expands the circumstances in which a waiver is available, but with additional demonstrations for some applicants.

C. Secondary Emissions

1. Background

The 1978 version of the Part 52 PSD regulations provided in 40 CFR 52.21(1) that, to obtain a permit, an applicant had to show, among other things, that the proposed project would neither cause nor contribute to a violation of a PSD increment or NAAQS (43 FR 26407). The preamble to the regulations added that an applicant, in making that showing, generally had to include any quantifiable "secondary emissions" of the proposed project (43 FR 26403).[1] The 1978 Part 51 PSD regulations echoed those requirements: it required any State PSD program to contain a provision equivalent to § 52.21(1). A definition of "secondary emissions" did not appear in the Part 51 or Part 52 regulations or in the preambles to them at that time.

In revising the PSD regulations in August 1980, EPA retained, in the form of new §§ 52.21(k) and 51.24(k) (now § 51.166(k)), the requirement for a demonstration that a proposed project would neither cause nor contribute to a violation of a PSD increment or NAAQS (45 FR 52741, 51784). The EPA, however, added a parenthetical clarification to those provisions which expressly

[1] In view of the restrictions on indirect source review in section 110(a)(5) of the Act, EPA added that the applicant could exclude any "secondary emissions" from motor vehicles or aircrafts (43 FR 26403 n.9). The EPA added vessels to the list so that emissions from vessels going to and from marine terminals are now to be excluded as well (see 47 FR 27544 (June 25, 1982)). See also *NRDC* v. *EPA*, 725 F.2d 761 (D.C. Cir. 1984).

required the inclusion of "secondary emissions." It also put a definition of that term into both sets of regulations. Now, "secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. For the purpose of PSD, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification. Secondary emissions do not include any emissions from any off-site support facility which would be constructed or increase its emissions for some reason other than the construction or operation of the major stationary source or major modification. Secondary emissions also do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle or from the propulsion unit of a train or a vessel (e.g., 40 CFR 52.21(b)(18) (1981), as amended 47 FR 27554 (June 25, 1982)).

An example of an off-site support facility included in the ambient impact demonstration is a strip mine owned by one company that would be located next to a proposed power plant owned by another and that would supply the power plant. Another example is a quarry owned by one company that would be located next to a proposed cement plant owned by another and that would supply the cement plant.

Certain of the industry petitioners in the *CMA* case challenged this requirement on the grounds that EPA exceeded its authority in creating it (see Fugitive Emissions Brief, at 48–50; American Mining Congress Petition for Reconsideration, at 29–32). They assert that a relevant statutory provision (section 165(a)(3)) requires only that an applicant include those emissions that would come from the proposed project, since that section refers only to "emissions from the construction or operation *of such facility*" (42 U.S.C. 7475(a)(3) (emphasis added)).[2]

The August 1983 Federal Register document proposed deletion of the requirement, but did so on the grounds that secondary emissions are not quantifiable unless the source is already permitted or in operation. The EPA noted that section 165(a)(3) also provides that an applicant must show that the proposed project "will not cause *or contribute to* air pollution" in violation of a PSD increment or NAAQS ((id.) (emphasis added)). This "contribute" language persuaded EPA that Congress intended "secondary emissions" to be taken into account for this limited purpose. Consequently, EPA based the proposed deletion of this requirement upon the premise that secondary emissions are "arguably not reasonably quantifiable" unless from sources already permitted or in operation (48 FR 38750–51).

2. Public Comment

a. *Comments Generally Favoring the Proposal.* Commenters in support of the proposal generally claimed that permit applicants have little control over secondary emissions and that their quantification is complex and burdensome. As a result, such emissions should be reviewed and controlled directly. One commenter observed that secondary emissions review is superfluous in those cases in which the secondary emitter is major, since that source would be subject to PSD review in any case.

Some of these commenters suggested legal interpretations of section 165. Several noted that section 165(a)(3) requires that the applicant demonstrate "that emissions from construction or operation" of the facility will not endanger ambient values. Consequently, emissions from support facilities cannot be included in secondary emissions review since the word "from" implies a direct connection. An industry trade group contended that section 165(a)(6), which requires "an analysis of any air quality impacts projected for the area as a result of growth associated with the facility," does not preclude the proposed regulatory deletion since it does not equate such analyses with ambient standards or increment assessments.

Mining industry commenters asserted that EPA has no authority to regulate fugitive dust from coal strip mining operations unless EPA complies with the rulemaking requirements of section 302(j). This section provides that fugitive emissions may be included in determining whether a proposed new source is "major" and subject to review only "as determined by rule by the Administrator." (See Alabama Power Co. v. Costle, 636 F.2d 323, 369 (D.C. Cir. 1979)). These commenters were particularly concerned with the inclusion of fugitive dust emissions from strip mines in the ambient air quality analyses of co-located, coal-fired electric generating facilities.

b. *Comments Generally Opposing the Proposal.* The provisions of section 165(a) (3) and (6) were also interpreted by commenters opposing the proposal. They stated that the industry interpretation of section 165(a)(3) is too narrow since, in using the words "contribute to," Congress indicated that the sum of the emissions of the proposed source and other projects affected by it be taken into account in the ambient demonstration. They concluded that it was reasonable for EPA to have determined in the existing regulations that secondary emissions, which would not be produced "but for" the new facility, should be included as part of the emissions from the facility's construction or operation. Commenters also pointed out that section 165(a)(6) requires an analysis of associated growth and that this cannot be complied with unless secondary emissions are considered. An environmental group cited section 165(a)(6) and concluded that it would be anomalous to suggest that the air quality analysis must be performed, but that a finding that secondary emissions would violate increments or standards must be ignored in the permitting decision.

Several commenters challenged the proposal's conclusion that secondary emissions are not quantifiable. A Federal agency noted that secondary emissions have been quantified in numerous environmental impact statements. They added that there is no major difference between quantifying emissions from a source that does not have a permit and one that does, since many operating parameters are known before a source is constructed and, conversely, many permits are issued on the basis of preliminary design information. A State air quality program reported that it disagrees with the contention that secondary emissions are significantly more difficult to measure.

Commenters also noted that secondary emissions can be important. One commenter reported that, as the result of a proposed oil shale processing facility, an entire town was planned with all the quantifiable emissions sources associated with major urban areas, such as space heaters and incinerators. Another commenter stated

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[2] Section 165(a)(3) provides, in relevant part, as follows:

(a) No major emitting facility on which construction is commenced after the date of enactment of this part may be constructed in any area to which this part applies unless * * *.

* * * * *

(3) * * * the owner or operator of such facility demonstrates * * * that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of * * * (42 U.S.C. 7475(a)).

that EPA should not exempt all sources from assessing secondary emissions simply because of a few cases in which such emissions are not reasonably quantifiable.

3. EPA Analysis

After review of the public comments and further analysis of the subject provision, EPA has decided to retain the current regulation. Evaluation of secondary emissions is consistent with section 165 of the Act. Section 165(a)(6), in particular, indicates strong congressional concern that secondary emissions be reviewed as part of the applicant's ambient impact assessment. The regulation also furthers the broader purposes of an NSR program that emphasizes prospective review of all the consequences of growth so as to minimize the risk of future ambient air quality problems. The EPA acknowledges that there may be situations in which quantification of secondary emissions may be unduly speculative or complex. The "reasonably quantifiable" condition in this requirement provides an appropriate response to those problems.

The EPA disagrees with the comments of mining industry representatives that it must conduct a separate rulemaking under section 302(j) before it can consider secondary emissions from strip mines or any other industrial category. Section 302(j) only addresses whether fugitive emissions should be included in threshold applicability determinations. Once a source is found to be major, section 302(j) is irrelevant to the application of substantive NSR requirements. Thus, in Alabama Power, the D.C. Circuit upheld EPA's position that section 302(j) has no bearing whatsoever on the applicability of substantive PSD requirements under section 165 after a source is determined to be major. 636 F.2d at 369 ("[t]he terms of section 165 * * * apply with equal force to fugitive emissions and emissions from industrial point sources").

D. Offset Credit for Source Shutdowns and Curtailments

1. Background

The concept of "offsetting" is the core of nonattainment NSR permitting. An applicant (for a permit for a "major" project that would be located in an area that is nonattainment for a pollutant for which the project is major) must show that the emissions of the pollutant from the project will be offset by sufficient creditable reductions in emissions elsewhere so as to assure reasonable further progress (RFP) toward attainment and a net air quality benefit (see section 173(1) of the Act; 40 CFR 51.165(a)(2) (formerly 40 CFR 51.18(j)(2)), 40 CFR Part 51, Appendix S (known as the "Offset Ruling"), Section IV.A).[3] The relevant regulations (40 CFR 51.165(a) (formerly 40 CFR 51.18(j)) and the Offset Ruling contain detailed criteria for determining the creditability of emissions reductions that come from the permanent shutdown or curtailment of a source. They allow a reduction from a shutdown or curtailment that occurred before the date of the preconstruction permit application to be creditable only if: (1) The curtailment occurred after August 7, 1977, and (2) the proposed source is a replacement for the productive capacity represented by the proposed offset credit [4] (40 CFR 51.165(a)(3)(ii)(c) (formerly 51.18(j)(3)(ii)(c)) and 40 CFR Part 51, Appendix S, Section IV.C.3 footnote 9).[5] The stated purpose of this restriction was "to ensure that an offset relates to the current air quality problem * * *" (see 44 FR 3280).[6]

In the *CMA* case, certain industry petitioners challenged the restriction in 40 CFR 51.18(j) (now 40 CFR 61.165(a)) and the Offset Ruling, claiming that EPA violated the intent of Congress and acted arbitrarily and capriciously (see Brief for Industry Petitioners on Source Shutdown and Curtailment, February 12, 1981).

The August 25, 1983 **Federal Register** document proposed deletion of the restriction. The EPA's action was based on its preliminary agreement with the *CMA* case petitioners that section 173 of the Act does not allow a restriction on the creditability of offsets. The proposal also agreed preliminarily that the restriction is unnecessary and, therefore, undesirable. The EPA also proposed to change the cutoff dates in the provisions from August 7, 1977 to "a reasonable date specified in the plan," in the case of 40 CFR 51.18 (now Subpart I) and to the date of original promulgation of the Offset Ruling (December 21, 1976). Finally, EPA proposed to delete the restriction that relates to notification of the work force (48 FR 38751–52).

2. Comments Supporting the Proposal

This issue attracted the greatest number of comments, although many were quite similar. Industry in southern California expressed special interest in this topic. Comments received on EPA's separate notice regarding the possible uses of shutdown credits for bubbles under EPA's Emissions Trading Policy Statement (ETPS) (48 FR 39580, August 31, 1983) were also taken into account in the present rulemaking. A great majority of the commenters supported the proposal in whole or in part.

a. *Restriction of Credits to Replacement Facilities.* Several of the commenters stated that this restriction violates section 173 of the Act and is arbitrary. One industry commenter explained that the existing rule infringes on the authority of a State to make growth management decisions, and that a State's internal growth decisions must be approved by EPA under sections 172 and 173 if RFP and attainment are assured. Moreover, this commenter claimed that the existing provision is arbitrary, since there is no rational basis to distinguish emissions reductions achieved by shutdowns and curtailments from emissions reductions achieved by other means.

The bulk of the comments stressed the practical need to allow this potential avenue for offset credits. Many of these commenters noted that industries in nonattainment areas find it difficult to obtain emissions reduction credits to use as offsets, since sources in those areas are already subject to rigorous pollution control requirements. In particular, they claimed that allowing credit for past shutdowns and curtailments is the only hope for continued growth and the replacement of older, more polluting facilities with newer, better controlled facilities in southern California. A local air pollution authority supported this contention by stating that it already requires the highest level of reasonably available control technology (RACT), and there is no reasonable opportunity for proposed sources to get credit from improved control by existing sources. Practically, therefore, all credits banked in the district are the result of shutdowns or curtailments. Thus, unless EPA's proposal is adopted, emission "banks" could be without assets available for new source offsets, which would

[3] The Offset Ruling currently applies in only a few circumstances. In general, the construction moratorium, or preconstruction review programs approved as meeting the requirements of section 173, as set forth in 40 CFR 51.165(a), have supplanted it.

[4] This provision first appeared in the original Offset Ruling, 41 FR 55529 (December 21, 1976). The EPA repromulgated it, with some refinement, when it revised the Offset Ruling in January 1979 (44 FR 3284). It was included in 40 CFR 51.18(j) (now 40 CFR 51.165(a)) (see 45 FR 52672, August 7, 1980).

[5] The regulations also provide that a reduction from a shutdown or curtailment that occurs after the date of application is creditable only if: (1) the work force has been notified of the shutdown or curtailment, and (2) the shutdown or curtailment is federally enforceable (40 CFR 51.165(a)(3)(ii) (c) and (e); Appendix 5. Section IV.C.3).

[6] In September 1980, EPA declined to revise the restriction in the Offset Ruling in response to comments opposing it (see 45 FR 59876–77).

adversely affect even the best controlled growth, employment, and the value of the emissions reduction credits already filed by over 100 companies. Several projects were described that would be adversely affected by retention of the restriction on offset credits.

Some of the supporting commenters argued that since air pollution agencies must require a greater than one-to-one ratio in crediting past reductions to proposed increases in emissions, trading (including credit for prior shutdowns and curtailments) should be encouraged since every time there is a trade, a net air quality benefit results. In this view, the ability to trade serves the Act's air quality purposes, since it provides an incentive for industries to look for ways to reduce emissions and, in particular, to replace old polluting facilities with newer and cleaner ones.

One commenter opposed discounting of offsets from prior source shutdowns but stated that, if EPA feels it necessary to require special discounting of such credits to achieve ambient standards in severe nonattainment areas, then the definition of "shutdown" should refer to only an "entire plant," rather than to specific equipment, thus allowing sources some flexibility and consequent economic benefit.

One air pollution control agency addressed the issue of credit from prior shutdowns or curtailments in nonattainment areas without a demonstration of attainment and stated that EPA should allow such credits but set certain additional conditions on their use. These conditions should be, it continued, that such emissions reductions: (1) Not be double-counted, (2) be discounted at a greater than one-to-one ratio, and (3) not be used to "net out" of best available control technology. The EPA was also urged to define "shutdown" as removal from service of an individual piece of equipment, a process line, or an entire plant. This commenter stated further that EPA should not include replacement of an individual piece of equipment, or relocation of equipment without modification to a nearby noncontiguous property, in the definition of "shutdown." This commenter stated EPA should also not consider the motive for the shutdown, which is subjective and would be difficult to discern.

Another air pollution control agency also supported the proposal, but was concerned over potential double counting. To prevent abuses, this commenter advised that a person creating an emissions reduction credit from a shutdown of equipment later be required to offset emissions increases, at least equal to the amount of the emissions credit, from similar types of new or modified major or nonmajor equipment.

b. *Time Limitations.* Arguing that the use of shutdown credits promotes RFP toward attainment of the Act's goals by securing more reductions than increases and by facilitating the replacement of old, dirty facilities with new, clean ones, and given the great need for offsets by companies in nonattainment areas who seek to modernize or expand, several commenters stated that there should be no time limitations on the use of credits, as long as the State is not explicitly taking credit for the shutdown in its applicable air quality plan. Some of these commenters stated that, at a minimum, all credits for shutdowns and curtailments occurring after December 21, 1976 should be allowed.

Two other commenters stated they had no objection to the "reasonable date" time limitation in 40 CFR 51.18(j) (now 40 CFR 51.165(a)), or to the proposed December 21, 1976 date for offsets, since both those proposals are consistent with the *CMA* settlement agreement. Both commenters stated, however, that they favor the removal of any time limitation in order to provide flexibility, so long as a State did not take that shutdown or curtailment credit into account when formulating its attainment plan. Other commenters supported the December 21, 1976 cutoff date.

Commenters from local air pollution control agencies also suggested alternative cutoff dates, generally based on the year a State established an emissions inventory for purposes of preparing its plan for attainment. For example, one local authority stated that the proper baseline date for crediting an offset is that of the SIP base year inventory. A group of local agencies recommended: (1) That EPA specify an appropriate baseline date from which State and local agencies can compute shutdown credits on grounds that any credits from plant closings should not be open-ended, and (2) that any benefits from the shutdowns should compensate directly those citizens in the community where the shutdown occurred. Another local control group suggested that the cutoff date should be related to the date of adoption of the local NSR rule.

Another commenter, in noting that the December 21, 1976 cutoff date may be reasonable, observed that there may well be a "natural" limit to the date which can be established, since even process and fuel use records become difficult to find as one goes back in time. The best approach, the commenter stated, is for the States to determine what date is "reasonable" based on inventory information, enabling legislation, or other criteria, and then use this date for both 40 CFR 51.18(j) (now 40 CFR 51.165(a)) and the Offset Ruling.

State agencies asserted that a baseline date should be established to limit shutdown credits, but differed as to the amount of State discretion that could be used in setting such baseline dates. One State control agency agreed that EPA should allow the States to set a "reasonable" date for both the 40 CFR 51.18(j) and Offset Ruling credit determinations. This agency and an agency from another State specifically recommended that the cutoff date be a moving date, not earlier than 5 years before the application date. They noted that permitting authorities do not have unlimited time to delve into past records, if such records exist at all. A different State control agency maintained that the cutoff date should be concurrent with the date of emissions inventory, which would preclude a windfall for sources that shut down after an arbitrary date like August 7, 1977. In no event, however, should the cutoff date be before August 7, 1977, the State concluded. Another State group noted that the requirements in sections 129 and 172 of the Act (that offsets provide a net air quality benefit and not interfere with RFP toward attainment) would preclude the use of emissions reductions for shutdowns before the date of the baseline inventory on which the nonattainment plan is based.

Finally, one commenter claimed that businesses in nonattainment areas are often advised by legal counsel to delay installation of control equipment, implementation of cleaner production methods, or removal of older equipment in order to preserve credit for the company's own expansion or sale of the credits to other businesses. This, the commenter stated, is because the existing EPA rule denies offsets for any reduction in air pollution due to a shutdown or curtailment occurring before credit is applied for regarding new construction.

c. *Notification of the Work Force.* The several commenters who addressed EPA's proposed deletion of the rule regarding notification of the work force supported it on the grounds that EPA lacks statutory authority for this requirement.

3. Comment Opposing the Proposal

The primary comment in opposition to the proposal came from a coalition of several environmental groups. Their analysis is based on a fundamental distinction between emissions

reductions achieved through shutdowns and curtailments and those achieved by actually installing pollution controls. They observed that sources have a limited life and a natural cycle of operation within that span, with the older units often being used for a relatively small portion of the time. Since a company's plans regarding capacity utilization and ultimate retirement of the unit are generally not public, a SIP, of necessity, exaggerates the emissions and longevity of many sources in its emissions inventory. This means that source owners may be able to get inappropriately large "paper" credits that would lead to actual worsening of air quality when used to offset emissions from new sources that would be operating at a higher capacity utilization. These commenters also asserted that the requirement, in section 172 of the Act, that attainment of the standards be achieved "as expeditiously as practicable," disallows crediting of any noncontemporaneous shutdowns. They contended that emissions reductions due to such noncontemporaneous shutdowns are "environmental windfalls" and, as the current regulations provide, should not be creditable for offsetting purposes. Similarly, they opposed the proposed change in cutoff dates for these credits as a further expansion of windfall credits.

4. EPA Analysis

After careful consideration of the comments received and further analysis of the issues involved, EPA has decided to promulgate the proposed elimination of the restriction on the use of prior shutdown credits for offset purposes only where the SIP contains an approved attainment demonstration. The EPA is retaining the current restrictions on crediting, for offset purposes, emissions reductions attributable to the prior shutdown or curtailment of an existing source in those nonattainment areas for which there is not an approved demonstration of attainment of the NAAQS. In addition, EPA is adding certain safeguards to assure that prior shutdown credits, where they are allowed, are consistent with the area's SIP.

The EPA believes that this decision to relax the current regulations comports with congressional intent regarding the offset program. However, as a preliminary matter, it is appropriate to point out that the Act does not expressly mandate any particular treatment of shutdowns for offset crediting purposes. Rather, this question is a matter within the administrative discretion delegated to EPA under the Act. In *Chevron, U.S.A. Inc.* v. *NRDC, Inc.*, 467 U.S. 837 (1984), the Supreme Court reaffirmed that Congress intended to grant EPA broad discretionary authority in implementing the 1977 Amendments to the Act. This discretion extends to rules implementing the nonattainment plan provisions in Part D generally and, in particular, the offset program in section 173. (Indeed, Congress made an explicit delegation by incorporating the Offset Ruling, and authorizing EPA to amend it, in an uncodified provision of the 1977 Amendments o the Act (section 129 of Pub. L. 95-95), 42 U.S.C. 7502 Note.) Thus, although it is true, as noted in the proposed regulations, that section 173 requires EPA to allow the construction of new sources in nonattainment areas where such construction will be consistent with RFP toward attainment, EPA retains broad discretion to establish criteria for determining when RFP has been assured. In this regard, EPA believes that it is certainly a reasonable exercise of its discretion to distinguish between the showing necessary to represent RFP where there is an attainment demonstration and the showing needed where an attainment demonstration is lacking. In the latter situation, EPA can properly require greater assurances that offset transactions will result in the improvement of air quality. The final rules reflect this position.

The essence of the Act's offset provision is that a new source may be allowed in a nonattainment area only where its presence would be consistent with RFP toward attainment of the NAAQS. The EPA's primary concern in this regard is that State plans provide reliable assurance of steady improvement in air quality and attainment by the target dates. Thus, where a fully approved SIP demonstrates RFP and attainment, it is appropriate to grant that State maximum flexibility in its nonattainment plan, under section 173, within the constraint that the demonstration not be invalidated. By definition, any fully approved SIP has independently assured RFP and attainment. Therefore, allowing credit for the prior shutdown of sources which the SIP assumed are currently in operation generally is appropriate in this context, because it will not endanger the overall showing of RFP and attainment. Of course, this independent assurance would be lacking to the extent that the SIP has relied on such prior shutdowns in its attainment demonstration, or to the extent that the emissions reductions attributable to the prior shutdowns cannot reasonably be ascertained.

Following these principles, EPA has concluded that, so long as adequate safeguards are in place to prevent possible abuses (e.g., provisions to avoid double counting and ensure proper quantification of credits), it is no longer necessary to restrict shutdown credits under a fully approved SIP in the manner currently provided by 40 CFR 51.165(a)(3)(ii)(c) and the Offset Ruling (40 CFR Part 51, Appendix S, section IV.A). In contrast, where a SIP, at this late date, lacks an approved attainment demonstration, EPA has a responsibility under sections 110(a)(2)(I), 172(a)(1), and 173(1)(A) to disallow offset transactions that do not clearly demonstrate RFP toward timely attainment. The EPA has concluded that, where an attainment demonstration is lacking, retention of the current shutdown credit restriction on offset transactions is necessary both to assure RFP and to guarantee that a new source does not cause or contribute to a violation of the NAAQS.

At the outset, EPA should point out that the nonattainment areas requiring but lacking attainment demonstrations, which are at the center of EPA's current concern regarding the shutdown credit issue, were not specifically addressed in the proposed rule. The August 1983 proposal assumed that, in general, nonattainment areas would either be governed by a preconstruction review program approved as meeting the requirements of section 173 (i.e., where there was an approved demonstration of attainment), or be subject to a construction moratorium under section 110(a)(2)(I) (i.e., where there was no such demonstration) (see 48 FR 38742, 38751 and n. 23). In fact, there are currently several categories of SIP's, listed below, which have neither fully demonstrated attainment nor are currently subject to a construction moratorium. It is these areas which, for the reasons detailed below, must remain subject to the shutdown credit restriction.

As noted previously, the essence of the offset program is to ensure that additional emissions from a new source will be offset by corresponding reductions elsewhere so as to result in RFP toward attainment. Although neither the Act itself nor the legislative history is explicit regarding the source of these offsetting emissions reductions, it seems clear that Congress contemplated a relatively well-defined transactional relationship between the existing offsetting source(s) and the new source. Thus, the Senate Report on the 1977 Amendments emphasized that the offset program was meant to entail a case-by-case review, in which a new

source would obtain "matching reductions from existing sources" (S. Rep. No. 127, 95th Cong., 1st. Sess. 55, reprinted in "3 Legislative History of the Clean Air Act Amendments of 1977," at 1429). Certainly, this transactional approach has been followed since EPA's original 1976 Offset Ruling, which Congress did not alter in pertinent part when it enacted Part D. At one extreme under the current rules, the new source may actively and directly induce specific emissions reductions, such as by causing an existing source to install control equipment not otherwise required under the Act, or by replacing its own existing facilities with newer, cleaner facilities. A somewhat more attenuated market relationship is present when an existing source voluntarily installs pollution controls to reduce emissions below legally required levels and places the surplus in a "bank" from which that surplus is later purchased by a prospective new source needing offsets. Toward the other extreme, there is a temporal relationship between a new source which applies for a construction permit on a certain date, and unrelated existing sources which shut down or curtail operations after that date.

The 1977 Amendments sought to reconcile the need for economic growth in nonattainment areas and the environmental interest in improving air quality in those same areas by granting States greater flexibility in accommodating these often conflicting goals (see H. R. Rep. No. 294, 95th Cong., 1st Sess. 211, reprinted in "4 Legislative History of the Clean Air Act Amendments of 1977," at 2678). Recognizing this congressional direction, EPA has taken affirmative steps to encourage early replacement of existing, dirtier sources with newer, cleaner ones without requiring NSR when there would be no significant net increase in emissions as a result of that change. Examples include EPA's decision to allow States to adopt a "plantwide" definition of "source" for purposes of the preconstruction review program in nonattainment areas where it is consistent with RFP and attainment (see 46 FR 5076 (1981)). The Supreme Court upheld this approach in *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 407 U.S. 837 (1984).

As noted above, several industry commenters likewise favored elimination of the prior shutdown offset credit restriction on grounds that the present rules discourage early replacement of older, dirtier facilities. The EPA agrees with the general thrust of this proposition—that the offset rules should encourage construction of new sources, so long as there is a linkage to the removal from service of older and dirtier sources, and that such removal results in progress toward attainment. Indeed, the purpose of the present offset rules is to allow offset credit for prior shutdowns in those circumstances where EPA has a reasonable assurance that the shutdown is sufficiently "matched" with the new source, such that use of the offset credit can be said to represent RFP. Similarly, for the reasons stated above, where a SIP contains an adequate demonstration of attainment—and hence an independent assurance of RFP—EPA has determined that a significantly more attenuated link between a prior shutdown and the construction of a new source may be sufficient to constitute RFP, and thus the prior shutdown credit restriction may be deleted. However, with respect to those areas without the attainment demonstration mandated by section 172(a)(1), and therefore no independent assurance of RFP, EPA has concluded that it remains inappropriate, under the present NSR structure, to attribute preapplication shutdowns to the construction of an unrelated new source for offset purposes. The EPA believes that this is a reasonable basis upon which to distinguish the creditability of prior shutdowns and offsets generated by other means.

The restriction on crediting of prior shutdowns for NSR offset purposes in areas without adequate plans rests on logic similar to the logic reflected in EPA's Emissions Trading Policy Statement, which governs trades between existing sources (i.e., bubbles) (see generally 51 FR 43814–43860, December 4, 1986). In the ETPS, EPA decided to allow, with stringent qualitative safeguards, the use of shutdown credits for bubbles with case-by-case EPA approval as a SIP revision, or under generically approved State programs in areas lacking approved attainment demonstrations, so long as the shutdown of a source occurred after its application to bank or trade, special baseline and extra reduction requirements were met, and the State gave assurances of noninterference with future SIP planning. The EPA concluded that it was plausible to presume that such a source's decision to shut down was elicited "at least in part" by an opportunity to trade or bank emissions reduction credits (see 51 FR 43822). Thus, in the ETPS, EPA did not pretend that it had divined an unvarying, dominant economic motive behind all existing source trades involving shutdowns, but rather that it had resolved a close question in a generic fashion as a practical necessity (see 51 FR 43811). Applying a presumption as to transactional relationship under both NSR and the ETPS is a reasonable accommodation, administratively necessary to avoid extraordinarily difficult, case-by-case determinations of subjective motive.

However, EPA also believes it is reasonable to continue on somewhat different paths to these common goals of NSR and emissions trading given the longstanding distinctions between the two programs. For example, in emissions trading, EPA presumes that even shutdowns occurring before an application to trade were elicited by an opportunity to trade if they occurred after an application to bank. Any doubts about that presumption are compensated for by other program-wide safeguards. These include the requirements that all trades under generic programs in nonattainment areas without adequate plans—not just those trades involving banking or shutdowns—use a very stringent baseline, produce a net reduction in actual emissions of at least 20 percent, and be accompanied by State assurances that a trade is consistent with ambient progress and future air quality planning goals (see 51 FR 43832). For NSR offset purposes, EPA has presumed that shutdowns banked prior to a new source application are not transactionally related to the new source, but EPA historically has not required a lower-of-actual-or-allowable baseline, an across-the-board minimum offset ratio, or State assurances for offset transactions generally.

Nothing in the Act requires that emissions trading and NSR programs treat shutdown credits or other credits in precisely the same way. Moreover, revamping the longstanding NSR offsets system to incorporate all of the provisions of the ETPS would be a time-consuming and burdensome process.

Accordingly, issuance of the ETPS does not, as the ETPS itself indicated, force EPA to abandon the longstanding restriction on use of shutdown offset credits in areas without adequate plans.[7] Likewise, the ETPS does not independently require EPA to adopt a uniformly tighter baseline, a minimum 20 percent reduction in emissions, or a State assurance provision in its NSR program as a general matter. The end result is that EPA has rationally chosen different administrative mechanisms which it believes will serve equally well

[7] In adopting the ETPS, EPA noted that nothing therein altered existing NSR requirements or the need for compliance with them (see 51 FR 43831).

the statutory goals of RFP and attainment.

An additional consideration in this regard is EPA's developing program to address the failure of many metropolitan areas to meet the December 31, 1987 attainment date for ozone and carbon monoxide, which is the latest one specified in the Act. On November 24, 1987, EPA published a comprehensive proposed policy that spells out, in detail, the planning requirements that EPA expects to impose on areas that still lack adequate plans for attainment, or have otherwise failed to meet the NAAQS (see 52 FR 45044). Although EPA has not yet issued a final policy, in May 1988, the Agency issued notices that the SIP's for numerous areas are "substantially inadequate" within the meaning of section 110(a)(2)(H) of the Act. The notices call for SIP revisions in those areas, so that States will begin the fundamental activities necessary to make progress toward attainment of the ozone and carbon monoxide NAAQS (see 53 FR 20722, 20724 (June 6, 1988)). Although the final contours of EPA's post-1987 policy have not been drawn, it is clear that many States will face substantial planning burdens and the need to adopt additional control measures for the areas in question. Under these circumstances, EPA believes it would be inappropriate even to hold out the possibility that States could obtain approval at this time for expanded use of shutdown offset credits in areas with inadequate plans. In light of the continued severe ozone and CO nonattainment in many metropolitan areas beyond the 1987 statutory deadline, any such approval would need to be conditioned on the adoption of safeguards at least as stringent as those now required for approval of generic bubble rules under the ETPS.[8] But it is doubtful that affected States could provide, for example, the necessary assurances that prior shutdown offset credits would be consistent with ambient progress and future air quality planning goals. In particular, EPA could not approve a general relaxation on the current restriction on the use of prior shutdown offsets until, at a minimum, a State has completed a draft emissions inventory, which is required within 12 months of the SIP call (see 52 FR 45056). This is so because, if the State lacks an approved attainment plan, the absence of an emissions inventory means that EPA has no assurance that use of prior shutdown offset credits for an indefinite period of time, without further review by EPA, would be consistent with further SIP planning for attainment. (For the same reason, the State would be unable to determine whether a 20 percent net reduction in emissions or some larger percent reduction would be consistent with that needed to attain in the area.)[9]

The final factor in today's decision is that the possibility that elimination of the shutdown credit restriction would serve to encourage economic growth and early cleanup is insufficient to justify a radical departure from the present NSR offset rules in nonattainment areas lacking adequate attainment demonstrations. In contrast to situations where a new source is responsible for the installation of additional control equipment by an existing source, or where an existing source replaces an old item of process equipment with a newer one, the relationship between the prior shutdown of an existing source and the later construction of an unrelated new source is not obvious. In an August 31, 1983, **Federal Register** notice, EPA solicited comments on the issue of whether the restriction on shutdown crediting induced sources to keep older, dirtier facilities on line beyond their economically optimum period of use in order to preserve potential emissions reduction credits (48 FR 39585). No definitive evidence that such is the case was received. In the absence of such evidence, EPA is not compelled to adopt this change in areas lacking adequate attainment demonstrations.

Accordingly, at this time EPA is retaining the offset restrictions on shutdowns which occurred prior to the date of the construction permit application where there is no adequate attainment demonstration. The EPA believes it is reasonable to deem that postapplication shutdowns may be transactionally linked to the new source for purposes of demonstrating RFP under the NSR offset requirement. Conversely, a preapplication shutdown (other than a replacement) can reasonably be viewed as insufficiently related to the new source, and therefore unavailable for purposes of demonstrating that the net result of construction of the new source is RFP, in those nonattainment areas lacking an adequate independent demonstration of RFP and timely attainment.

The EPA believes that this position comports with congressional intent regarding the proper role of the offset program. Moreover, EPA believes that this position is generally consistent with requirements for bubbles under the ETPS, taking into account the different history and functions of these programs. It is also consistent with EPA's emerging post-1987 nonattainment policy. Finally, EPA's position follows the recommendation of many pollution control agencies by avoiding the difficult and intrusive task of determining a source's subjective motive for shutting down or curtailing production.

The EPA wishes to clarify the four types of planning circumstances in which EPA considers the SIP to be inadequate and will continue to restrict offset credits for prior shutdowns. In all but the following situations, EPA will consider the SIP to contain an acceptable attainment demonstration and will allow the general offsetting use of prior source shutdowns, provided all other criteria regarding creditable emissions reductions are met:

a. The total suspended particulates (TSP) areas that are designated nonattainment under section 107 in States which failed to submit a 1979 Part D attainment demonstration or submitted one that did not receive full EPA approval. This also includes both primary and secondary TSP nonattainment areas that submitted a SIP that did not include an actual demonstration of attainment but still received EPA approval (e.g., a "RACT plus studies" SIP). Although EPA has changed the NAAQS indicator for particulate matter from TSP to particulate matter nominally 10 microns and less (PM_{10}), the TSP nonattainment designations will remain in place at least until a State receives EPA approval of its PM_{10} attainment plan. Until such time, State NSR provisions requiring compliance with the old TSP requirements—including offsets—remain in effect (see 52 FR 24672, 24682, and 24684).

b. Nonattainment areas that have received a final notice of disapproval of their current SIP.

c. Nonattainment areas that have received either a section 110(a)(2)(H) notice of deficiency based on failure to attain or maintain the primary NAAQS, or a notice of failure to implement an approved SIP. This includes newly

[8] State generic bubble rules under the ETPS and State offset rules under NSR are structurally similar because, in both programs, EPA reviews and approves the rules governing the overall conduct of such programs by the States indefinitely into the future but does not pass judgment on individual transactions which these programs share.

[9] It should be noted that State rules may at the present time allow sources to preserve prior shutdown credits for future use at such time as an attainment demonstration has been approved by EPA, provided that the emissions inventory used in the development of the approved attainment demonstration explicitly includes as current "existing" emissions the emissions from the previously shutdown sources. In addition, the emissions reductions from such shutdown sources must be permanent, quantifiable, and federally enforceable at the time of use.

designated primary nonattainment areas that do not yet have an EPA-approved attainment demonstration to address the new-found nonattainment problem.

d. Nonattainment areas that received notice from EPA that they have failed to meet conditions in their EPA-approved SIP's, including commitments to adopt particular regulations by specified dates.

There may be circumstances where, subsequent to the submittal of a complete permit application which relies on a specific prior shutdown or curtailment which is otherwise creditable, the SIP's attainment demonstration is no longer considered adequate for one of the four reasons outlined above. In such cases, the criteria for crediting prior source shutdowns in areas with an acceptable demonstration will continue to apply to the processing of the permit.

Regarding the comments pertaining to the proper definition of shutdown for offsetting purposes, EPA wishes to clarify that where the prior shutdown restrictions remain in place, "source shutdown" refers to the permanent withdrawal from productive capacity of any building, structure, facility, installation, item of process equipment, or combination thereof. This nontechnical definition of the potential sources of offset credits has been followed by EPA since adoption of the original Offset Ruling, and clearly comports with the purpose of the offset program. The EPA did not intend to alter its policy in October 1981 (see 46 FR 50766), when EPA adopted a "plantwide" definition of "source" for determining the overall applicability of the NSR requirements.

With respect to the question of discounting of shutdown offsets, EPA's position is that where offset credit for shutdowns is appropriate, such credits may be treated in the same fashion as any other type of emissions reduction. Thus, shutdown offset credits continue to be subject to any general offset ratio specified in an applicable SIP unless the State in its discretion establishes a different ratio for such credits, and are not subject to the special baseline, across-the-board 20 percent net emissions reduction, or State assurance requirements applicable to "progress" bubbles under EPA's ETPS.

Regarding time limitations, the EPA agrees with the reasoning of those commenters who favored removal of inflexible nationwide time limitations on the crediting of prior shutdowns. However, EPA does not concur that time limitations are wholly unnecessary, so long as a State has not explicitly taken credit for the shutdown in its SIP. Rather, some limitations must be retained to provide adequate assurance for air quality planning and administrative reasons that shutdown credits are allowed only where they will, in fact, result in RFP.

As noted by several States and local air pollution control agencies, shutdowns which occurred prior to a State's establishment of the emissions inventory used in its attainment demonstration should not be available as credit. In general, States have at least implicitly taken account of all such preinventory shutdowns and curtailments in their nonattainment plans. It would constitute "double counting" of these emissions reductions to allow their unrestricted use as shutdown offset credits by potential new sources. Accordingly, emissions from a new source whose construction is premised upon such shutdowns cannot reliably be said to be consistent with RFP, unless the emissions inventory explicitly treats the emissions from the shutdown source as current actual emissions.

The EPA believes that the final rule should also reflect the concerns of State commenters who pointed to a range of practical difficulties in verifying the existence and extent of past emissions reductions. Accordingly, in order to afford individual States maximum flexibility, while ensuring that prior shutdown credits will result in RFP, the final rule in Subpart I provides that the time limit for use of shutdown credits may be any reasonable cutoff date after August 7, 1977, as specified in the SIP, so long as that date is on or after the date of the most recent emissions inventory used in the plan's EPA-approved demonstration of attainment. In addition, where the emissions inventory explicitly lists the emissions from a previously shut down or curtailed source as still existing, the State may choose to allow such emissions for offset credit purposes. The Offset Ruling has been revised to contain the same cutoff date provisions as Subpart I. In addition, the final rules provide that, in order to be creditable, prior shutdowns must be permanent, quantifiable, and federally enforceable when used.

The final rules also promulgate the proposed deletion of the work force notification provision. This requirement served no purpose in assuring attainment of the NAAQS and, thus, its retention would be inappropriate.

E. Banking of Offsets

1. Background

The current Offset Ruling contains a provision, subparagraph IV.C.5., which affirms that a permitting authority may give credit under the Offset Ruling for past "banked" reductions and which sets some boundaries on the circumstances under which it may grant this credit. The third and last sentences of that subparagraph also contain guidance on the approvability, under section 173, of a permit program that would give credit for "banked" offsets. Since adding that guidance to the Offset Ruling in January 1979, EPA has issued regulatory guidance on banking for purposes of nonattainment NSR in the form of § 51.165(a)(3) (formerly § 51.18(j)(3)) and policy guidance in the form of the ETPS (51 FR 43814, December 4, 1986). This newer guidance renders the guidance in the Offset Ruling superfluous. To avoid confusion, EPA proposed to delete the third and last sentences.

2. Public Comments

Comment on this issue was limited but generally favorable. Several commenters supported what they termed "the removal of artificial distinctions against the use of shutdown emissions," noting that crediting of such emissions was very important, especially in California, where shutdowns are the only area source of emissions credit. Others agreed with EPA's proposal to eliminate the banking guidance in the Offset Ruling in favor of more recent guidance in the ETPS.

One State agency opposed the proposed deletion of the two provisions in the Offset Ruling because, until the final ETPS is promulgated, there would be no official regulatory replacement of these limitations on abuse of emissions reduction credits. Finally, one commenter stated that the ETPS should be combined with a formal emissions banking and trading program, subject to notice and public comment, in order to reduce confusion and provide the maximum flexibility in the use of credits.

3. EPA Analysis

The EPA is today deleting the subject provisions, as proposed. They are unnecessary in view of the ETPS.

F. Health and Welfare Equivalence

1. Background

The five sets of PSD and nonattainment NSR regulations define "major modification," roughly, as any change at a major source that would result in a "significant net emissions increase" in any one of certain pollutants. "Net emissions increase," in turn, is defined as the amount by which the sum of: (1) The increase in emissions from the proposed change, and (2) any

creditable increases and decreases elsewhere at the source would exceed zero (e.g., 40 CFR 52.21(b)(3)(i)). This process of summing increases and decreases in emissions in order to avoid NSR is commonly referred to as "netting." The regulations restrict the creditability of some decreases in emissions. One provision, in particular, allows credit for a reduction only to the extent that it has approximately the same qualitative significance for public health and welfare as the increase from the proposed change (e.g., id. § 52.21(b)(3)(vi)(c)). Examples of specific concerns are variations in pollutant carcinogenicity and volatile organic compounds (VOC) reactivity, and in air quality impact as a result of different stack heights.

Several of the industry petitioners in the *CMA* case have challenged that restriction on the creditability of emissions reductions. The basis of this argument is that the relevant statutory definition of "modification," section 111(a)(4) of the Act, includes any change "which increases the amount of any air pollutant emitted. * * *" This reference to "amount" is argued to mean that the definition only applies to the quantity of air pollutants, by weight, rather than to any qualitative criteria regarding amount of impact, such as toxicity or impact area. The EPA proposed to delete this requirement on those grounds, stating that NSR of modifications primarily is triggered by quantitative increases in emissions and, therefore, it lacks authority to limit netting credits based on purely qualitative reasons. In addition, the proposal concluded that, even if EPA did have authority to impose this restriction, it could not do so because the wording is unlawfully vague.

In conjunction with the issue of health and welfare equivalence, EPA proposed to exclude certain compounds from the term VOC's as that term is used in the PSD and nonattainment regulations, because EPA has determined them to be negligibly photochemically reactive and, hence, not precursors of ozone.

2. Public Comment on Health and Welfare Equivalence

a. *Comments Generally Favoring the Proposal.* Industry commenters generally supported the proposal. Some stated that there is no reason to differentiate between types of emissions which contribute to ambient levels of a criteria pollutant. For example, all reductions in particulate matter emissions help to attain the TSP standard. Consequently, if EPA's concern is with fine particulates, it should directly address them in a rulemaking. Similarly, these commenters stated, mechanisms from other programs—such as RACT, NSPS, and national emission standards for hazardous air pollutants (NESHAP)—exist to address toxic pollutants directly. Some commenters also criticized the restriction as vague and potentially burdensome if case-by-case analyses were required. One State air quality program added that it has authority to ban netting in any case where such could cause hazardous emissions problems.

b. *Comments Generally Opposing the Proposal.* Several commenters representing State air quality programs opposed the proposal, arguing that it should be the quality, not merely the quantity, of emissions that determine creditability for netting purposes. If this were not the case, trades could proceed that allowed increases in toxic pollutants in place of criteria pollutants, or between large and small particulate emissions, even though there would be a significantly greater adverse effect on public health and welfare.

A Federal agency noted that the rerouting of fugitive emissions through a stack to achieve a net decrease in emissions could still cause greater ambient concentrations of a pollutant further downwind, such as at a national park. Since a PSD applicant would thereby avoid having to demonstrate a lack of adverse impact on such a downwind Class I area, the FLM's ability to exercise his affirmative responsibility to protect air quality-related values would be impaired. Therefore, the only creditable emissions decreases should be those for which points of emissions have the same emissions characteristics, and the FLM should be notified if a Class I area would be potentially affected by emissions from a source modified through such netting.

An environmental group stated that the *Alabama Power Company* v. *Costle* case, contrary to EPA's assertion in the proposal, provides no authority against a health and welfare equivalency criterion since no party raised this question in the litigation, and the court had no occasion to address it. The language from the court opinion which EPA quotes is, therefore, simply not relevant.

3. Public Comment on Exclusion of Nonreactive VOCs.

a. *Comments Generally Favoring the EPA Proposal.* Several commenters supported EPA's decision to exclude certain compounds from the term VOC's as that term is used in the PSD and nonattainment regulations. A petroleum company urged EPA to also delete propane, acetone, methanol, acetylene, and tertiary alkyl alcohols from the definition, arguing that these compounds are also nonreactive. A manufacturing company urged EPA to delete fluorinated organic compounds (citing an EPA letter that such substances were negligibly photochemically reactive); a chemical company urged EPA to delete tetrachloroethylene (citing an EPA report); and a trade association urged EPA to clarify that other nonreactive VOC's may, in the future, be added to the present list as soon as they are shown not to be precursors of ozone.

One commenter, although supporting the EPA proposal, urged that the new definition of VOC not be retroactive to previous applicability determinations or emissions banking determinations, since this would create an administrative nightmare and change the basic principles under which industry has been operating.

b. *Comments Generally Opposing the EPA Proposal.* A local air quality program opposed the proposed definition of VOC unless EPA institutes measures to consider the compounds deleted from the definition under separate provisions of the Act. That commenter noted that these compounds are a potential public health hazard.

Another commenter stated that the proposed exclusions from the VOC definition were shortsighted since a number of the substances to be deleted are candidates for listing under section 112. The commenter stated that the effect of the proposal would be to encourage greater use of these substances which may in the future have to be regulated more tightly than the average hydrocarbon.

4. EPA Analysis

Upon consideration of the public comments and of its duties and authority under the Act, EPA has decided to retain the current regulation allowing netting credit for a reduction in emissions only to the extent that the reduction has "approximately the same qualitative significance for public health and welfare" as the proposed emissions increase. However, as explained below, today's action clarifies that the implementation of this regulation is temporarily limited in certain ways, described below, pending further improvements in EPA's ability to assess qualitative differences in the effects, including toxic effects, of pollutants that are similar in quantity.

In view of substantial arguments on both sides of the health and welfare issue, EPA has reassessed the question

of EPA's authority to promulgate this regulation. The EPA has concluded that congressional intent behind the adoption of section 111(a)(4) to guide the definition of "modification" for NSR purposes is ambiguous, and that EPA possesses adequate authority to maintain the health and welfare requirement.

Industry commenters have urged EPA to strictly construe the operative phrase "* * * which increases the amount of any air pollutant emitted * * *" so as to exclude consideration of qualitative impacts. However, although strict construction might require exclusive focus on the amount of pollution, it would also demand close adherence to the "any air pollutant" portion of the definition. This could lead to anomalous results that no party has sought, and which would not further the statutory purposes of the Act. This is because section 302(g) defines "air pollutant" very broadly to include:

> Any air pollutant agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter which is emitted into or otherwise enters the ambient air.

However, under the PSD program, EPA, to date, has equated "any air pollutant" with pollutants "subject to regulation under (the Act)" as that term is used in section 165(a)(3). In contrast, in the "NSPS" program from which the definition is borrowed, EPA has consistently treated "any air pollutant" as referring only to those pollutants for which a performance standard has been promulgated under section 111 for the specific source category in question.

Thus, a strict reading of section 111(a)(4), together with section 302(g), might require vastly expanded regulation, under both the NSPS and NSR provisions of the Act, of any air pollutant, including discrete subspecies of criteria pollutants, regardless of whether such pollutant is otherwise regulated under the Act or the program in question. In the context of NSR netting calculations, such a reading would require that netting be strictly quantitative by focusing on the amounts of individual air pollutant agents, yet be qualitative in nature by allowing only netting of air pollutant agents of the same type.

There is no indication that Congress required EPA to administer the Act in this fashion. Rather, EPA believes that there is an inherent tension between the statutory terms "amount" and "any air pollutant," and that congressional intent is thus ambiguous. Where a clear expression of legislative purpose is lacking, EPA may interpret statutory language reasonably so as to further the general legislative purposes (see *Chevron, U.S.A., Inc.* v. *NRDC*, 467 U.S. 837 (1984)). Here, EPA believes that the central purposes of the Act, to protect public health and welfare (see sections 101(b)(1) and 160(1)), and to allow increases in pollution only after careful evaluation of all the consequences (see section 160(5)), will be served by retaining this regulatory requirement, because it helps ensure that modified sources that would otherwise "net out" of review do not inadvertently cause a significant adverse health or welfare impact. This position is also supported by *Alabama Power Co.* v. *Costle*, wherein the court recognized that EPA retains substantial discretion in applying the bubble concept (see 636 F.2d at 402).

Some commenters have argued that these goals should be pursued exclusively through the NSPS and NESHAP programs, not through NSR. The EPA's response to these commenters is two-fold. First, the Act clearly does not limit control of these problems to only those two programs. Indeed, the Act provides for complementary, but distinctly different, roles for all three programs. Section 112 addresses "hazardous air pollutants," defined as those which

> * * * cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness (section 112(a)(1)).

This program provides for the identification of these hazardous air pollutants and control of emissions from source categories designated by EPA. The PSD provisions of the Act provide a very different focus and standard for regulation. For example, the PSD program addresses all major sources and is designed "to protect public health and welfare from any actual or potential adverse effect" from any air pollutant (section 160(1)).

Second, NSR possesses an inherent speed and flexibility in its ability to protect public health and welfare that those other programs lack. The NSR programs provide timely and focused responses to health and welfare issues arising from specific sources. These responses complement the type of long-range and general studies performed pursuant to sections 111 and 112. The NSR programs also address all pollutants from each source in every source category, while the NSPS and NESHAP programs do not.

Although EPA believes it has adequate authority to consider differences in the toxicity of various subspecies of pollutants in netting calculations, EPA has not yet set forth criteria by which to delineate these differences so as to ensure reasonable and nationally consistent implementation. Thus, while EPA believes that sources should not trade decreases in compounds of lesser toxicity (considered in terms of acute or carcinogenic effects) if this results in adverse health or welfare consequences, specific limitations on sources' ability to net must await further development of objective criteria by which to judge these differences.

Toward this goal, EPA now solicits comments to be used in the development of guidance for implementing this provision. Certainly, an exact and detailed approach to ranking all toxics is impossible; there are 4,500,000 chemicals listed by the American Chemical Society, with 70,000 chemicals in commercial use and 1,000 new ones added each year. Furthermore, toxicity is an art, as well as a science, with the level of knowledge constantly evolving. It would be irresponsible and contrary to the Act, however, to ignore potential public health problems because of the inability to precisely discriminate among all chemicals. Prudent regulatory strategy entails the broad examination and classification of toxic air pollutants in such a way as to provide for reasonable and predictable implementation of the NSR program while preventing appreciable increases in public health risk.

There are a variety of sources of information to assist permitting authorities and affected industry in assessing relative risk of toxic air pollutants. For example, the American Conference of Governmental Industrial Hygienists publishes "Threshold Limit Values," indicating safe worker exposure concentrations for numerous pollutants. The Carcinogen Assessment Group provides a broad classification system for carcinogens, as well as unit risk factors for carcinogenic potency. Such sources of information on toxicity could well serve as the basis for classifications of pollutants for purposes of determining appropriateness of netting transactions. One initial approach might be to group the toxic air pollutants likely to be encountered into four or five classifications based on variances in toxicity, with netting credits being allowed for reductions in any other chemical contained in the same group.

In the meantime, section 116 allows, and EPA encourages, the States to continue development and implementation of their own air toxics programs, including case-by-case analysis of proposed netting transactions. The EPA will continue to closely monitor these State efforts, and will consider the approaches being used by the various States (such as prohibiting netting between certain groups of toxic subspecies, or establishing netting ratios between certain groups of toxic pollutants) in developing specific Federal regulatory requirements in this area.

The EPA also agrees with those commenters who pointed out a vagueness problem with the area impact aspect of the health and welfare equivalence regulation. Specifically, industry comments criticizing netting restrictions determined by area or concentration of pollutant impact, such as stack height, plume temperature, and impact on visibility or vegetation, are well taken. Absent more specific guidance on the reach of this provision, it is unduly vague and, hence, difficult to implement in a consistent manner. Consequently, EPA policy will be to limit this aspect of the health and welfare provision unless, and until, specific guidance on how to address these comparisons is issued.

Accordingly, the area impacts aspect of the regulation will apply only where the State has reason to believe that the reduction in ambient concentrations from the emissions decrease will not be sufficient to prevent the proposed emissions increase from causing or contributing to a violation of any NAAQS or PSD increment, despite the absence of a significant net increase in emissions. In such cases, an applicant for a federally enforceable permit must demonstrate that the proposed netting transaction will not cause or contribute to an air quality violation before the emissions reduction may be credited. This requirement serves as a "safety valve" for circumstances not contemplated by the calculation of significance values in the NSR regulations, and is amply specific to allow consistent application. This requirement is also appropriate because it provides, as to sources that would be considered major but for their ability to net out of NSR review, air quality protection equivalent to that mandated under section 165(a)(3) of the Act.

As indicated above, the concerns addressed by this regulation relate to differences in the toxicity and impact areas of emissions subject to a netting calculation. However, many common types of emissions can be considered the same pollutant in terms of health and welfare impacts. In addition, many industrial processes are sufficiently similar that they can be considered as having an equivalent impact on health and welfare. Therefore, where netting takes place between the same or similar combustion units, fuels, or processes, equivalency may, in most cases, be assumed. As is the case with all other criteria for the crediting of emissions reductions, it is the responsibility of the source attempting to net emissions to support, where necessary, a finding of equivalence of health and welfare equivalence. Nevertheless, EPA has no evidence to indicate that the requisite health and welfare equivalency demonstration has been burdensome or has resulted in any undue delay or prohibition in the construction of a major modification to a major source. Furthermore, any burdens that currently exist would be reduced as a result of today's action.

The EPA is also promulgating a new definitional provision that, in general, excludes certain organic compounds from the term "VOC" as that term is used in the PSD and nonattainment regulations.[10] The compounds are those that EPA has determined to be negligibly photochemically reactive and, hence, not important precursors of ozone (see 42 FR 35314, July 8, 1977; 44 FR 32043, June 4, 1979; 45 FR 32424, May 15, 1980; 45 FR 48941, July 22, 1980; 54 FR 1987, January 18, 1989). They are, therefore, not considered to be VOC's within the meaning of the PSD and nonattainment regulations. The purpose of the revision is to clarify that increases and decreases in emissions of those compounds are to be ignored completely in any applicability determination with respect to VOC's. Although this is a new provision for the NSR regulations, it does not change the chemicals on EPA's list of organic compounds determined to be negligibly photochemically reactive. Thus, it does not change any EPA applicability determinations, since this list has already been relied on in those transactions.

III. Miscellaneous

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is a "major rule" and therefore subject to the requirement for preparation of a Regulatory Impact Analysis. The EPA has determined that this regulation is not a "major rule," because it either relaxes a regulatory requirement or retains existing provisions and will not have any significant effects on the economy.

This regulation has been submitted to the Office of Management and Budget for review under Executive Order 12291. Any written comments from that office, and EPA's written responses to any such comments, have been placed in the docket for this proceeding and are available for public inspection at the times and place described earlier in this preamble.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0003.

The public reporting burden resulting from this rulemaking is estimated to decrease 2,920 hours overall as a result of today's rulemaking. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Economic Impact Assessment

The requirement for performing an Economic Impact Assessment under section 317 of the Act (42 U.S.C. 7617), does not apply, because this regulation does not make "substantial revisions" to existing regulations. These revisions are not "substantial," because they either relieve a current regulatory burden or retain existing provisions.

D. Regulatory Flexibility Act Certification

As required by section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I certify that this regulation will not have a significant adverse impact on any small entities, because it relieves an existing regulatory burden and imposes no significant new burdens.

[10] It would not exclude a compound if it were subject to an NSPS or NESHAP.

E. Effective Date

As stated earlier in this notice, this rule is effective immediately upon publication in the **Federal Register.** The EPA has concluded that, under section 307(d)(1) of the Act, the requirement of section 4(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), for a 30-day waiting period before making a rule effective is not applicable.

F. Federalism Implications

Under Executive Order 12612, EPA must determine if a rule has federalism implications, i.e., substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. For those rules which have federalism implications, a Federalism Assessment is to be made.

The Executive order also requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Executive order provides for preemption of State law, however, if there is a clear congressional intent for the agency to do so. Any such preemption, however, is to be limited to the extent possible.

This final rule either retains the current rules or provides increased State policy options. The only change with federalism implications is the action which allows use of certain emissions reductions (e.g., prior shutdowns) in certain areas for offsets. Previously, such reductions could not be used. The change increases State policy options, allowing them to prohibit, use, or partially use these reductions as a part of their air quality management plans.

List of Subjects

40 CFR Part 51

Administrative practices and procedures, air pollution control, intergovernmental relations, reporting and recordkeeping requirements, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, hydrocarbons, carbon monoxide.

40 CFR Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

Date: June 12, 1989.

William K. Reilly,

Administrator.

For reasons set forth in the preamble, Parts 51 and 52 of Chapter I of the Title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for Part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 110, 160–169, 171–178, and 301(a) of the Clean Air Act, 42 USC 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

2. Section 51.165 is amended by adding paragraph (a)(1)(xix) and revising paragraph (a)(3)(ii)(C) to read as follows:

51.165 Permit requirements.

(a) * * *

(1) * * *

(xix) "Volatile organic compounds" excludes: methane; ethane; methylene chloride: 1,1,1 tricholoroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

(3) * * *

(ii) * * *

(C)(*1*) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this paragraph, a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current "existing" emissions the emissions from such previously shutdown or curtailed sources.

(*2*) Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions of § 51.165(a)(3)(ii)(C)(*1*) are observed.

* * * * *

3. Section 51.166 is amended by adding paragraphs (b)(29) and (s)(2)(vi) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(29) "Volatile organic compounds" excludes each of the following compounds, unless the compound is subject to an emissions standard under sections 111 or 112 of the Act: methane; ethane; methylene chloride; 1,1,1 trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluouromethane (CFC–12); chlorodifluoromethane (CFC–22): trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114): chloropentafluoroethane (CFC–115): dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HCFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

(s) * * *

(2) * * *

(vi) The provisions of paragraph (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

* * * * *

4. Section 51.166 is amended by removing paragraph (s)(2)(iv)(*b*) and redesignating paragraph (s)(2)(iv)(*c*) as (s)(2)(iv)(*b*).

5. Appendix S is amended by adding paragraph II.A.20 and revising paragraph IV.C.3. to read as follows:

Appendix S—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

20. "Volatile organic compounds" excludes: methane; ethane; methylene chloride; 1,1,1

tricholoroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HCFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

IV. * * *

C. * * *

3. (i) *Operating hours and source shutdown.*

A source may generally be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels (see initial discussion in this Section IV.C), if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this paragraph, a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current "existing" emissions the emissions from such previously shutdown or curtailed sources.

(ii) Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source and the cutoff date provisions of section IV.C.3.(i) are observed.

* * * * *

6. Appendix S, paragraph IV.D. is amended by redesignating footnote 10 as footnote 9 and paragraph V.A.(1) is amended by redesignating footnote 11 as footnote 10.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.21 is amended by adding paragraphs (b)(30) and (v)(2)(vi) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(30) "Volatile organic compounds" excludes each of the following compounds, unless the compound is subject to an emissions standard under sections 111 or 112 of the Act: methane; ethane; methylene chloride; 1,1,1 trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluouromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

(v) * * *

(2) * * *

(vi) The provisions of paragraph (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

* * * * *

3. Section 52.21 is amended by removing paragraph (v)(2)(iv)(*b*) and redesignating paragraph (v)(2)(iv)(*c*) as (v)(2)(iv)(*b*).

4. Section 52.24 is amended by adding paragraph (f)(18) to read as follows:

§ 52.24 Statutory restriction on new sources.

* * * * *

(f) * * *

(18) "Volatile organic compounds" excludes: methane; ethane; methylene chloride; 1,1,1 tricholoroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

[FR Doc. 89–14682 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
June 28, 1989

Part III

Department of Education

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Final Rule; Correction

DEPARTMENT OF EDUCATION

34 CFR Part 300

RIN 1820-AA71

Assistance to States for Education of Handicapped Children; Correction

AGENCY: Department of Education.

ACTION: Final rule; correction.

SUMMARY: On April 27, 1989, final regulations for 34 CFR Part 300, titled "Assistance to States for Education of Handicapped Children," were published at 54 FR 18248. The regulations are corrected as follows:

§ 300.138 [Corrected]

1. On page 18253, in the second column, under § 300.138 (Amended), the fourth line is corrected to read "(20 U.S.C. 241e-2), section 305(b)(8) of".

2. On the same page, in the same column, under § 300.138 (Amended), the ninth line is corrected to read "Subpart 2 of Part D of Chapter 1".

3. On same page, in the same column and section, the thirteenth line is corrected to read "Vocational Education Act,".

§ 300.589 [Corrected]

4. On page 18255, in the first column, "supplement" in the heading for § 300.589 is corrected to read "supplementing".

§ 300.702 [Corrected]

5. On the same page, in the third column, in § 300.702(a)(3), paragraph (3) beginning with the third line is corrected to read "under Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965.".

§ 300.751 [Corrected]

6. On page 18256, in the third column, in § 300.751, the second line of paragraph (d)(2) is corrected to read "disability (other than a deaf-blind child) must".

§ 300.753 [Corrected]

7. On the same page, in the same column, under § 300.753 (Amended) the third and fourth lines are corrected to read "adding, in its place, "Subpart 2 of Part D of Chapter 1 of Title I of".

FOR FURTHER INFORMATION CONTACT: Lucille Sleger, Office of Special Education and Rehabilitative Services, Division of Assistance to States, 400 Maryland Avenue, SW., Room 3615, Switzer Building, Washington, DC 20202; Telephone: (202) 732-1104.

Authority: 20 U.S.C. 1411-1420, unless otherwise noted.

Dated: June 22, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89-15230 Filed 6-27-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
June 28, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area; AZ; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-8]

Proposed Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects the description of the Phoenix Terminal Control Area (TCA) (54 FR 23922, June 2, 1989). Due to the difficulty of using geographical landmarks to depict TCA boundaries, some coordinates of latitudes and longitudes of Area B were incorrectly stated in the NPRM. Subarea B-1 is proposed by this action to depict that correction. No airspace is added by this correction. Also, a boundary was incorrectly described in Area H. In addition, some minor editorial changes were made for clarification.

DATES: Comments must be received on or before August 1, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 88-AWA-8, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

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 aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWA-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket 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-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. 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.

History

Federal Register Document 89-13135 published June 2, 1989, proposed a TCA at Phoenix, AZ (54 FR 23922). Because of the difficulty involved with the TCA alignment using geographical landmarks, errors were made in some latitude and longitude coordinates in Area B. To correct the error, a new subarea, B-1, is proposed and is designed for terrain clearance using prominent visual landmarks. No additional airspace is contemplated by this correction. Further, although the altitudes for the visual flight rules transition area were described correctly in the proposal as 3,500 to 5,500 feet mean sea level (as assigned by air traffic control), the chart depiction was incorrect. In Area H, a boundary was incorrectly described as a bearing from the instrument landing system localizer antenna instead of a radial from the Salt Lake City very high frequency omni-directional radio range and tactical air navigational aid. In addition, some minor editorial changes were made for clarification.

The FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291, and it is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. This rule is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas and airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Federal Register Document 89-13135, as published in the Federal Register on June 2, 1989 (54 FR 23922), is corrected by substituting the following:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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

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

§ 71.403 [Amended]

2. § 71.403 is amended as follows:

Phoenix, AZ [New]

Primary Airport

Phoenix Sky Harbor International Airport (lat. 33°26'10"N., long. 112°00'32"W.)

Phoenix Sky Harbor International Airport Runway 8R Instrument Landing System (ILS) Localizer Antenna (lat. 33°25'52"N., long. 111°59'11"W.) Salt River VORTAC (SRP) (lat. 33°25'53"N., long. 111°53'17"W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within the area bounded on the north by a point at lat. 33°30'34"N., long. 112°10'05"W., (intersection of 51st Avenue and Camelback Road) extending east along Camelback Road until a point at lat. 33°30'07"N., long. 111°53'28"W., (intersection of Camelback Road and Pima/Price Road), on the east by Pima/Price Road until a point at lat. 33°21'49"N., long. 111°53'34"W., (Pima/Price Road and Guadalupe Road), on the south by Guadalupe Road to a point at lat. 33°21'50"N.,

long. 111°58'05"W., (intersection of Guadalupe Road and Interstate 10) direct to a point at lat. 33°21'48"N., long. 112°06'27"W., direct to a point at lat. 33°21'46"N., long. 112°10'06"W., on the west by 51st Avenue to the point of beginning.

Area B. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within an area bounded on the north by a point at lat. 33°30'29"N., long. 112°21'26"W., (intersection of Litchfield Road and Camelback Road) extending east on Camelback Road to a point at lat. 33°30'27"N., long. 112°18'14"W., (Camelback Road and Agua Fria River) north along Agua Fria River to a point at lat. 33°32'11"N., long. 112°18'23"W., (Agua Fria River and Glendale Avenue) extending east on Glendale Avenue to a point at lat. 33°32'19"N., long. 112°06'42"W., (intersection of Glendale Avenue and Interstate 17), on the east by Interstate 17 to a point at lat. 33°30'34"N., long. 112°06'42"W., (intersection of Interstate 17 and Camelback Road) west on Camelback Road to a point at lat. 33°30'34"N., long. 112°10'05"W., (intersection of Camelback Road and 51st Avenue) south of 51st Avenue to a point at lat. 33°21'46"N., long. 112°10'06"W., east to a point at lat. 33°21'48"N., long. 112°06'27"W., south to a point at lat. 33°18'18"N., long. 112°06'27"W., on the south by an extension of Chandler Boulevard extending west to a point at lat. 33°18'18"N., long. 112°21'26"W., on the west by Litchfield Road and an extension of Litchfield Road to the point of beginning, excluding that airspace west of the Gila River.

Area B–1. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point beginning at the intersection of the Gila River and an extension of Chandler Boulevard at lat. 33°18'18"N., long. 112°12'00"W., extending west on an extension of Chandler Boulevard to a point at lat. 33°18'18"N., long. 112°21'26"W., extending north along an extension of Litchfield Road and Litchfield Road until intercepting the Gila River extending southeast along the Gila River to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL with the airspace bounded on the north by a point at lat. 33°32'18"N., long. 111°53'26"W. (intersection of Indian Bend Road and Pima/Price Road) east on Indian Bend Road and an extension of Indian Bend Road until a point at lat. 33°32'20"N., long. 111°47'20"W., (extension of Indian Bend Road intercepts Gilbert Road), on the east by Gilbert Road and an extension of Gilbert Road to a point at lat. 33°18'18"N., long. 111°47'20"W., (extension of Gilbert Road intercepts Chandler Boulevard) on the south by Chandler Boulevard to a point at lat. 33°18'19"N., long. 111°58'18"W., (intersection of Chandler Boulevard and Interstate 10), on the west by Interstate 10 to a point at lat. 33°21'50"N., long. 111°58'05"W., (the intersection of Guadalupe Road and Interstate 10) then east on Guadalupe Road to a point at lat. 33°21'49"N., long. 111°53'34"W., (intersection of Guadalupe Road and Pima/Price Road), then north on Pima/Price Road until the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°36'32" N., long. 112°18'15" W., (Agua Fria River and Thunderbird Road) extending east on Thunderbird Road and Cactus Road and an extension of Cactus Road (lat. 33°35'45" N., long. 111°38'30" W.) until intercepting the 20-mile arc from the ILS localizer antenna clockwise to the Williams 1 MOA, AZ, boundary, then south along the Williams 1 MOA boundary until intersecting Riggs Road and an extension of Riggs Road, extending west on Riggs Road and an extension of Riggs Road to a point at lat. 33°13'10" N., long. 112°09'55" W., (intersection of Valley Road and Riggs Road) north on Valley Road to a point at lat. 33°15'20" N., long. 112°10'10" W., (intersection of Valley Road and Gila River) north along Gila River until intercepting an extension of Chandler Boulevard at lat. 33°18'18" N., long. 112°12'00"W., extending east on an extension of Chandler Boulevard to a point at lat. 33°18'18" N., long. 112°06'27" W., north to a point at lat. 33°21'48" N., long. 112°06'27" W., east to a point at lat. 33°21'50" N., long. 111°58'05" W., (intersection of Guadalupe Road and Interstate 10) south on Interstate 10 to a point at lat. 33°18'19" N., long. 111°58'18" W., (intersection of Chandler Boulevard and Interstate 10) east on Chandler Boulevard to a point at lat. 33°18'19" N., long. 111°47'20" W., (intersection of Gilbert Road and Chandler Boulevard) north on Gilbert Road and an extension of Gilbert Road to a point at lat. 33°32'20" N., long. 111°47'20" W., (intersection of Gilbert Road and Indian Bend Road) west on Indian Bend Road to a point at lat. 33°32'18" N., long. 111°53'26" W., (intersection of Indian Bend Road and Pima/Price Road) south on Pima/Price Road to a point at lat. 33°30'07" N., long. 111°53'26" W., (intersection of Camelback Road and Pima/Price Road) west on Camelback Road to a point at lat. 33°30'34" N., long. 112°06'42" W., (intersection of Camelback Road and Interstate 17) north on Interstate 17 to a point at lat. 33°32'19" N., long. 112°06'42" W., (Interstate 17 and Glendale Avenue) west on Glendale Avenue to a point at lat. 33°32'11" N., long. 112°18'23" W., (intersection of Glendale Avenue and Agua Fria River) north on Agua Fria River until the point of beginning.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at the Agua Fria River and the 20-mile arc of the ILS localizer antenna (lat. 33°37'45" N., long. 112°18'25" W.), clockwise until intercepting an extension of Cactus Road (lat. 33°35'45" N., long. 111°38'30" W.), west on an extension of Cactus Road and Cactus Road and Thunderbird Road until a point at lat. 33°36'32" N., long. 112°18'15" W., (intersection of Agua Fria River and Thunderbird Road) north along Agua Fria River until the point of beginning.

Area F. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°13'10" N., long. 112°09'55" W., (intersection of Valley Road and Riggs Road and an extension of Riggs Road) extending east on an extension of Riggs Road and Riggs Road until intercepting the Williams 1 MOA extending south along the Williams 1 MOA boundary until intercepting the 20-mile arc of the ILS localizer antenna clockwise until intercepting a point at lat. 33°07'30" N., long. 112°08'45" W., on Valley Road, north on Valley Road until the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point on the 25-mile arc of the ILS localizer antenna and Camelback Road, east on Camelback Road to a point at lat. 33°30'29" N., long. 112°21'26" W., (intersection of Camelback Road and Litchfield Road) south on Litchfield Road to a point at lat. 33°18'18" N., long. 112°21'26" W., (intersection of Litchfield Road and an extension of Chandler Boulevard) west on an extension of Chandler Boulevard to a point on the 25-mile arc of the ILS localizer antenna, clockwise until the point of beginning.

Area H. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point on the 25-mile arc of the ILS localizer antenna and the Agua Fria River clockwise to the Williams 1 MOA, west along the Williams 1 MOA until intercepting the 20-mile arc of the ILS localizer antenna counterclockwise to a point at lat. 33°37'45" N., long. 112°18'25" W., on the Agua Fria River, extending north along the Agua Fria River until the point of beginning, excluding that airspace between Interstate 17 and the 009° radial from the Salt River VORTAC.

Area I. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°05'40" N., long. 111°59'50" W., on the 20-mile arc of the ILS localizer antenna counterclockwise to the Williams 1 MOA south along Williams 1 MOA to the 25-mile arc of the ILS localizer antenna clockwise to a point at lat. 33°00'35" N., long. 111°59'50" W., (power transmission line) north along the power transmission line to the point of beginning.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows: Phoenix Sky Harbor International Airport, AZ [Removed].

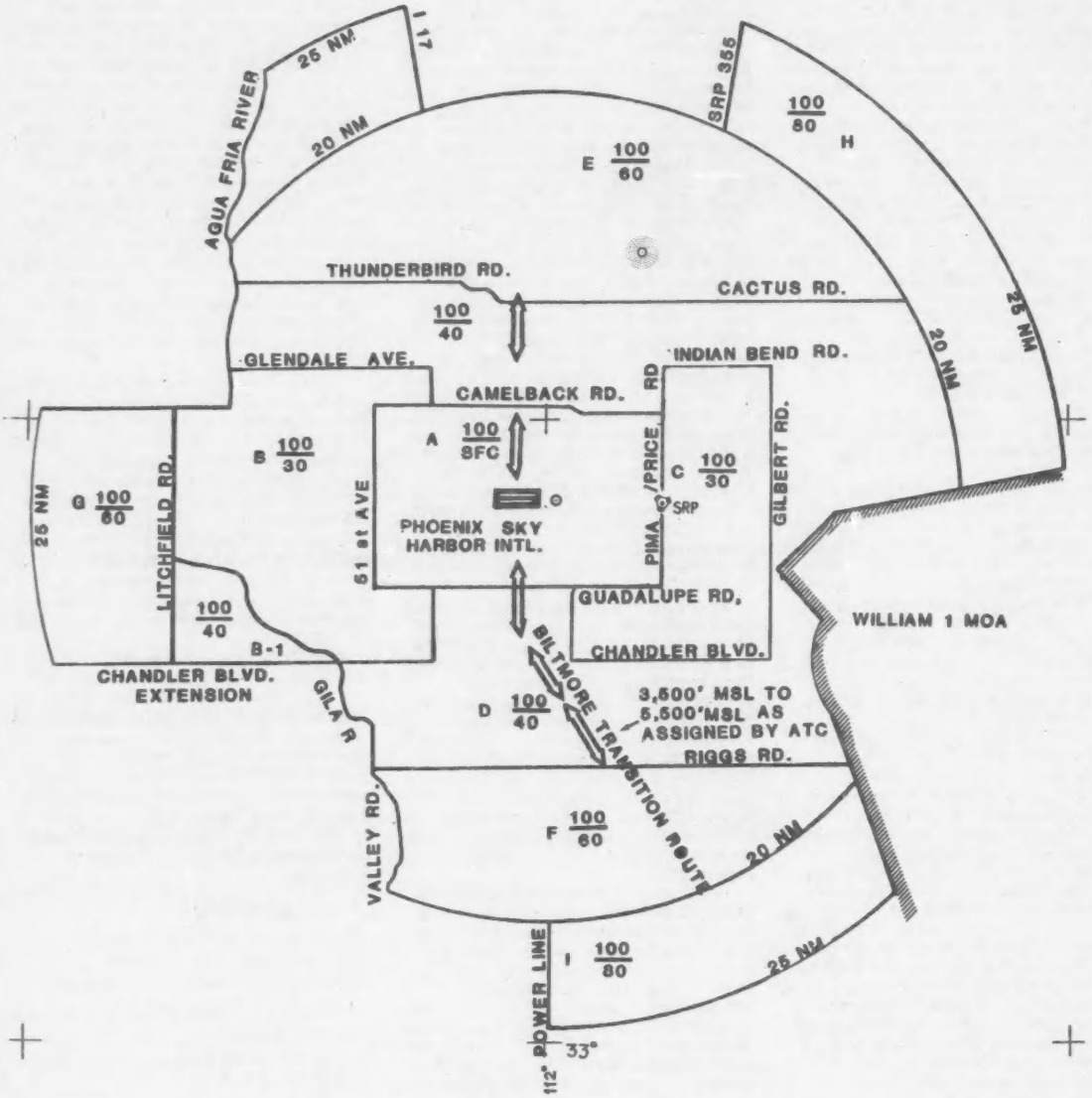
Issued in Washington, DC, on June 20, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

PROPOSED PHOENIX TCA



PHOENIX TCA
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SCALE

[FR Doc. 89-15214 Filed 6-27-89; 8:45 am]
BILLING CODE 4910-13-C

federal register

Wednesday
June 28, 1989

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 5, 6, 19, and 52
Federal Acquisition Regulation (FAR); Competitive Thresholds; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 19, and 52

Federal Acquisition Regulation (FAR); Competitive Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing a revision to Federal Acquisition Regulation (FAR) Parts 5, 6, Subpart 19.8, and Part 52 to implement sections 303(b) and 303(d) of the Business Opportunity Development Reform Act of 1988, Pub. L. 100–656.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 28, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–53 is all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 89–53.

SUPPLEMENTARY INFORMATION:

A. Background

Section 303(b) of the Business Opportunity Development Reform Act of 1988 requires that acquisitions offered for award pursuant to section 8(a) of the Small Business Act be awarded on the basis of competition restricted to eligible program participants if (a) there is a reasonable expectation that at least two eligible program participants will submit offers and that award can be made as a fair market price, and (b) the anticipated award price of the contract (including options) will exceed $5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities.

Section 303(d) amends the current appeal authority of the Small Business Administration to permit appeals as to whether a requirement should be offered to the section 8(a) program and as to whether the estimated fair market price as determined by the contracting agency is correct.

B. Regulatory Flexibility Act

The requirements of the Act are being addressed by the Small Business Administration in development of its regulations implementing the "Business Opportunity Development Reform Act of 1988," Pub. L. 100–656, published in the **Federal Register** on March 23, 1989 (54 FR 12054).

C. Paperwork Reduction Act.

The requirements of the Paperwork Reduction Act are being addressed by the Small Business Administration in development of its regulations published in the **Federal Register** on March 23, 1989 (54 FR 12054) implementing the Business Opportunity Development Reform Act of 1988, Pub. L. 100–545.

List of Subjects in 48 CFR Parts 5, 6, 19, and 52

Government procurement.

Dated: June 23, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Parts 5, 6, 19, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.202 is amended by revising paragraph (a)(4) to read as follows:

5.202 Exceptions.

(a) * * *

(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see 5.205(e)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

* * * * *

3. Section 5.205 is amended by adding paragraph (e) to read as follows:

5.205 Special situations.

* * * * *

(e) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under Subpart 19.8, the contracting officer shall transmit a synopsis of the proposed contract action to the CBD in accordance with 5.207. The synopsis may be transmitted to the CBD concurrent with submisson of the agency offering (see 19.804–2) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the Standard Industrial Classification (SIC) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental or transitional stage; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

PART 6—COMPETITION REQUIREMENTS

4. Section 6.204 is added to read as follows:

6.204 Section 8(a) competition.

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Pub. L. 100–656, contracting officers may limit competition to eligible 8(a) contractors (see Subpart 19.8).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) contractors.

5. Section 6.302–5 is amended by revising paragraph (b)(4) to read as follows:

6.302–5 Authorized or required by statute.

(b) * * *

(4) Sole source awards under the 8(a) Program—15 U.S.C. 637 (see Subpart 19.8).

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Subpart 19.8 is revised to read as follows:

Subpart 19.8—Contracting With the Small Business Administration (The 8(a) Program)

Sec.

Subpart 19.8—Contracting With the Small Business Administration (The 8(a) Program)

19.800 General.

(a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. SBA's subcontractors are referred to as "8(a) contractors."

(b) Contracts may be awarded to the SBA for performance by eligible 8(a) firms on either a sole source or competitive basis.

(c) When, acting under the authority of the program, the SBA certifies to an agency that the SBA is competent and responsible to perform a specific contract, the contracting officer is authorized, in the contracting officer's discretion, to award the contract to the SBA based upon mutually agreeable terms and conditions.

19.801 Definitions.

"Local buy requirement" as used in this subpart means a supply or service purchased to meet the specific needs of one user in one location.

"National buy requirement" as used in this subpart means a supply or service purchased to meet the needs of one or more users in two or more locations where supply control, inventory management, or acquisition responsibility have been assigned to a central contracting activity.

19.802 Selecting concerns for the 8(a) program.

Selecting concerns for the 8(a) program is the responsibility of SBA and is based on the criteria established in 13 CFR 124.101–113.

19.803 Selecting acquisitions for the 8(a) program.

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) concerns to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways.

(a) The SBA advises an agency through a search letter of an 8(a) firm's capabilities and asks the agency to identify acquisitions to support the firm's business plans. In these instances, the SBA will provide at least the following information in order to enable the agency to match an acquisition to the firm's capabilities.

(1) Identification of the concern and its owners.

(2) Background information on the concern, including any and all information pertaining to the concern's technical ability and capacity to perform.

(3) The firm's present production capacity and related facilities.

(4) The extent to which contracting assistance is needed in the present and the future, described in terms that will enable the agency to relate the concern's plans to present and future agency requirements.

(5) If construction is involved, the request shall also include the following:

(i) The concern's capabilities in and qualifications for accomplishing various categories of maintenance, repair, alteration, and construction work in specific categories such as mechanical, electrical, heating and air conditioning, demolition, building, painting, paving, earth work, waterfront work, and general construction work.

(ii) The concern's capacity in each construction category in terms of estimated dollar value (e.g., electrical, up to $100,000).

(b) The SBA identifies a specific requirement for a particular 8(a) firm or firms and asks the agency to offer the acquisition to the 8(a) program for the firm(s). In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide—

(1) A clear identification of the acquisition sought; e.g., project name or number;

(2) A statement as to how any additional needed facilities will be provided in order to ensure that the firm will be fully capable of satisfying the agency's requirements; and

(3) If a sole source request: (i) The reasons why the firm is considered suitable for this particular acquisition; e.g., previous contracts for the same or a similar supply or service; and (ii) a statement that the firm is eligible in terms of STC code, business support levels, and business activity targets.

(4) If competitive, a statement identifying at least two 8(a) firms considered capable of satisfying the agency's requirements which are also eligible in terms of the SIC code, business support levels, and business activity targets.

(c) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self-marketing efforts of an 8(a) firm, identify a requirement for the 8(a) program, they may offer on behalf of a specific 8(a) firm, for the 8(a) program in general, or for 8(a) competition.

19.804 Evaluation, offering, and acceptance.

19.804–1 Agency evaluation.

In determining the extent to which a requirement should be offered in support of the 8(a) program, the agency should evaluate—

(a) Its current and future plans to acquire the specific items or work that the SBA's contractor is seeking to provide, identified in terms of—

(1) Quantities required or the number of construction projects planned; and

(2) Performance or delivery requirements, including required monthly production rates, when applicable.

(b) Its current and future plans to acquire items or work similar in nature and complexity to those specified in the business plan, if there are no known requirements for the specified items or work;

(c) Problems encountered in previous acquisitions of the items or work from the SBA's contractor and/or other contractors;

(d) The impact of any delay in delivery;

(e) Whether the items or work have previously been acquired using small business set-asides; and

(f) Any other pertinent information about the SBA's contractor, the items, or the work. This includes any information concerning the firm's capabilities. When necessary, the contracting agency shall make an independent review of the factors in 19.803(a) and other aspects of

the firm's capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) program.

19.804-2 Agency offering.

(a) After completing its evaluation, the agency shall notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work. The notification must identify the time frames within which prime contract and subcontract actions must be completed in order for the agency to meet its responsibilities. The notification must also contain the following information applicable to each prospective contract:

(1) A description of the work to be performed or items to be delivered, and a copy of the statement of work, if available.

(2) The estimated period of performance.

(3) The SIC code that applies to the principal nature of the acquisition.

(4) The anticipated dollar value of the requirement, including options, if any.

(5) Any special restrictions or geographical limitations on the requirement (for construction and services include the location of the work to be performed).

(6) Any special capabilities or disciplines needed for contract performance.

(7) The type of contract anticipated.

(8) The acquisition history, if any, of the requirement; including the names and addresses of any small business contractors which have performed this requirement during the previous 24 months.

(9) A statement that no solicitation for this specific acquisition has been issued as a small business set-aside or a small disadvantaged business set-aside, and that no other public communication (such as a notice in the Commerce Business Daily) has been made evidencing the contracting agency's clear intention to set aside the acquisition for small business or small disadvantaged business.

(10) Identification of any particular 8(a) concern designated for consideration, including a brief justification, such as—

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent.

(11) Bonding requirements, if applicable.

(12) Identification of all 8(a) concerns which have expressed an interest in being considered for the acquisition.

(13) Identification of all SBA district or regional offices which have asked for the acquisition for the 8(a) program.

(14) A recommendation, if appropriate, as to whether the acquisition should be competitive or sole source; and

(15) Any other pertinent and reasonably available data.

(b) An agency offering for a local buy requirement should be submitted to the SBA Regional Office for the geographical area where the user is located. An agency offering for a national buy requirement should be submitted to the Office of Program Development, Office of Minority Small Business and Capital Ownership Development, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

19.804-3 SBA acceptance.

(a) Upon receipt of the contracting agency's offer, SBA will determine whether to accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 15 working days of receipt of the offer, unless SBA requests, and the contracting agency grants, an extension.

(b) If the acquisition is accepted for sole source, the SBA will advise the contracting activity of the 8(a) firm selected for negotiation. Generally, SBA will accept a contracting activity's recommended source.

(c) If the acquisition is accepted for competition: (1) For a local buy requirement, SBA will advise as to which SBA districts or regions the competition is restricted and provide the list of the 8(a) firms in those districts or regions which are eligible for the designated SIC code; or (2) for a national buy requirement, the SBA will identify at least two eligible sources; and the contracting officer, in coordination with the small business specialist, will augment the source list based on results of the synopsis (see 5.205(e)) and other available information. The SBA will advise of any program participation stage restrictions. The SBA may limit competition to 8(a) concerns in the developmental stage of program participation, it may limit competition to 8(a) concerns in the transitional stage, or it may permit competition among firms in either stage.

19.804-4 Repetitive acquisitions.

In order for repetitive acquisitions to be awarded through the 8(a) program, there must be separate offers and acceptances. This allows the SBA to revalidate a firm's eligibility, to evaluate the suitability of each acquisition for competitive 8(a), and to determine whether the requirement should continue under the 8(a) program.

19.805 Competitive 8(a).

19.805-1 General.

(a) Except as provided in paragraph (b) of this subsection, an acquisition offered to the 8(a) program shall be awarded on the basis of competition limited to eligible 8(a) firms if—

(1) There is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price; and

(2) The anticipated award price of the contract, including options will exceed $5,000,000 for acquisitions assigned manufacturing standard industrial classification (SIC) codes and $3,000,000, for all other acquisitions.

(b) Where an acquisition excees the competitive threshold, SBA may accept the requirement for sole source 8(a) award if—

(1) There is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or

(2) SBA determines that an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe is eligible and responsible and needs the acquisiton for its business development.

(c) On a limited basis, the SBA Associate Administrator for Minority Small Business and Capital Ownership Development, may approve an agency recommendation for a competitive 8(a) award below the competitive thresholds. The agency recommendation may be included in the offering letter or may be submitted by separate correspondence through the SBA region or headquarters, depending upon whether the acquisition is a local or national buy requirement. Agency recommendations for competition below the threshold will be given favorable consideration primarily in acquisitions requiring formal technical evaluation or where a large number of responsible 8(a) firms are available for the competition.

19.805-2 Procedures.

(a) Competitive 8(a) acquisitions shall be conducted by contacting agencies by using sealed bids (see Part 14) or competitive proposals (see Part 15).

(b) Offers will be solicited from those sources identified in accordance with

the SBA instructions provided in accordance with 19.804–3.

(c) Upon receipt of offers, the contracting officer will provide the SBA a copy of the solicitation and the fair market price and, in a sealed bid acquisition, a list of offerors ranked in the order of their standing for award; i.e., first low, second low, etc., with the total evaluated price for each offer, differentiating between basic and any options. In negotiated acquisition, in addition to a copy of the solicitation and fair market price, the contracting officer will submit an unranked list of offerors within the competitive range. Actual offered prices in a negotiated acquisition will not be submitted or revealed to SBA. The SBA will determine the offerors' business support level and business activity target potential eligibility on the basis of the estimated fair market price.

(d) Within 5 working days after receipt of the list of offerors, SBA will determine eligibility of the firms for award of the contract and advise the contracting officer. Eligibility is based on whether the firm has the SIC code for this acquisition in its approved business plan, whether the firm is currently small under the SIC code, whether the firm is in developmental or transitional stage (if the acquisition is restricted by stage), whether the firm has exeeded its approved business support level, and whether the firm is in conformance with its 8(a) buisness activity targets. In sealed bid acquisitions, SBA will consider the eligibility of the first low bidder. If the first low bidder is not determined eligible, SBA will consider the eligibility of the next low bidder until an eligible bidder is identified. In negotiated acquisitons, SBA will determine the eligibility of all firms within the competitive range. If the contracting officer has not received a response from SBA within the 5–day period, the contracting officer may continue to process the acquisition but should recognize that SBA will not enter into the resultant contract unless the offeror is eligible.

(e) Once eligibility has been established by SBA, the successful offeror will be determined by the contracting activity in accordance with normal contracting procedures.

19.806 Pricing the 8(a) contract.

(a) The contracting officer shall price the 8(a) contract in accordance with Subpart 15.8. If required by Subpart 15.8, the SBA shall obtain certified cost or pricing data from its contractor. If the SBA requests audit assistance to determine the reasonableness of the proposed price in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.

(b) An 8(a) contract, sole source of competitive, may not be awarded if the price of the contract results in a cost to the awarding agency which exceeds a fair market price.

(c) If requested by SBA, the contracting officer shall make available the data used to estimate the fair market price.

(d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with 19.810.

19.807 Estimating fair market price.

(a) The contracting officer shall estimate the fair market price of the work to be performed by the SBA's contractor.

(b) In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer shall use price or cost analysis and consider commercial prices for similar products and services, available in house cost estimates, data (including cost or pricing data) submitted by the SBA or its contractor, and data obtained from any other Government agency.

(c) In estimating a fair market price for a repeat purchase, the contracting officer shall consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices may be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items may also be used.

19.808 Contract negotiation.

19.808–1 Sole source.

(a) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the agency may, after notifying the SBA, proceed with the acquisition from other sources.

(b) The SBA's contractor should participate, whenever practicable, in negotiating the contract terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the SBA's contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award and determining whether its contractor shall be required to provide a performance bond.

19.808–2 Competitive.

In competitive 8(a) acquisitions, subject to Part 15, the contracting officer conducts negotiations directly with the competing 8(a) firms.

19.809 Preaward considerations.

The contracting officer should request a preaward survey of the SBA's contractor whenever considered useful. A cognizant contract administration office may be requested to assist in reviewing a specific element of responsibility. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer should refer the matter to the SBA for its consideration in deciding whether SBA should certify that it is competent and responsible to perform. This is not a referral for Certificate of Competency consideration under Subpart 19.6. Within 15 working days of the receipt of the referral or a longer period agreed to by SBA and the contracting activity, the SBA Assistant Regional Administrator for Minority Small Business and Capital Ownership Development in the regional office which services the 8(a) firm will advise the contracting officer as to SBA's willingness to certify its competency to perform the contract using the 8(a) concern in question as its subcontractor. The contracting officer shall proceed with the acquisition and award the contract to another appropriately selected 8(a) offeror if SBA has not certified its competency within 15 working days (or a longer period agreed to).

19.810 SBA appeals.

(a) The following matters may be submitted for determination to the agency by the SBA Administrator if the SBA and the contracting officer fail to agree on them:

(1) The decision not to make a particular acquisition available for award under the 8(a) program.

(2) The terms and conditions of a particular sole source acquisition to be awarded under the 8(a) program.

(3) The estimated fair market price.

(b) Notification of a proposed referral to the agency head by SBA must be received by the contracting officer within 5 working days after SBA is formally notified of the contracting officer's decision. The SBA must provide

the request for determination to the agency head within 15 working days of SBA's receipt of the adverse decision. Pending issuance of a decision by the agency head, the contracting officer shall suspend action on the acquisition. Action on the acquisition need not be suspended if the contracting officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a decision.

(c) If the SBA appeal is denied, the decision of the agency head shall specify the reasons for the denial, including the reasons why the selected firm was determined incapable of performance, if appropriate. The decision shall be made a part of the contract file.

19.811 Preparing the contracts.

19.811-1 Sole source.

(a) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer shall use the Standard Form 26 as the award form, except for construction contracts, in which case Standard Form 1442 shall be used as required in 36.701(b).

(b) The agency shall prepare the contract that the SBA will award to its contractor in accordance with agency procedures, as if the agency were awarding the contract directly to the SBA's contractor, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5) (as appropriate) as the authority for use of other than full and open competition.

(2) Appropriate clauses shall be included, as necessary, to reflect that the contract is between SBA and its contractor.

(3) The following items shall be inserted by the SBA when it makes the award—

(i) The SBA contract number.

(ii) The effective date.

(iii) The typed name of the SBA's contracting officer.

(iv) The signature of the SBA's contracting officer.

(v) The date signed.

(4) The SBA will obtain the signature of its contractor prior to signing and returning the prime contract to the contracting officer for signature.

(5) If the contract is for construction work, it shall include requirements of the Miller Act with respect to performance and payment bonds (see Part 28).

(c) SBA shall provide the contracting activity the certifications, from both the 8(a) contractor and SBA, required by 3.104-9 related to procurement integrity. SBA shall also provide the contracting activity a list of those persons having had access to proprietary or source selection information (see 3.104-9(f)(2)).

19.811-2 Competitive.

(a) The contract will be prepared in accordance with 14.407-1(d), except that appropriate blocks on the Standard Form 26 or 1442 will be asterisked and a continuation sheet appended which includes the following:

(1) Agency acquisition office, prime contract number, name of agency contracting officer, and lines for signature, date signed, and effective date.

(2) SBA office, SBA subcontract number, name of the SBA contracting officer and lines for signature and date signed.

(b) SBA shall provide the contracting activity the certifications, from both the 8(a) contractor and SBA, required by 3.104-9 related to procurement integrity. SBA shall also provide the contracting activity a list of those persons having had access to proprietary or source selection information (see 3.104-9(f)(2)).

19.811-3 Contract clauses.

(a) The contracting officer shall insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using the procedures of 19.811-1.

(b) The contracting officer shall insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using the procedures of 19.811-1.

(c) The contracting officer shall insert the clause at 52.219-17, Section 8(a) Award, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805.

(d) The contracting officer shall insert the clause at 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805. The clause at 52.219-18 with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts/regions pursuant to 19.804-3. The clause at 52.219-18 with its Alternate II will be used when competition is to be limited to 8(a) concerns within a specific stage of 8(a) program participation (i.e. developmental or transitional) pursuant to 19.804-3.

(e) The contracting officer shall insert the clause at 52.219-14, "Limitations on Subcontracting," in any solicitation and contract resulting from this Subpart.

19.812 Contract administration.

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the SBA's contractor (see DoD Directory of Contract Administration Services Components (DoD 4105.59-H)).

(b) The contract for the SBA and its contractor shall be provided to the SBA along with the one between the SBA and the agency, and shall be distributed by the SBA. Both contracts shall be executed and distributed in accordance with Part 4.

(c) To the extent consistent with the awarding agency's capability and resources, SBA contractors furnishing requirements shall be afforded production and technical assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.219-11 is amended by revising the introductory text to read as follows:

52.219-11 Special 8(a) contract conditions.

As prescribed in 19.811-3(a), insert the following clause:

* * * * *

8. Section 52.219-12 is amended by revising the introductory text to read as follows:

52.219-12 Special 8(a) subcontract conditions.

As prescribed in 19.811-3(b), insert the following clause:

* * * * *

52.219-16 [Reserved]

9. Section 52.219-16 is added and reserved.

10. Section 52.219-17 is added to read as follows:

52.219-17 Section 8(a) award.

As prescribed in 19.811-3(c), insert the following clause:

Section 8(a) Award (Oct 1989)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(2) Delegates to the ..... (*insert name of contracting agency*) the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; *provided, however* that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting agency.

(b) The Offeror/Subcontractor agrees and acknowledges as follows:

(1) That it will, for and on behalf of SBA, fulfill and perform all of the requirements of the contract.

(2) That it will not subcontract the performance of any of the requirements of the contract without the prior written approval of the SBA and the designated Contracting Officer of the contracting agency.

(End of clause)

11. Section 52.219–17 is added to read as follows:

52.219–17 Notification of competition limited to eligible 8(a) concerns.

As prescribed in 19.811–3(d), insert the following clause:

Notification of Competition Limited to Eligible 8(A) Concerns (Oct 1989)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) SIC code* is specifically included in the Offeror's approved business plan;

(2) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(3) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror certifies that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration which will subcontract performance to the successful 8(a) offeror, selected through the evaluation criteria set forth in this solicitation.

(d) *Agreement.* A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

(*Insert SIC code assigned to the procurement by the buying agency.)

Alternate I (Oct 1989). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following subdivision (a)(3)(iv) to subparagraph (a)(3) of the clause:

(iv) The Offeror's approved business plan is on the file and serviced by* (*Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA).

Alternate II (Oct 1989). If the competition is to be limited to 8(a) concerns within a particular program participation stage, add the following subdivision to subparagraph (a)(3) of the clause. When used in conjunction with Alternate I, this subdivision should be renumbered (a)(3)(v).

(iv) The Offeror is in the* stage of 8(a) program participation. (**Contracting Officer completes by inserting the appropriate stage of participation as identified by SBA (i.e. developmental or transitional).)*

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Wednesday
June 28, 1989

Part VI

Department of Transportation

Office of the Secretary

Windward Viaduct Project on Interstate Highway H-3 In Hawaii; Waiver; Notice

DEPARTMENT OF TRANSPORTATION

Windward Viaduct Project on Interstate Highway H–3 in Hawaii; Waiver

AGENCY: Department of Transportation, (DOT) Office of the Secretary.

ACTION: Notice of waiver of restriction against participation in public works projects by Japanese firms with respect to Hawaii's Windward Viaduct Project on Interstate Highway H–3.

SUMMARY: The Secretary of the Department of Transportation waives application of the so-called "Brooks-Murkowski Amendment," Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100–202, section 109(a) (1987), to Hawaii Department of Transportation highway project FAIP No. I–H3–1(57) and ACI(58), which involves the Windward Viaduct Project on Interstate Highway H–3. The waiver permits the state of Hawaii to use Federal funds for procuring construction services and products for U.S. public works projects from Japanese firms, should they otherwise qualify for participation.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: William A. Weseman, Chief, Construction and Maintenance Division, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590, telephone 202–366–0392.

SUPPLEMENTARY INFORMATION: The text of the letter granting the waiver is set forth below.

Date: June 15, 1989.

Samuel K. Skinner,

The Secretary.

June 15, 1989

Mr. Edward Y. Hirata,

Director, Hawaii Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813–5097

Re: Interstate Route H–3; Windward Viaduct, FAIP No. I–H3–1(57) & ACI (58)

Dear Mr. Hirata: By letter dated December 21, 1988 to the division administrator of the Federal Highway Administration, you asked that I waive application of the restriction on the use of products and services of Japanese contractors imposed by the Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100–202, section 109(a) (1987) for the construction of the H–3 Windward Viaduct Project. The Federal Highway Administration concurred in your request.

The Brooks-Murkowski Amendment and the Department's implementing regulations, 53 FR 19914, 19919 (1988) (to be codified at 49 CFR 30.17), provide for Secretarial waiver of the restriction when application of the restriction would not be in the public interest. I have determined that application of the Brooks-Murkowski Amendment to the Windward Viaduct Project would not be in the public interest, for the following reasons:

- The Windward Viaduct Project is crucial to completion of Interstate Highway H–3, which will complete the construction of the National System of Interstate and Defense Highways in Hawaii. Congress has repeatedly declared completion of the system to be a national priority. 23 U.S.C. § 101 (West Supp. 1989).
- The Windward Viaduct will provide a direct, multi-lane, limited-access highway connection between the military installations of central Oahu (Pearl Harbor industrial/defense complex, Hickam AFB, NAS Barber's Point, and Schofield Barracks) with the installations of Windward Oahu (MCAS Kaneohe Bay, the Coast Guard OMEGA facility, and Bellows AFB). Completion of H–3 will thus improve the overall effectiveness of the Defense-related transportation system on Oahu and have a beneficial impact on national defense and civil defense readiness.
- The Department of Defense has designated H–3 as important to national defense.
- Congress has recognized the importance of the Windward Viaduct by ordering the Secretary to approve the construction of H–3 notwithstanding the restrictions on the taking of public parklands for highways in the Department of Transportation Act of 1966, section 4(f), 49 U.S.C. 303 (West Supp. 1989).

Continuing Appropriations Bill for Fiscal Year 1987, Pub. L. No. 99–500, section 114, 100 Stat. 1783. The conference report accompanying the legislation recites the importance of avoiding "unnecessary delay in the completion of this important highway project" and notes the continuing substantial escalation of construction costs in Hawaii. Conference Report to Accompany H.J. Res. 738, H. Rep. No. 1005, 99th Cong., 2d Sess. 783–84 (1986).

- The Windward Viaduct project will be one of the largest Federal-aid highway contracts ever awarded and certainly the largest in the last several years. The total will be in excess of $100 million. Large contracting firms and multinational joint ventures are expected to tender bids. If the waiver request is approved, it is likely that some U.S. firms will enter into joint ventures with Japanese firms that would otherwise be prohibited from particupating in the project by the Brooks-Murkowski Amendment.
- Participation of Japanese firms as low bidders in previous, much smaller Hawaii Federal-aid highway projects has resulted in significant cost savings.
- Because of the size of the project, the urgency in completing it, and its potential fiscal impact on the Federal-aid highway program, maximum competition is essential to obtain the lowest possible overall project cost. Federal funds represent 90 percent of the cost of the project. Increased competition may also increase the likelihood of completing the project quickly.

I therefore waive application of the Brooks-Murkowski Amendment to the Windward Viaduct Project. Notice of this waiver will be published in the **Federal Register.**

If you have any questions regarding the issuance of an addendum to this project's invitation for bids advising of this waiver, please contact William R. Lake, Division Administrator, Federal Highway Administration, Box 50206, Honolulu, Hawaii 96850.

Sincerely yours,

Samuel K. Skinner.

[FR Doc. 89–15505 Filed 6–27–89; 11:38 am]

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Federal Register

Vol. 54, No. 123

Wednesday, June 28, 1989

INFORMATION AND ASSISTANCE

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