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# federal register

Wednesday
October 27, 1993

**Briefing on How To Use the Federal Register**
For information on briefing in New York, NY, see announcement on the inside cover of this issue.

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

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### NEW YORK, NY

**WHEN:** November 23, 9:00 am—12:00 pm

**WHERE:** National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY

**RESERVATIONS:** 1–800–347–1997

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**Separate Parts in This Issue**



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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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**Electronic Bulletin Board**
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## CFR PARTS AFFECTED IN THIS ISSUE

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. 58, No. 206
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## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### 7 CFR Part 729

RIN 0560-AD52

### Peanut Marketing Assessments

**AGENCY:** Agricultural Stabilization and Conservation Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing marketing assessments for the 1994 and 1995 crops of peanuts to conform with the provisions of the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act) that amended the Agricultural Act of 1949 (the 1949 Act) with respect to the existing nonrefundable marketing assessments for farmers stock peanuts that are marketed or considered marketed by a producer, or marketed from peanuts pledged to Commodity Credit Corporation (CCC) as security for price support loans. For the 1994 and 1995 crops of peanuts, the 1993 Act amendments increase the assessment by 10 percent to an amount equal to 1.1 percent of the respective crop's national average quota support rate per pound of peanuts, if such peanuts are marketed as quota peanuts, or national average additional support rate per pound of peanuts, if such peanuts are marketed as additional peanuts.

**EFFECTIVE DATE:** This final rule is effective October 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jack S. Forlines, Deputy Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–0156.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined not to be a "significant regulatory action." Based on information compiled by USDA, it has been determined that this interim rule:

(1) Would have an effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal, or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

### Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases—10.051.

### Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive and preempt State and local laws to the extent such laws are inconsistent with provisions of this final rule. Before any judicial action may be brought regarding the provisions of this final rule, administrative appeal remedies at 7 CFR part 780 may be required to be exhausted.

### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

### Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

### Paperwork Reduction Act

The information collection requirements contained in the regulations of 7 CFR part 729 for the peanut poundage quota program were approved by the Office of Management and Budget (OMB), as required by 44 U.S.C. chapter 35, and assigned OMB control numbers 0560–0006. This final rule does not change the information collection approved by OMB. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0560–0006), Washington, DC 20503.

### Background

Section 108B(g) of the 1949 Act was amended by section 1109 of the 1993 Act to provide, for the 1994 and 1995 crops, a 10 percent increase in the amount of the nonrefundable marketing assessment on each pound of farmers stock peanuts marketed or considered marketed by a producer, or marketed from loan stocks by CCC or a producer association. Peanuts pledged as collateral for a price support loan by the producer are "considered marketed" by the producer. Existing regulations at 7 CFR 729.316 specify collection procedures. That section of the regulations also specifies which portion of the assessment is deducted from producer proceeds by CCC or the handler, and which part must be paid from handler funds.

This rule merely changes the amount of the total assessment for each affected pound of peanuts. Due to the 10 percent increase, the total assessment for each pound of affected 1994 and 1995 crop peanuts shall be equal to 1.1 percent of the national average quota support rate per pound, if such peanuts are marketed as quota peanuts, or 1.1 percent of the national average additional support rate

per pound, if such peanuts are marketed as additional peanuts.

The only purpose of this final rule is to make the program regulations conform to the mandatory terms of the applicable statute. For that reason, prior public comment has been determined to be unnecessary. Therefore, it has been determined that this final rule shall become effective upon date of publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 729**

Poundage quotas, Peanuts, Penalties, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 729 is revised as follows:

## PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to reads as follows:

**Authority:** 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375; 7 U.S.C. 1445c–3.

2. In § 729.316, paragraph (a) is revised to read as follows:

**§ 729.316 Marketing assessments.**

(a) *General.* A nonrefundable marketing assessment shall be due on each pound of farmers stock peanuts marketed or considered marketed by a producer, or marketed from loan stocks by CCC or the association. The assessment shall be an amount equal to 1 percent, for each of the 1991 through 1993 crops, and 1.1 percent, for each of the 1994 and 1995 crops, of the national average:

(1) Quota support rate per pound, for the applicable crop year, if such peanuts are marketed as quota peanuts.

(2) Additional support rate per pound, for the applicable crop year, if such peanuts are marketed as additional peanuts.

* * * * *

Signed at Washington, DC, on October 20, 1993.

**Floy E. Payton,**

*Acting Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 93–26460 Filed 10–26–93; 8:45 am]

BILLING CODE 3410–05–P

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## Agricultural Marketing Service

### 7 CFR Part 966

**[Docket No. FV93–966–1FR]**

## Tomatoes Grown in Florida; Amendment to Handling Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule will clarify and bring handling regulations of the Federal marketing order for Florida tomatoes into conformity with current industry operating practices. The Florida Tomato Committee (Committee), the agency responsible for local administration of the marketing order, recommended this action.

**EFFECTIVE DATE:** October 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Shoshana Avrishon, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3610, or FAX (202) 720–5698; or John R. Toth, Officer-in-Charge, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; (813) 299–4770 or FAX (813) 299–5169.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 966 [7 CFR part 966] (order), both as amended, hereinafter referred to as the order regulating the handling of tomatoes grown in Florida. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

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 final 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 50 handlers of Florida tomatoes that are subject to regulation under the marketing order and approximately 250 producers in the production area. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the tomato handlers and producers may be classified as small entities.

This action revises § 966.323 of Subpart—Administrative Rules and Regulations and is based on a recommendation of the Committee and other available information.

In accordance with § 966.323, Handling Regulation, of the order's rules and regulations, fresh market shipments of Florida tomatoes sold within the regulated area must meet grade, size, and inspection requirements. Fresh market shipments of tomatoes to points outside of the regulated area must also meet grade, size and inspection requirements, as well as container requirements. The regulated area is defined as that portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. Basically, it is the entire State of Florida, except for the panhandle. The production area is part of the regulated area.

In recent years, the Committee has recommended various changes to this handling regulation in an attempt to improve returns to Florida tomato producers and provide consumers with a quality product.

The Committee recommended that these regulations no longer apply to

handlers shipping fresh tomatoes within the regulated area. According to the Committee, many handlers who sell tomatoes within the regulated area are small handlers who purchase the right to enter tomato fields and glean from them tomatoes that were picked over or missed by regular harvesting crews. These small handlers do not qualify as "registered handlers" under the marketing order. Registered handlers are defined as persons who have adequate facilities for grading tomatoes for market and who assume initial responsibility for compliance with inspection, assessment, and other regulatory requirements on the handling of tomatoes grown in the production area. These small handlers lack permanent, non-portable facilities to grade, size, and pack tomatoes.

In the past, the industry had marketing problems with poor quality tomato shipments within the regulated area. The Committee indicates that this is no longer a problem.

Tomatoes shipped within the regulated area normally are more ripe than those shipped outside that area, and cannot withstand shipment to more distant markets. Most tomatoes produced in Florida are shipped fresh to markets outside the regulated area.

Hence, the Committee recommended that grade, size, and inspection requirements implemented under the order only apply to shipments of fresh tomatoes made outside the regulated area. This action modifies the introductory paragraph by eliminating the reference to tomatoes shipped within the regulated area.

Minor changes are made in §§ 966.323(a)(2) (i) and (ii) to clarify and conform those provisions with current industry practices. In the size provision, paragraph (a)(2)(i), clarification is made to show that size requirements apply to all tomatoes packed by a "registered" handler. The word "registered" was not included in the previous regulation. In addition, clarification is made to paragraph (a)(2)(ii) to show that containers or "lids" shall be marked with the proper size. The word "lids" was not included in the previous language.

With regard to container requirements of § 966.323(a)(3), a minor correction is being made to the reference to the United States Standards for Grades of Fresh Tomatoes, in accordance with the Committee's recommendation.

This action changes § 966.323(b), to include tomatoes for "pickling." Pickling is a common method of processing tomatoes. Also, in § 966.323(d)(2), the minimum quantity of tomatoes that may be handled per day exempt from the handling regulation, is being changed from 60 pounds to 50 pounds. Thirty-pound tomato boxes are no longer used. Twenty-five-pound cartons are the most common size shipped and the intent of the Committee is to exempt up to two boxes of tomatoes per day from the requirements of § 966.323.

The proposed rule concerning this action was published in the **Federal Register** on August 25, 1993, [58 FR 44780]. Comments on the proposed rule were invited from interested persons until September 9, 1993. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that clarifying the handling regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30-days after publication in the **Federal Register** because: (1) This action, among other things, relaxes handling requirements and was recommended by the Committee by a unanimous vote; (2) the harvest and shipment of 1993–94 crop tomatoes is about to begin and this action should be effective as soon as possible in order to cover as much of the shipping season as possible; and (3) the proposed rule provided a 30-day comment period and no comments were received.

**List of Subjects in 7 CFR Part 966**

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is to be amended as follows:

## PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising the introductory text of the section and the first sentence in paragraph (a)(2)(i); adding the words "or lid" after the phrase "and each container" in paragraph (a)(2)(ii); revising the last sentence in paragraph (a)(3)(i); adding in paragraphs (b) and (c) introductory text after the phrase "shipments of tomatoes for" the word "pickling,"; and revising in paragraph (d)(2) the words "60 pounds" to "50 pounds", the changes read as follows:

**§ 966.323 Handling regulation.**

From October 10 through June 15 of each season, except as provided in paragraphs (b) and (d) of this section, no person shall handle any lot of tomatoes produced in the production area for shipment outside the regulated area unless it meets the requirements of paragraph (a) of this section.

(a) * * *

(2) *Size.* (i) All tomatoes packed by a registered handler shall be at least 2 8/32 inches in diameter and shall be sized with proper equipment in one or more of the following ranges of diameters.

* * *

* * * * *

(3) *Containers.* (i) * * * Section 51.1863 of the U.S. Tomato Standards shall apply to all containers.

* * * * *

[Note: This section will appear in the Code of Federal Regulations.]

Dated: October 21, 1993.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93–26452 Filed 10–26–93; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 966**

**[Docket No. FV93–966–2IFR]**

## Tomatoes Grown in Florida; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 966 for the 1993–94 fiscal period. Authorization of this budget enables the Florida Tomato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Effective August 1, 1993, through July 31, 1994. Comments received by November 26, 1993, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. 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:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or John R. Toth, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida tomatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes handled during the 1993–94 fiscal period, from August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 the 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 250 producers of Florida tomatoes under this marketing order, and approximately 50 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Florida tomato producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Florida Tomato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs of goods and services 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 Florida tomatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met September 9, 1993, and unanimously recommended a 1993–94 budget of $2,682,000, $4,000 less than the previous year. Increases in expenditures, which include $6,250 for office rent, $200 for miscellaneous, and $4,000 for research expense, will be offset by decreases of $7,000 for office salaries and $7,450 for employees' retirement program. Major expense items include $276,000 for office salaries, $200,000 for research expense, and $2,000,000 for education and promotion expense.

The Committee also unanimously recommended an assessment rate of $0.04 per 25-pound container, the same as last year. This rate, when applied to anticipated shipments of 58,000,000 25-pound containers, will yield $2,320,000 in assessment income. This, along with $20,000 in interest and other income and $342,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1993–94 fiscal period, $1,349,348, were within the maximum permitted by the order of one fiscal period's expenses.

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

After consideration of all relevant matter present, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable tomatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 966**

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes,

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

## PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 966.231 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 966.231 Expenses and assessment rate.**

Expenses of $2,682,000 by the Florida Tomato Committee are authorized, and an assessment rate of $0.04 per 25-pound container of Florida tomatoes is established for the fiscal period ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: October 21, 1993.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93–26451 Filed 10–26–93; 8:45 am]

BILLING CODE 3410–02–P

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**Commodity Credit Corporation**

**7 CFR Part 1413**

**RIN 0560–AD50**

## Amendments to the Acreage Conservation Reserve and Conserving Use Acreage Requirements

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act) which was enacted on November 28, 1990, amended the Agricultural Act of 1949 (the 1949 Act) to authorize price support, payment, and production adjustment programs for the 1991 through 1995 crops of feed grains, rice, wheat, and upland and extra long staple cotton. The regulations relating to eligible land requirements for acreage conservation reserve (ACR) and conserving use (CU) for payment acreage are amended to provide for a minimum size requirement that, for 1993 only, a producer may designate as ACR or CU for payment small areas of at least .1 (one-tenth) an acre in size as determined by the Commodity Credit Corporation (CCC), if all other eligibility requirements are met, and, because of excessive rainfall, either of the following applies: (1) ASCS–574, Application for Disaster Credit, for prevented planting or failed acreage of a program crop has been approved by the Agricultural Stabilization and Conservation county committee; or (2) the county committee determines on a farm-by-farm basis, that the producer has changed planting patterns.

**DATES:** October 27, 1993. Comments must be received on or before November 26, 1993 in order to be assured of consideration.

**ADDRESSES:** Submit comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415.

**FOR FURTHER INFORMATION CONTACT:** Bruce D. Hiatt, Agricultural Program Specialist, USDA, ASCS, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–690–2798.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined not to be a "significant regulatory action." Based on information compiled by USDA, it has been determined that this interim rule:

(1) Would have an effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal, or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

### Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; and Rice Production Program—10.065.

### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the CCC is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

### Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule do not preempt State laws; are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

### Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

### Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35, and assigned OMB No. 0560–0004 and 0560–0092.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0004 and 0560–0092), Washington, DC 20503.

### Background

The 1990 Act amended various Acts including the Agricultural Adjustment Act of 1938 and the 1949 Act. Accordingly, the regulations at 7 CFR part 1413, published April 19, 1991, contained the provisions for minimum

size and width requirements for land designated as ACR, and CU for payment. Land so designated must meet a minimum size of 5.0 acres, and a minimum width of 1.0 chain (66 feet). One area of a farm may be designated that is smaller than the requirements to complete the balance of the required ACR or CU for payment, and entire permanent fields may be designated that are less than 5.0 acres. Contiguous and noncontiguous strips, including end rows, that are part of an approved conservation plan, which do not meet the minimum size (5.0 acres) and width (1.0 chain 66 feet) may be designated as ACR or CU for payment if they are at least 33 feet wide; and, contiguous and noncontiguous strips, including end rows, that are planted in a perennial cover and at least 33 feet wide, may be designated as ACR or CU for payment.

The continued rainfall in several States in the midwest has prevented producers from planting crops, or crops have failed, or has caused producers to change planting patterns. The land available to be designated as ACR or CU for payment does not meet the minimum size and width requirements. Therefore, producers cannot comply with the provisions of their Acreage Reduction Program contract.

Accordingly, the regulations at 7 CFR 1413.61 and 1413.79 are amended to provide that, for 1993 only, a producer may designate as ACR or CU for payment small areas of at least .1 (one-tenth) an acre in size as determined by CCC, if all other eligibility requirements are met, and, because of excessive rainfall, either of the following applies: (1) an ASCS–574, Application for Disaster Credit, for prevented planting or failed acreage of a program crop has been approved by the Agricultural Stabilization and Conservation county committee: or (2) the county committee determines, on a farm-by-farm basis, that the producers on the farm have changed planting patterns.

**Discussion of Changes**

*Section 1413.61 Eligible ACR Land*

New paragraph (b)(4) has been added to provide that, for 1993 only, producers shall be permitted to designate as ACR small areas of at least .1 (one-tenth) acre in size as determined by CCC, if all other eligibility requirements are met, and, because of excessive rainfall, either of the following applies; (1) the producer has an approved ASCS–574, Application for Disaster Credit, on file in the county ASCS office for prevented planting or failed acres of the crop; or (2) the county committee determines, on a farm-by-farm basis, that the producers on the farm were forced to change planting patterns.

*Section 1413.79 Eligible CU for Payment Land*

New paragraph (b)(4) has been added to provide that, for 1993 only, producers shall be permitted to designate as CU for payment small areas of at least .1 (one-tenth) an acre in size as determined by CCC, if all other eligibility requirements are met, and, because of excessive rainfall, either of the following applies; (1) the producer has an approved ASCS–574, Application for Disaster Credit, on file in the county ASCS office for prevented planting or failed acreage of the crop; or (2) the county committee determines, on a farm-by-farm basis, that the producer was forced to change planting patterns.

**List of Subjects in 7 CFR Part 1413**

Cotton, Feed grains, Price support programs, Rice, Wheat.

Accordingly, 7 CFR part 1413 is amended as follows:

## PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

**Authority:** 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b-3a, 1461–1469, 15 U.S.C. 714b and 714c.

2. Section 1413.61 is amended by revising the heading and adding new paragraph (b)(4) to read as follows:

**§ 1413.61 Eligible ACR land.**

* * * * *

(b) * * *

(4) For 1993 only, producers may designate as ACR small areas of at least .1 (one-tenth) an acre in size as determined by CCC, if all other eligibility requirements are met, and, because of excessive rainfall, either of the following applies:

(i) Such producers have an approved ASCS–574, Application for Disaster Credit, on file in the county ASCS office, for prevented planting or failed acreage of the crop; or

(ii) The county committee determines, on a farm-by-farm basis, that the producers on the farm were forced to change planting patterns.

(3) Section 1413.79 is amended by adding new paragraph (b)(4) to read as follows:

**§ 1413.79 Eligible CU for payment land.**

* * * * *

(b) * * *

(4) For 1993 only, producers may designate as CU for payment small areas of at least .1 (one-tenth) an acre in size as determined by CCC, if all other eligibility requirements are met, and, because of excessive rainfall, either of the following applies:

(i) Such producers have an approved ASCS–574, Application for Disaster Credit, on file in the county ASCS office, for prevented planting or failed acreage of the crop, or

(ii) The county committee determines, on a farm-by-farm basis, that the producers on the farm were forced to change planting patterns.

* * * * *

Signed at Washington, DC on October 20, 1993.

**Floy E. Payton,**

*Acting Executive Vice-President, Commodity Credit Corporation.*

[FR Doc. 93–26389 Filed 10–26–93; 8:45 am]

BILLING CODE 3410–05–P

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**7 CFR Parts 1421 and 1474**

**RIN 0560–AD32**

## Oilseed Prevailing World Price Calculations, Loan Origination Fees, and Final Loan Maturity Date; Farm Storage Facilities

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** On July 16, 1993, the Commodity Credit Corporation (CCC) issued a proposed rule to change the method for calculating the prevailing world prices for oilseeds. Section 205(d) of the Agricultural Act of 1949, as amended (the 1949 Act), requires the Secretary of Agriculture (Secretary) to prescribe a method for calculating prevailing world prices for oilseeds—soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, and mustard seed—and a mechanism by which the Secretary shall announce periodically the prevailing world market price for each oilseed (adjusted for U.S. quality and location). Previously issued regulations required the use of data that were not readily available. These regulations will permit the Secretary to use readily available data to calculate prevailing world prices of oilseeds. The Omnibus Budget Reconciliation Act of 1993 (August 10, 1993) amended the 1949 Act to eliminate the loan origination fee and to change the final loan maturity date for the 1994 through 1997 crops. In addition, this final rule removes obsolete provisions with respect to CCC's Farm Storage Facilities Loan Program.

**EFFECTIVE DATE:** October 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Bradley Karmen, Director, Oilseeds Analysis Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3746–S, Washington, DC 20013–2415 or call 202–720–7923.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This interim rule is issued in conformance with Executive Order 12866 and has been determined not to be a "significant regulatory action." Based on information compiled by USDA, it has been determined that this interim rule:

(1) Would have an effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal, or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

**Federal Assistance Program**

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Executive Order 12778**

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

**Environmental Assessment or Impact Statement**

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Executive Order 12372**

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Paperwork Reduction Act**

The amendments to 7 CFR part 1421 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

**Part 1421**

*Public Comments*

This final rule amends 7 CFR part 1421 to set forth the method for calculating the prevailing world price for oilseeds. General descriptions of the statutory basis for the determinations in this final rule were set forth at 58 FR 38311 (July 16, 1993).

The public was asked to comment on the proposal that adjusted world prices for oilseeds be established and announced, to the extent practicable, weekly based upon current prices at major U.S. markets for oilseeds, as determined by CCC. One trade association and one producer organization commented on the proposed regulation in a joint letter. They supported the proposal that only U.S. market prices be used in setting the adjusted world prices for oilseeds during periods when any difference between U.S. and world prices would not affect the loan repayment level. However, if world prices would indicate a repayment rate below U.S. loan rates, they recommend using world prices to calculate the adjusted world price.

**Statutory Background**

In accordance with section 205(d)(1) of the 1949 Act, the Secretary may permit a producer to repay a nonrecourse loan at a level that is the lesser of the loan level for the crop or the prevailing world market price for the applicable oilseed, adjusted for U.S. quality and location (i.e., the adjusted world price), as determined by the Secretary; or at such other level not in excess of the loan level for that crop that the Secretary determines will:

(1) Minimize potential loan forfeitures;

(2) Minimize the accumulation of oilseed stocks by the Federal Government;

(3) Minimize the cost incurred by the Federal Government in storing oilseeds; and

(4) Allow oilseeds produced in the U.S. to be marketed freely and competitively, both domestically and internationally.

In accordance with section 205(d)(2) of the 1949 Act, the Secretary shall prescribe a formula to define the adjusted world price and a mechanism by which the Secretary shall periodically announce the adjusted world price.

**Prevailing World Price, Adjusted to U.S. Quality and Location**

In accordance with section 205(d)(2) of the 1949 Act, it is determined that adjusted world prices for oilseeds be established and announced, to the extent practicable, weekly based upon current market prices for each oilseed at major U.S. markets, as determined by CCC.

This amendment to the regulation governing the establishment of world prices for oilseeds will permit the calculation of prices reflective of world market conditions with readily available data in a timely manner. In addition, the change will enable publication of world prices for oilseeds other than soybeans more frequently and simplify the existing regulations.

**Loan Repayment and Loan Origination Fees**

In accordance with the Omnibus Budget Reconciliation Act of 1993, regulations are amended to indicate that loans made for the 1994 through 1997 crops of oilseeds mature on the last day of the 9th month following the month in which the loan was made, except that the loans may not mature later than the last day of the fiscal year in which the application is made. Also in accordance with the Omnibus Budget Reconciliation Act of 1993, regulations are amended to indicate that the 2-percent loan origination fees apply only to the 1991 through 1993 crops. No public comment was requested for changes in loan repayment requirements or loan origination fees because these changes were mandated in the Omnibus Budget Reconciliation Act of 1993.

**Part 1474**

The regulations at 7 CFR part 1474 set forth the provisions of CCC's Farm Facility Loan Program. CCC made the last such loan in 1984 and has retained

these regulations in order to process such loans. As of this date, all such loans have been repaid or the indebtedness otherwise discharged by CCC with respect to approximately 125 loans which were rescheduled or otherwise adjusted in accordance with 7 CFR part 1403. Since these regulations were last amended in 1984, substantial changes in State and Federal laws have occurred with respect to agricultural lending. Accordingly, since these regulations are no longer used by CCC and since any subsequent decision by CCC to reinstate the program would require the promulgation of new regulations to make such loans available, this final rule removes 7 CFR part 1474.

**List of Subjects**

*7 CFR Part 1421*

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

*7 CFR Part 1474*

Loan programs/agriculture.

Accordingly, 7 CFR parts 1421 and 1474 are amended as follows:

## PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1444c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. Section 1421.6 is amended by revising paragraph (a)(1) to read as follows:

**§ 1421.6 Maturity and expiration dates.**

(a)(1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts, oilseeds, and loan collateral transferred in accordance with § 1421.17(c) and (d), no later than the last day of the ninth calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved;

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested; and

(iii) Oilseeds, for the 1991 through 1993 crops no later than the last day of the ninth calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved, and for the 1994 through 1997 crops, no later than the last day of the ninth calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved, except that the loan may not mature later than the last day of the fiscal year in which the note and security agreement is filed in accordance with § 1421.5(a) and approved.

* * * * *

3. Section 1421.12 is amended by revising paragraph (c) to read as follows:

**§ 1421.12 Fees, charges, and interest.**

* * * * *

(c) For each of the 1991 through 1993 crops of oilseeds, the producer must pay a nonrefundable loan origination fee to CCC which shall be deducted from the loan proceeds and shall be equal to two percent of the loan level for the crop multiplied by the quantity of such crop of oilseeds for which the loan is made. In addition, for each of the 1991 through 1993 crops of oilseeds on which a loan deficiency payment is made in accordance with § 1421.29, the producer must pay a nonrefundable amount, equal to the loan origination fee in accordance with this paragraph, that such producer would have been required to pay for the quantity on which the payment is made had such quantity been pledged as collateral for a price support loan. CCC shall deduct such amount from the loan deficiency payment amount.

* * * * *

4. Section 1421.25 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 1421.25 Market price repayments.**

* * * * *

(b) For the 1991 through 1997 crops of oilseeds:

(1) A producer may repay a loan that is the lesser of:

(i) The loan level and charges, plus interest determined for such crop; or

(ii) The prevailing world market price for the applicable oilseed, adjusted for U.S. quality and location (i.e., the adjusted world price), as determined by the Secretary.

(2) CCC may, in lieu of the repayment level determined in accordance with paragraph (b)(1) of this section, allow producers to repay a loan at such other level not in excess of the loan level for that crop that the Secretary determines will minimize potential forfeitures, minimize the accumulation of oilseed stocks by the Federal Government, minimize the cost incurred by the Federal Government in storing oilseeds and allow oilseeds produced in the U.S. to be marketed freely and competitively, both domestically and internationally.

(c) In accordance with paragraph (b)(1)(ii) of this section, adjusted world prices will be calculated as follows:

(1) The adjusted world price for soybeans will be established, to the extent practicable, weekly based upon current market prices for soybeans at major U.S. markets, as determined by CCC.

(2) The adjusted world price for each oilseed other than soybeans will be established, to the extent practicable, weekly based upon current market prices for each oilseed other than soybeans at major U.S. markets, as determined by CCC.

* * * * *

## PART 1474—[REMOVED]

5. Part 1474 is removed.

Signed at Washington, DC on October 20, 1993.

**Floy E. Payton,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 93–26461 Filed 10–26–93; 8:45 am]

BILLING CODE 3410–05–P

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**7 CFR Part 1427**

**RIN 0560–AD29, 0560–AD36**

## Upland Cotton Adjusted World Price—Coarse Count Adjustment and Upland Cotton User Marketing Certificate Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** On August 6, 1993, the Commodity Credit Corporation (CCC) issued an interim rule amending the regulations to update the list of upland cotton qualities eligible for the coarse count adjustment. On August 12, 1993, CCC issued another interim rule amending the regulations to revise the formula for determining liquidated damages when shipment of cotton on an original export contract or on a replacement contract is not completed, or when a replacement contract is not designated by the exporter within the timeframe established in the user marketing certificate agreement. The interim rule also revised the procedure for establishing the payment rate for U.S. upland cotton shipped under an optional origin contract and further outlined documentation requirements to support relief requests for export contract cancellations, contract amendments, or any failure to export deemed beyond the control of the exporter. These actions are authorized by section 103B of the Agricultural Act

of 1949, as amended (1949 Act). This rule adopts as final the interim rules published on August 6, 1993, and August 12, 1993.

**EFFECTIVE DATE:** August 1, 1993, for Upland Cotton Adjusted World Price—Coarse Count Adjustment (58 FR 41994) October 27, 1993, for Upland Cotton User Marketing Certificate Program (58 FR 42841).

**FOR FURTHER INFORMATION CONTACT:** Janise Zygmont, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

**SUPPLEMENTARY INFORMATION:** This final rule combines amendments to the regulations at 7 CFR part 1427 that were published separately as interim rules on August 6, 1993, and August 12, 1993.

**Executive Order 12866**

This interim rule is issued in conformance with Executive Order 12866 and has been determined not to be a "significant regulatory action." Based on information compiled by USDA, it has been determined that this interim rule:

(1) Would have an effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal, or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Federal Assistance Program**

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

**Executive Order 12778**

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

**Executive Order 12372**

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Paperwork Reduction Act**

The amendment to 7 CFR 1427.25 will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to the amendment relating to the coarse count adjustment.

The information collection requirements contained in the current regulations at 7 CFR 1427.100 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 through July 31, 1995, and assigned OMB No. 0560–0136. The amendments to 7 CFR 1427.100 set forth in this final rule contain information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35. The information collection package was submitted to OMB for review and was approved September 27, 1993.

**Background**

*Upland Cotton Adjusted World Price—Coarse Count Adjustment*

An interim rule was published in the **Federal Register** on August 6, 1993, at 58 FR 41994 which amended 7 CFR part 1427 to update the list of upland cotton qualities eligible for the coarse count adjustment.

The interim rule provided for a 30-day public comment period which ended on September 7, 1993. No comments were received during the comment period.

*Upland Cotton User Marketing Certificate Program*

An interim rule was published in the **Federal Register** on August 12, 1993, at 58 FR 42841 which amended 7 CFR part 1427 to revise the formula for determining liquidated damages when shipment of cotton on an original export contract or on a replacement contract is not completed, or when a replacement contract is not designated by the exporter within an established timeframe. The interim rule also revised the procedure for establishing the payment rate for U.S. upland cotton shipped under an optional original contract and further outlined documentation requirements to support relief requests for export contract cancellations, contract amendments, or any failure to export deemed beyond the control of the exporter.

The interim rule provided for a 30-day public comment period which ended on September 13, 1993. No comments were received during the comment period.

Accordingly, under the authority of 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2, and 15 U.S.C. 714b and 714c, the interim rules amending 7 CFR part 1427 which were published at 58 FR 41994 on August 6, 1993, and at 58 FR 42841 on August 12, 1993, are adopted as a final rule without change.

Signed at Washington, DC, on October 20, 1993.

**Floy E. Payton,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 93–26458 Filed 10–26–93; 8:45 am]

BILLING CODE 3410–05–M

## FEDERAL ELECTION COMMISSION

**11 CFR Part 104**

**[Notice 1993–25]**

## Recordkeeping and Reporting by Political Committees: Best Efforts

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule; Transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is revising its regulations implementing the requirement of Federal Election Campaign Act ("FECA") that treasurers of political committees exercise best efforts to obtain, maintain and report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. The revisions are intended to ensure that solicitations clearly and

conspicuously request the necessary contributor information, and to provide guidance when the information is not received with the contribution. The changes also state the Commission's rule that committees must report contributor identifications received either before or after the end of the applicable reporting period.

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, (202) 219–3690 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the text of revisions to its regulations at 11 CFR 104.7(b), which set forth steps needed to ensure that political committees obtain, maintain and report the names, addresses, occupations and employers of contributors whose donations exceed $200 per year. These regulations implement section 432(i) of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"). 2 U.S.C. 432(i).

On September 24, 1992 the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 57 FR 44137 (Sept. 24, 1992). Twenty three written comments were received from fourteen commenters in response to the Notice. A public hearing was held on March 31, 1993, at which six witnesses presented testimony on the issues raised in the rulemaking.

The Commission also sent anonymous questionnaires to 200 randomly selected committees to obtain additional information from a larger number of committees regarding the specific methods currently used to obtain, maintain and report the necessary contributor information, and the cost and effectiveness of the methods used. Only committees that received 40 or more contributions of $200 or above during the '91–'92 election cycle were included. Approximately half of the authorized committees and party committees, and approximately one quarter of the nonconnected committees active during that election cycle had 40 or more contributions of over $200. Committees included in the survey ranged from those who received under $20,000 in contributions during 1992, to those whose contributions exceeded $5 million. The committees chosen were divided into three groups based on whether their reports contained a high, medium or low percentage of contributions containing information on contributors' name of employer. The questionnaire was sent to both incumbents' committees and challengers' committees. (Separate segregated funds were not included in the pool of surveyed committees since most SSF contributors have an employment or other close relationship with the SSF's sponsoring organization.) Finally, the survey was publicized through an FEC Record article which invited other committees to participate in the survey.

The Commission received responses from 44 authorized committees, 11 party committees, 19 nonconnected committees and one unidentified committee. Six additional committees requested and completed questionnaires. Thus, there was a total of 81 responses. Although the questionnaires were completed anonymously, 74 included demographic information on the type of committee, its size, and whether it was in the upper third, middle, or lower third based on the amount of contributor information obtained. A compilation of these 74 responses to the survey questions is available from the Public Records Office.

Section 438(d) of title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on October 22, 1993.

**Explanation and Justification**

The FECA specifies that reports filed by political committees disclose "the identification of each * * * person (other than a political committee) who makes a contribution to the reporting committee * * * whose contribution or contributions [aggregate over $200 per calendar year] * * * together with the date and amount of any such contribution." 2 U.S.C. 434(b)(3)(A). For an individual, identification means his or her full name, mailing address, occupation and employer. 2 U.S.C. 431(13).

The Commission's regulations at 11 CFR 104.7(b) implement these statutory requirements. These rules are being revised to address several concerns that have arisen, including the low percentage of complete reporting by some political committees. The regulatory changes focus on three areas in which problems have arisen: The phrasing and location of the request for the information in committee solicitations, the measures committees take if the necessary contributor information is not accompanying the contribution, and the reporting process. Please note that revised § 104.7(b) has been reorganized into four paragraphs to address the topics of solicitations, follow-up, reporting, and amendments separately.

In reviewing the operation of the current regulations, the Commission has given serious consideration to concerns raised by several commenters, witnesses, and survey respondents regarding the privacy interests of contributors, and the perceived intrusiveness of asking for information about contributors' home addresses, occupations and employers. Despite the concerns of some, 52 of the 74 survey responses compiled indicated that contributors seldom expressly informed committees that they do not wish to provide this information. Moreover, these concerns must be evaluated in light of the high priority the FECA places on the public interest in the disclosure of accurate and complete contributor information. Some witnesses and commenters believed that wide differences in reporting rates were attributable to variations in the seriousness of different committees' efforts to comply with the statutory requirements. They were concerned that the Commission's long-standing best efforts rules were inadequate in ensuring sufficient disclosure.

The Commission has also weighed concerns regarding the cost, burdensomeness, and effectiveness of various modifications to the regulations. In revising these rules, the Commission has made every effort to ensure that costs are reasonable, and has attempted to give committees as much flexibility as possible in utilizing the methods they have found to be cost efficient and effective. The new rules establish procedures that many committees already follow voluntarily. As noted above, during the 1992 election cycle, about half of all authorized committees and party committees and three quarters of nonconnected committees had less than 40 individual contributions exceeding $200. Consequently, many committees will need to make minimal additional efforts, or none, to meet these requirements. In addition, these measures do not apply to contributors who give a political committee $200 or less per calendar year.

*A. Solicitations*

Under the previous regulations, to satisfy the best efforts requirement, the treasurer had to make at least one written or oral request per solicitation for contributor information. If the solicitation corresponding to a contribution requested the information and notified the solicitee that the committee is required by law to report such information, no further action had to be taken. Experience demonstrated, however, that the request for the information and the notice about reporting requirements often appeared in small type in a way that did not adequately convey their importance. For example, sometimes the request for occupation and employer was not included with the contributor's name and address on the front of the response card, but was placed on the back in lighter type or in a separate insert. Moreover, the regulations did not clarify what responsibilities a political committee has if the contribution does not correspond to a particular solicitation and it is not possible to know if the proper request and notice were provided. As a result, some committees have reported incomplete information for a significant percentage of their itemized contributions.

Accordingly, paragraph (b)(1) of § 104.7 is being revised to specify that if a political committee fails to provide all contributor information for any contribution, the best efforts defense is only available if the solicitation included a clear request for the information. The comments, testimony, and survey results indicate that most political committees already do so, and that they have found this to be a successful, financially feasible method of obtaining contributor information. In order for the best efforts explanation to be available, solicitations for contributions of $200 or less must include the request, since contributors may make several contributions which are individually under $200, but which aggregate over $200 during the course of the calendar year. However, given that the best efforts requirements only apply when treasurers receive contributions aggregating over $200 per calendar year, contributions aggregating under this amount would not trigger the best efforts requirements. Further, any contribution which is reported by a committee with all required contributor information will meet the reporting requirements for such information, whether or not the committee asked for the information in the solicitation or used the language specified in 11 CFR 104.7(b)(1).

The revised rules at 11 CFR 104.7(b)(1) also prescribe the precise language to be included in the solicitation. The statement must say, "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year." Statements such as "Federal law requires political committees to ask for this information," without more, do not meet the best efforts requirement. The results of the survey indicated that party committees tended to use the latter statement more frequently than authorized committees or nonconnected committees. Party committees tended to have lower success rates than other committees in obtaining contributor information.

Paragraph (b)(1) of § 104.7 also addresses the location, size and readability of the required language. This provision is intended to ensure that the request is more likely to be seen and read by the contributor. Several commenters and witnesses at the hearing favored a requirement that would standardize the wording, type size, and placement of the request for contributor information.

*B. Missing Information*

Section 104.7(b)(2) is being revised to indicate that treasurers who receive itemizeable contributions lacking complete contributor identifications must take an additional step to obtain the information. The regulation gives committees flexibility to decide whether to send out written requests solely devoted to obtaining the needed information or to make telephone calls which are documented in writing. To ensure that a written request for the information is not overlooked, it cannot include material on other subjects or additional solicitations, but may thank the contributor for the previous contribution. The written or oral request must be made no later than thirty days after the receipt of the contribution. If a written request is sent out, it must be accompanied by a pre-addressed return envelope or postcard. The results of the anonymous survey indicated that committees in the lower third in success rate were much less likely to include return envelopes.

Please note that these follow-up measures are required whenever complete contributor identifications are lacking, even if the solicitation associates with the itemizeable contribution asked for the information. The comments, testimony and survey responses to this approach reflected a wide diversity of views, including concerns regarding the cost and time needed to contact contributors to obtain missing information, and the perceived success or lack thereof for different follow-up measures. There was also a range of opinion regarding the importance of the public's right to know who is contributing to candidates, and possible reasons some contributors are reluctant to provide the information. Consequently, the Commission believes that it is preferable to allow committees to have the choice of making either verbal or written follow-up requests, so that they may use whichever method they believe is most effective and least costly.

Some of the commenters and one witness construed the legislative history to mean that Congress wished to preclude what they presumed had been the Commission's previous practice of requiring multiple requests. The Commission notes that when the original "best efforts" provision was enacted by Congress in 1976, those offering the amendment stated that "[d]isclosure of a contributor's occupation and place of business, including the name of the firm where the person is employed, is vitally important if the public is to know and understand the source of a candidate's campaign funds." 122 Cong. Rec. 6963 (March 17, 1976) (statement of Sen. Clark).

In 1979, the statutory best efforts requirements were revised in several respects. The amount triggering reporting of occupation and employer was raised from $100 to $200. In addition, the candidate's obligation to exercise best efforts was eliminated, although the treasurer's obligation remained. The House Report states that:

> The application of the best efforts test is central to the enforcement of the recordkeeping and reporting provisions of the Act. It is the opinion of the Committee that the Commission has not adequately incorporated the best efforts test into its administration procedures, such as systematic review of reports.
>
> One illustration of the application of this test is the current requirement for a committee to report the occupation and principal place of business of individual contributors who give in excess of $100. If the committee does not report the occupation and principal place of business for each itemized individual contribution, the Commission's review and enforcement procedures must be geared to determining whether the committee exercised its best efforts to obtain the information. The best efforts test is crucial since contributor information is voluntarily supplied by persons who are not under the control of the committee.
>
> In a situation such as this, the first question is what efforts did the committee

take to obtain the information. Did the solicitation contain a clear request for the occupation and principal place of business? If the committee made an effort to obtain the information in the initial solicitation and the contributor ignored the request, the Commission should not require the committee to make the same request two, three, or four times. On the other hand, if the best efforts test is not met, the committee must be required to take corrective action, such as contacting the contributor and requesting the information.

H.R. Rep. No. 96–422, 96th Cong., 1st Sess. 14 (1979).

The Commission does not read this legislative history to preclude requiring multiple requests. In fact, the legislative history set out above indicates concern with the ineffectiveness of the Commission's previous approach. Similarly, in *Federal Election Commission* v. *Citizens for the Republic, et al.*, Civil Action No. 78–1116, (D.D.C. March 1, 1979) the Court emphasized the Commission's "duty * * * to give considerably more detailed guidance by regulations, instructions, or otherwise, as to what was to be done to get this information * * *." Transcript of hearing on defendant's summary judgment motion, p. 41. The Commission's initial best efforts regulations were promulgated in 1980 after this case was decided and after the 1979 Amendments to the FECA were enacted.

After careful consideration of the full legislative history, and in light of the subsequent level of incomplete disclosure since the 1980 best efforts rules were promulgated, the Commission concludes that Congress did not intend to preclude it from requiring that committees take additional measures when the information sought in the solicitation is not forthcoming, such as a single request of a different type. Requiring committees to make a request which does not include any other subjects or solicitations, with an accompanying notice of the reporting requirement, will emphasize the importance and will be more in line with the true meaning of "best efforts." It will also clarify a committee's responsibilities regarding unsolicited contributions lacking the proper itemization information.

*C. Reporting*

The Commission is also adding new language at 11 CFR 104.7(b)(3) to ensure that contributor identifications are reported as accurately and as completely as possible. The revised rules in paragraph (b)(3) state the Commission's current policy that political committees are expected to review their own records, including contributor records, fundraising records and previously-filed FEC reports, so that they can report information known to them but not listed on contributor response cards. To prevent reporting of outdated information, political committees need only check their records and reports for the current two-year election cycle. In general, those who responded to the survey indicated that this approach enhances reporting either a great deal or somewhat with little increase in cost.

The Commission has decided not to add new language requiring a committee treasurer to report all contributor information which is not provided by the contributor, but which is in fact known by the committee treasurer or the treasurer's agents. Some commenters and survey participants expressed concern regarding the accuracy of the information they would be expected to provide when contributors are prominent individuals, and regarding outdated or incorrect information inadvertently supplied by the treasurer or committee staff. Revised § 104.7(b)(3) does not include such a requirement because treasurers should not be encouraged to guess at contributor information.

Finally, new paragraph (b)(4) of § 104.7 sets forth the Commission's current policy that when political committees do not have complete contributor identifications at the time they file reports, they must include whatever information is available. In this situation, political committees have an obligation under the FECA to file amended reports if additional contributor information is obtained after the applicable reporting period. See Matters Under Review 3528, 3114 and 2674. Accordingly, new language is being added to § 104.7(b)(3) to explain more fully that political committees have two options for filing amendments. Under both options, it is important that committees clearly indicate the previous report, schedule, page number and line number which is being amended. Under the first option, on or before the next regularly scheduled reporting date, committees may amend each of their previous reports on which the contributions were originally reported. Under the second option, they may file a single memo Schedule A listing all the contributions for which they have received additional information, including the full name of each contributor, his or her mailing address, occupation, and employer, together with the amount and date of the contribution. Under this option, the information should be submitted at the same time committees file their next regularly scheduled reports. While both options are intended to promote more timely and complete reporting of contributor information, the second option avoids an increase in the number of times committees must file reports during the election year. Several commenters, survey participants and witnesses suggested timing the amendments to correspond to existing reporting dates. Although this means that months may elapse in non-election years before such information is placed on the public record, it will ensure more timely disclosure during election years.

Several comments and survey participants raised concerns regarding the burdensomeness of filing amendments over a lengthy period of time. Accordingly, the revised rules include language indicating that the requirement to file amendments regarding contributor information only applies to reports covering the two year election cycle in which contributions were received from a contributor, and does not require amendments to reports from previous election cycles. For example, if an itemizable contribution lacking occupation and name of employer is received in February, 1994, and a follow-up letter is sent in thirty days, and a response is received in April, 1994, amendments would be needed for previously filed reports covering the '93–'94 election cycle, but not for the '91–'92 election cycle. In situations where a contribution is received in late October, 1992, a follow-up request must be made by late November, 1992, and amendments to '91–'92 election cycle reports must be filed even if the information is not received until March, 1993.

*D. Other Issues*

Two commenters suggested revising 11 CFR 9036.2 so that Presidential primary candidates would only receive matching funds for contributions containing complete contributor information. While full contributor identifications are required for threshold submissions, they are not currently required for additional submissions for matching funds. The commenters' suggestion is beyond the scope of this rulemaking, but may be addressed in a subsequent rulemaking.

The Commission also considered comments and testimony that itemizable contributions which do not contain complete contributor identifications be returned or held without depositing them, until the necessary information is requested and a response is forthcoming. These proposals would eliminate the need for amended reports, since they do not anticipate that

anything would be reported until the contribution is deposited. Both of these approaches are beyond the statutory authority granted to the Commission at this time. They were incorporated into the Commission's legislative recommendations submitted to Congress on January 26, 1993.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Act in these areas.

**List of Subjects in 11 CFR Part 104**

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

## PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority citation for part 104 continues to read as follows:

**Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

2. Section 104.7 is amended by revising paragraph (b) to read as follows:

**§ 104.7 Best efforts (2 U.S.C. 432(i)).**

* * * * *

(b) With regard to reporting the identification as defined at 11 CFR 100.12 of each person whose contribution(s) to the political committee and its affiliated committees aggregate in excess of $200 in a calendar year (pursuant to 11 CFR 104.3(a)(4)), the treasurer and the committee will only be deemed to have exercised best efforts to obtain, maintain and report the required information if—

(1) All written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer, and include the following statement: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar years." The request and statement shall appear in a clear and conspicuous manner on any response material included in a solicitation. The request and statement are not clear and conspicuous if they are in small type of comparison to the solicitation and response materials, or if the printing is difficult to read or if the placement is easily overlooked.

(2) For each contribution received aggregating in excess of $200 per calendar year which lacks required contributor information, such as the contributor's full name, mailing address, occupation or name of employer, the treasurer makes at least one effort after the receipt of the contribution to obtain the missing information. Such effort shall consist of either a written request sent to the contributor or an oral request to the contributor documented in writing. The written or oral request must be made no later than thirty (30) days after receipt of the contribution. The written or oral request shall not include material on any other subject or any additional solicitation, except that it may include language solely thanking the contributor for the contribution. The request must clearly ask for the missing information, and must include the statement set forth in paragraph (b)(1) of this section. Written requests must include this statement in a clear and conspicuous manner. If the request is written, it shall be accompanied by a pre-addressed return post card or envelope for the response material;

(3) The treasurer reports all contributor information not provided by the contributor, but in the political committee's possession regarding contributor identifications, including information in contributor records, fundraising records and previously filed reports, in the same two-year election cycle in accordance with 11 CFR 104.3; and

(4)(i) If any of the contributor information is received after the contribution has been disclosed on a regularly scheduled report, the political committee shall either:

(A) File with its next regularly scheduled report, an amended memo Schedule A listing all contributions for which contributor identifications have been received during the reporting period covered by the next regularly scheduled report together with the dates and amounts of the contribution(s) and an indication of the previous report(s) to which the memo Schedule A relates; or

(B) File on or before its next regularly scheduled reporting date, amendments to the report(s) originally disclosing the contribution(s), which include the contributor identifications together with the dates and amounts of the contribution(s).

(ii) Amendments must be filed for all reports that cover the two-year election cycle in which the contribution was received and that disclose itemizable contributions from the same contributor. However, political committees are not required to file amendments to reports covering previous election cycles.

Dated: October 22, 1993.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 93-26445 Filed 10-26-93; 8:45 am]

BILLING CODE 6715-01-M

## FEDERAL RESERVE SYSTEM

**12 CFR Part 264b**

**[Docket No. R-0684]**

### Regulations Regarding Foreign Gifts and Decorations

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** Congress has permitted Federal government employees to accept gifts from foreign governments in amounts up to a "minimal value" that is to be established by the General Services Administration (GSA) in consultation with the Secretary of State. While the Board's Rules Regarding Foreign Gifts and Regulations set "minimal value" at $200 or such higher amount as might be established by the GSA, the GSA has since redefined "minimal value", effective January 1, 1993, to be $225. Accordingly, this technical amendment will change the Board's definition of "minimal value" to be $225 or such higher amount as might be established by the GSA, and will be effective the same date as that of the GSA amendment.

**EFFECTIVE DATE:** January 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Cary Williams, Senior Attorney (202/452-3295), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Street, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Receipt of gifts from a foreign government without the consent of Congress is prohibited by Article I, Section 9, Clause 8 of the U.S. Constitution. Congress has passed a statute that allows an employee of the U.S. government to accept and retain a gift of "minimal value," 5 U.S.C. 7342. The statute authorizes the GSA to determine "minimal value" every three years, in consultation with the Secretary of State, to reflect changes in the

consumer price index during the previous three-year period.

On September 1, 1993 the GSA published regulations redefining minimal value to be $225, effective January 1, 1993 (41 CFR 101-49.0001-5). The Board's rules (12 CFR 264b.3(a)) currently state minimal value to be $200. The technical amendment raises the minimal value to $225 or such higher amount established by the GSA.

**Regulatory Flexibility Act**

This rule relates solely to the internal management, operations and personnel of the Board of Governors of the Federal Reserve Board, and no notice of proposed rulemaking is required by 5 U.S.C. 553. Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required.

**List of Subjects in 12 CFR Part 264b**

Decorations, metals, awards, Foreign relations, Government employees, Government property.

For the reasons set out in the preamble, 12 CFR part 264b is amended as follows:

## PART 264b—RULES REGARDING FOREIGN GIFTS AND DECORATIONS

1. The authority citation for part 264b is revised to read as follows:

**Authority:** 5 U.S.C. 552, 7342; and 12 U.S.C. 248(i).

**§ 264b.3 [Amended]**

2. In § 264b.3 the last sentence in paragraph (a) is amended by removing "$200" and adding in its place "$225".

By order of the Board of Governors of the Federal Reserve System, October 21, 1993.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 93-26405 Filed 10-26-93; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 2

**[Docket Nos. RM92-13-002 and -003; Order No. 544-A]**

### Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities

Issued: October 21, 1993.

**AGENCY:** Federal Energy Regulatory Commission (Commission), DOE.

**ACTION:** Order on rehearing and amending final rule.

**SUMMARY:** On September 21, 1992, the Commission issued a final rule amending its regulations governing the replacement of natural gas facilities and the construction of such facilities under section 311 of the Natural Gas Policy Act. The Commission herein is ruling on petitions for rehearing by granting rehearing in part and denying it in part. Most significantly, the Commission is granting rehearing and amending the final rule by excepting from the annual reporting requirement all above-ground replacement projects not involving compression facilities or the use of earthmoving equipment.

**EFFECTIVE DATE:** November 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Paul W. Schach, Supervisory Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208-2246.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426.

**ORDER ON REHEARING AND AMENDING FINAL RULE**

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

### I. Introduction

On September 21, 1992, the Commission issued a final rule in Order No. 544.[1] The final rule, which took effect on November 9, 1992, amended § 2.55(b) of the Commission's regulations, involving the replacement of natural gas pipeline facilities, and § 284.11 of the regulations, involving the construction of such facilities under section 311 of the Natural Gas Policy Act of 1978 (NGPA).[2]

Before us here are nine requests for rehearing. In Docket No. RM92-13-002, requests for rehearing of Order No. 544 were filed by Associated Gas Distributors, Inc. (AGD), Arkla Pipeline Group (Arkla), American Gas Association (AGA), Oklahoma Natural Gas Company and ONG Transmission Company (ONG), Peoples Natural Gas Company Division of UtiliCorp United Inc. (Peoples), United Cities Gas Company (United Cities), and United Distribution Companies (UDC). By order issued on November 17, 1992, the Commission granted rehearing of Order No. 544 for the limited purpose of further consideration. In Docket No. RM92-13-003, UDC and ONG filed requests for rehearing of the November 17, 1992 tolling order. By order issued on December 28, 1992, the Commission granted rehearing of that tolling order for the limited purpose of further consideration.

For the reasons stated below, we are granting rehearing in Docket No. RM92-13-003, and granting rehearing in part and denying it in part in Docket No. RM92-13-002. Most significantly, we are granting rehearing of Order No. 544 and amending the final rule by excepting from the annual reporting requirement at § 2.55(b)(4)(ii) of the regulations all above-ground replacement projects not involving compression or the use of earthmoving equipment.

### II. Public Reporting Burden

The amendment adopted here on rehearing reduces the number of § 2.55(b) replacement projects that must be reported to the Commission in an annual report. The amount of information that a pipeline must compile and file with the Commission will decrease from the amount required for the 1993 annual report. We expect the new public reporting burden for the § 2.55(b) annual report to average 19.2 hours per response. We anticipate that some 50 pipeline respondents will file one annual report per year for a total annual reporting burden of 960 hours. This represents a reduction of 336 burden hours from Order No. 544's burden estimate under FERC-577(A),

[1] Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities, III FERC Stats. & Regs. ¶ 30,951 (1992); 57 FR 46487 (Oct. 9, 1992).

[2] 15 U.S.C. 3301-3432.

Gas Pipeline Certificates: Environmental Impact Statement.

The Commission is notifying the Office of Management and Budget (OMB) of this amendment to its regulations. Interested persons may obtain information on the § 2.55(b) annual reporting requirement by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415). Comments on the requirements of this order can also be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

## III. Background

The final rule adopted in Order No. 544 requires companies (1) constructing natural gas facilities (or abandoning and removing them) pursuant to NGPA section 311, or (2) replacing natural gas facilities pursuant to § 2.55(b) of the regulations, to notify the Commission at least 30 days prior to commencing construction, if the cost of the project exceeds the cost limit applicable to the part 157, subpart F automatic construction authorization. For 1993, that cost limit is $6.4 million. It is adjusted annually for inflation.[3]

Stated conversely, any section 311 construction or § 2.55(b) replacement project costing less than the cost limit applicable to the part 157, subpart F automatic construction authorization is not subject to the 30-day advance notification requirement. In addition, any § 2.55(b) replacement that must be performed immediately under U.S. Department of Transportation safety regulations also is not subject to the advance notification requirement, regardless of its cost.

The purpose of the advance notification requirement is to enable the Commission to review extensive section 311 and § 2.55(b) replacement projects for environmental compliance before construction commences and, where warranted, to intervene. All projects not subject to the advance notification requirement are subject, however, to an after-the-fact, annual reporting requirement. The purpose of this requirement is to allow the Commission to monitor pipelines' compliance with the applicable environmental requirements and to make sure that the limited advance notification requirement is working.

[3] See Column 1 of Table I at 18 CFR 157.208(d).

## IV. Docket No. RM92–13–003

In the November 17, 1992 tolling order, the Commission noted that ONG, UDC, Peoples, and United Cities filed pleadings styled as requests for rehearing of Order No. 544. However, the Commission found that, because these entities had not, in effect, intervened in this rulemaking proceeding by filing comments in response to the original Notice of Proposed Rulemaking (NOPR), they were not parties to the proceeding and their requests for rehearing thus did not properly lie. Nevertheless, the Commission stated that it would treat the four pleadings as petitions for reconsideration of Order No. 544, and that it would address them at the same time that it addressed the other properly filed requests for rehearing.

UDC and ONG argue that the Commission erred by treating these pleadings as petitions for reconsideration and not petitions for rehearing, thus abridging their rights to seek judicial review of a final order on rehearing. UDC cites both Commission and judicial case law to support the proposition that a person need not participate at the comment stage of a rulemaking to become a party to that proceeding later by filing a request for rehearing.[4]

Petitioners are correct that the Commission's November 17, 1992 tolling order was in error in this regard. The case law that UDC cites speaks directly to the issue, while our rules of practice, we note, are silent on it. Accordingly, we will grant rehearing of the requests for rehearing filed in Docket No. RM92–13–003. We will consider UDC's and ONG's pleadings, as well as the two other similarly situated pleadings filed in Docket No. RM92–13–002, as requests for rehearing of the final rule issued in Order No. 544. Further, we will deem those requests for rehearing tolled by the November 17, 1992 tolling order.

## V. Docket No. RM92–13–002

### *A. Notice to Local Distribution Companies of Section 311 Construction*

#### 1. Requests for Rehearing

All parties except Arkla seek rehearing of the final rule on one issue.

[4] Generic Determination of Rate of Return on Common Equity for Electric Utilities, 29 FERC ¶ 61,223, at 61,459 n.2 (1984) ("Intervention is not necessary in order to request rehearing of a rulemaking."); *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 46 (D.C. Cir. 1974) (Where the Commission does not permit interventions in proceedings, "it [is] sufficient for petitioners to file petitions for rehearing" in order to become "parties" to the proceeding.)

In addition to 30 days advance notification to the Commission, they argue that, where section 311 construction by an interstate pipeline would result in the bypass of a local distribution company (LDC), the pipeline also should be required to give, at a minimum, advance notice to the LDC. Some argue that notice also should be given to the appropriate state commission, while AGD argues that notice should be published in the **Federal Register**.

Petitioners claim that while Order No. 544 emphasizes the importance of preventing the potential harmful environmental impacts of section 311 construction, it neglects to address the potential harmful economic impacts of such construction on LDCs. They state that if LDCs are unable to compete for large volume, industrial customers—which are the customers for whom pipelines are most likely to build bypass facilities under section 311—it will be more difficult for LDCs to meet economically the needs of their remaining customers, particularly their low load residential and commercial customers.

In most cases, United Cities points out, LDCs make gas sales to large industrial customers at special or market sensitive rates. These special rates are designed to discourage bypass and fuel switching. UDC states that LDCs are willing to meet the Commission's challenge for increased competition in the natural gas industry. However, for a competitive, level playing field to exist, and for LDCs to have a realistic opportunity to compete, LDCs must have advance notice of bypass.

Petitioners argue that if an LDC is not put on notice of a cutomer's intent to leave its system, the LDC's ability to compete will be impaired severely. Without an opportunity to compete, LDCs will lose high load customers, continually causing their rates to their remaining customers to rise. Once this spiral of rising prices starts, it will be increasingly difficult for LDCs to remain competitive—to the eventual detriment of not only the LDCs but also the entire natural gas industry.

UDC points out that since Order No. 544 already requires 30 days advance notification to the Commission of extensive 311 construction, simultaneous notice to the affected LDC would involve little incremental effort by the pipeline, and no hardship. Likewise, requiring notice to the affected LDC of nonextensive section 311 construction, where advance notification to the Commission is not required, would require little effort by

the pipeline. UDC argues that the lack of a significant burden on the pipeline must be weighed against the potentially severe impact of bypass on the LDC and its remaining customers. At a minimum, then, petitioners request that the Commission require notice to LDCs of all section 311 construction resulting in bypass.

In addition, Peoples and ONG claim that the Commission's elimination of notice of LDCs in this area is inconsistent with its treatment of bypass in the electric utilities area, and therefore arbitrary and unlawful. They also claim that, by not requiring advance notification to it of all section 311 construction, the Commission has abdicated its responsibility under the National Environmental Policy Act (NEPA)[5] to identify and assess reasonable alternatives to proposed actions that would avoid or minimize adverse effects on the environment. In bypass situations, petitioners claim, the Commission will have no opportunity to consider the most environmentally benign option—the use of the LDC's existing facilities to provide service—prior to the construction of new, duplicative facilities.

Finally, AGD requests that, if the Commission denies rehearing of the LDCs' request for prior notice of section 311 construction, it should clarify that this issue remains pending on rehearing of Order No. 555, and that the regulations promulgated by Order No. 544 will be modified as necessary to reflect the outcome of that proceeding.

2. Discussion

We will deny rehearing on this issue. Contrary to the claims of UDC, AGA, and AGD, the issue of prior notice to LDCs of section 311 construction resulting in bypass was not the subject of the instant rulemaking. Nor did the final rule eliminate a right previously afforded LDCs, as alleged by Peoples and ONG.

The NOPR in this proceeding was confined narrowly to one issue only—whether to require advance notification to the Commission of section 311 construction and § 2.55(b) replacement activities. The NOPR stated:

> The Commission is proposing to revise its regulations to require a pipeline to notify the Commission 30 days prior to commencing any construction, or abandonment with removal of facilities, pursuant to section 311 of the [NGPA]; and any replacement of facilities pursuant to § 2.55(b). The purpose of this rulemaking is to repromulgate regulations recently vacated on procedural grounds by the D.C. Circuit in *Tennessee Gas Pipeline Co.* v. *FERC*, No. 90–1618 (July 14, 1992). Such advance notification would enable the Commission to review these proposed activities before construction commenced and, where warranted, to intervene.[6]

Nowhere in the NOPR did the Commission state or suggest, either expressly or implicitly, that other issues surrounding section 311 construction would be considered in this proceeding.

As stated, the reason for the rulemaking was clear and singular: To re-promulgate regulations virtually identical to those vacated two weeks earlier on procedural grounds by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). Those vacated regulations, adopted as an interim rule in Order No. 525[7] on the same day that the NOPR eventually culminating in Order No. 555[8] was issued, did not require any form of notice to LDCs for any section 311 construction. The only notice requirement contained in those vacated regulations was notification to the Commission for environmental review purposes.

Prior to the Order No. 525 regulations, no notice at all was required for any section 311 construction. In other words, pipelines were free to commence section 311 construction without notice to the Commission, the public, LDCs, or state commissions. The purpose of Order No. 525 was to impose a notification requirement on pipelines constructing facilities under section 311, for environmental review purposes, because such construction often turned out to be very extensive.

Thus, in denying rehearing on this issue, we stress that: (1) The NOPR in this proceeding did not either state or suggest that the Commission would address issues involving notice to LDCs of section 311 construction; and (2) the final rule adopted in Order No. 544 did not eliminate any notice requirement to LDCs that previously was in effect.[9] The NOPR in this proceeding only announced the Commission's proposal to re-promulgate the limited, 30-day advance notification requirement vacated by the court in *Tennessee*, and the final rule in this proceeding adopted that proposal, albeit narrowing the applicability of the requirement to section 311 construction costing more than the cost limit applicable to the part 157, subpart F automatic authorization.

We also emphasize that we are not closed to considering adopting in some form the notice requirement urged here by petitioners on rehearing. However, we cannot and will not address the issue here because petitioners' proposal is outside the published scope of notice of this proceeding. Adopting here the requirement that they urge would invite a remand by a court of appeals on the ground that we violated the notice and comment procedures of the Administrative Procedure Act.[10]

We also reject the claim by Peoples and ONG that our action in the final rule is inconsistent with our treatment of bypass in the electric utilities area, and therefore arbitrary and unlawful. Simply, as stated, this proceeding did not address, or purport to address, the issue of bypass resulting from section 311 construction. What the Commission did in Order No. 544, therefore, was not inconsistent with other Commission policy.

Finally, we reject the other claim raised by Peoples and ONG that, by not requiring advance notification of section 311 construction costing less than the cost limit of the blanket automatic authorization, we violate our responsibility under NEPA to identify and assess reasonable alternatives to proposed actions—including the no-build option—that would avoid or minimize adverse effects on the environment. This claim amounts to one more collateral attack on the section 311 construction authorization itself and on our regulations implementing it.

Consistent with congressional intent, we have left the section 311 construction authorization as unencumbered as possible by prior regulatory oversight requirements. To this end, the Commission treats the section 311 construction authorization, which arises directly from the statute,

[5] 42 U.S.C. 4321–4370c.

[6] Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities, IV FERC Stats. & Regs. ¶32,486, at 32,614 (1992).

[7] Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,895 (1990), clarified, 52 FERC ¶ 61,252 (1990), reh'g denied, 53 FERC ¶ 61,140 (1990).

[8] Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928 (1991), order postponing effective date of rule, III FERC Stats. & Regs. ¶ 30,928A (1991), order withdrawing amendments, III FERC Stats. & Regs. ¶ 30,965 (1993).

[9] In this regard, we note that still in effect, and unaffected by Order No. 544, is the requirement that pipelines notify an LDC in writing prior to commencing transportation to a customer located in that LDC's service area. See 18 CFR 284.106(a)(4), 284.126(a)(6), and 284.223(d)(vi).

[10] 5 U.S.C. 551 *et seq.* We also note, by way of responding to AGD's request for clarification, that the Order No. 555 proceeding no longer is the vehicle in which we will consider the relief urged by the LDCs, since the Commission has withdrawn the amendments adopted in that order. See Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,965 (1993).

similarly to another type of blanket construction authorization, the authomatic authorization of part 157, subpart F. Both authorizations are self-implementing, meaning that neither prior notice nor prior, individual regulatory approval is required as a condition precedent to a pipeline's commencing construction. In each instance, however, the pipeline must comply with certain regulations designed: (1) To protect various facets of the public interest, most noticeably the environment; and (2) to fulfill the Commission's statutory mandates.

As correctly noted by Peoples and ONG, one of those mandates arises under NEPA. Contrary to petitioners' claims, however, we have satisfied our NEPA obligations by, at § 284.11 of the regulations, requiring pipelines proposing section 311 construction to observe our environmental compliance regulations at § 157.206(d). Pipelines constructing under the blanket automatic authorization, we note, also must comply with those regulations.

Order No. 436 added § 284.11 to the regulations.[11] Order No. 436, however adopted no prior notice or advance notification requirement for any section 311 construction. As stated, it was not until 1990, in Order No. 525, that the Commission first required 30 days advance notification for section 311 construction. And as should by now be clear, in repromulgating the Order No. 525 regulations in Order No. 544, the Commission cut back on 30-day advance notification requirement by excepting projects costing less than the cost limit of the blanket automatic authorization.

In its review of Order No. 436, the D.C. Circuit upheld the Commission's section 311 regulations in their entirety. The court rejected claims that the Commission "must, in effect, extend the construction certification requirement of Section 7 to Section 311."[12] Because the section 311 regulation adopted by Order No. 544 is more restrictive than the one adopted by Order No. 436—by requiring some notification to the Commission in lieu of none prior to beginning construction—we conclude that the new section 311 regulations satisfy our obligations under NEPA now just as the former ones did then.

[11] See Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,665, at 31,586 (1985).

[12] *Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 1040 (D.C. Cir. 1987), *cert. denied*, 108 S.Ct. 1469 (1988).

*B. The Annual Reporting Requirement*

1. Background

For all § 2.55(b) replacement and section 311 construction projects not subject to the 30-day advance notification requirement—i.e., those projects costing less than the cost limit of the part 157, subpart F automatic authorization—pipelines must file an annual report on or before May 1 of each year. Required in all annual reports are three things: (1) A brief description of the facilities replaced or constructed; (2) topographic maps showing the location of the facilities; and (3) a description of the procedures used for erosion control, revegetation and maintenance, and stream and wetland crossings. Additionally required in annual reports of section 311 construction is evidence of having complied with § 157.206(d) of the Commission's environmental regulations.

In adopting the annual reporting requirement, the Commission stated:

> The annual reporting requirement will serve two purposes. First, it will allow the Commission to verify that pipelines are complying on their own with all applicable environmental requirements and, consequently, that the limited advance notification requirement is working. Second, as it will inform the Commission of all projects not subject to the advance notification requirement, it will bridge a gap in the Commission's knowledge of such activities. We note that this annual reporting requirement parallels a similar reporting requirement for projects authorized under the part 157, subpart F automatic authorization.[13]

The Commission also stated that, where certain information is common to all projects, such as an erosion control plan, for example, the pipeline does not have to repeat that information for each project.

2. Request for Rehearing

While Arkla does not oppose the annual reporting requirement for section 311 construction, it claims that the Commission erred by requiring an annual report of "minor replacement projects" under § 2.55(b).[14] Arkla argues that an annual report requirement for minor replacement projects imposes an unreasonable burden on interstate pipelines while producing no benefits to the environment.

Arkla claims that the limited information required in an annual report is insufficient to enable the Commission to verify that pipelines are complying with all applicable environmental requirements. Arkla argues that the required brief description of the facilities replaced is irrelevant to the protection of the environment, and that topographic maps provide little information useful to verifying environmental compliance.

Arkla agrees with the Commission that it makes sense to require pipelines to comply with a Commission approved set of procedures for erosion control, revegetation and maintenance, and stream and wetland crossings, but it argues that this can be accomplished without requiring pipelines to file an annual report addressing each individual replacement project.

Arkla also claims that the Commission did not explain why it needs to know the details of every minor replacement project of every pipeline. The number of such projects is great, Arkla states, and the Commission has not articulated a use for this information. Accordingly, it should not burden pipelines with the obligation of collecting and filing it.

At a minimum, Arkla argues, if the Commission is unwilling to except all minor replacements from the annual reporting requirement, it should at least except above-ground replacements. Arkla claims that these pose virtually no potential for environmental damage, and that the burden of including them in an annual report clearly outweighs any benefits of reporting them.

3. Discussion

We will grant rehearing on this issue to the following extent. We will except all non-extensive, above-ground replacements not involving compression or the use of earthmoving equipment from the annual reporting requirement. By non-extensive replacements we mean those costing less than the cost limit of the part 157, subpart F automatic authorization. Examples of such above-ground replacement facilities include meters, regulators, taps, and the like. In most cases, the replacement of such facilities involves no ground disturbance, just the closing of valves, the unbolting and removal of old equipment, and the bolting or welding of new equipment.

We agree with Arkla generally that there is little likelihood of environmental disturbance resulting from such above-ground replacements. However, because non-extensive, above-ground replacement projects involving compression facilities may have significant noise and air emission impacts, and because such projects involving the use of earthmoving

[13] Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities, III FERC Stats. & Regs. ¶ 30,951, at 30,691 (1992).

[14] Arkla Request for Rehearing, at 5.

equipment may result in significant ground disturbance, we still will require these projects to be reported annually to the Commission for environmental monitoring purposes. The amendment that we are adopting here—excepting from the annual reporting requirement, beginning with the 1994 annual report, non-extensive, above-ground replacements not involving compression or the use of earthmoving equipment—is reflected as an exception at § 2.55(b)(4)(ii) of the regulations.

We deny the broader rehearing sought by Arkla. Below-ground replacements nearly always involve more environmental disturbance than above-ground replacements. An annual report of below-ground projects not subject to the 30-day advance notification requirement will enable the Commission to monitor, in many instances, a specific project's compliance with applicable environmental requirements, and, over time, a pipeline's general compliance history with those requirements. Contrary to Arkla's claims, a topographic map, accompanied by a brief description of the facilities being replaced, can tell the Commission a great deal. A topographic map shows area land use and potentially sensitive geographical areas such as streams and wetlands. The information gleaned from an annual report, even if received after a non-extensive replacement has been completed, is useful to the Commission's monitoring general pipeline compliance in this area.

In addition, the Commission has a legitimate need to keep informed of pipeline actions in the areas it oversees. In general, an information reporting requirement is a valid way for the Commission to keep apprised of industry actions. The information also is necessary to support field inspections. Accordingly, we conclude that the information required here by the annual reporting requirement for non-extensive replacement projects (with most above-ground replacements excluded) is a minor burden on pipelines that is outweighed by the resulting benefits to the Commission and ultimately the environment.

*C. Subjecting Intrastate Pipeline to the Rule*

1. Request for Rehearing

Arkla claims that the Commission erred by requiring intrastate pipelines to provide, for section 311 construction, both advance notification to the Commission and an annual report of projects not subject to the advance notification requirement. Arkla argues that these requirements impose an unreasonable burden on intrastate pipelines, without any concomitant benefit to the Commission, and unnecessarily duplicate the state environmental review process.

2. Discussion

We will deny rehearing on this issue. As stated, it was Order No. 436 that first required pipelines, including intrastate pipelines, to comply with the Commission's environmental regulations at § 157.206(d) prior to beginning section 311 construction. All Order No. 544 did was to require 30 days advance notification to the Commission of extensive section 311 projects, and an after-the-fact annual report of non-extensive projects. We do not see how either requirement is unduly burdensome.

Like an interstate pipeline, an intrastate pipeline generally will plan extensive section 311 construction more than 30 days before beginning construction. We do not see how the pipeline's advising the Commission of its plans in advance—by briefly describing the facilities to be constructed, providing evidence of having complied with § 157.206(d) of the Commission's environmental regulations, submitting a topographical map, and describing its procedures for erosion control, revegetation and maintenance, and stream and wetland crossings—is unduly burdensome. On the other hand, the information thus received by the Commission will allow it to determine whether additional inquiry is necessary to ensure that the pipeline satisfies the Commission's environmental compliance regulations.

Similarly, we are not convinced that an after-the-fact annual reporting requirement for non-extensive projects is unduly burdensome. The number of projects that an intrastate pipeline will have to report each year under this requirement will be few, if any, and the information required will be minimal. On the other hand, the Commission needs to know about section 311 construction—by all pipelines—due to its responsibility to oversee that part of the statute and its obligation to report, from time to time, to Congress. An after-the-fact annual reporting requirement, we conclude, is a minimal intrusion on pipelines in exchange for the privilege of proceeding under the self-implementing, section 311 construction authorization.

## VI. Regulatory Flexibility Certification Statement

The Regulatory Flexibility Act [15] requires rulemakings either to contain a description and analysis of the impact the rule will have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. This order makes a minor amendment to the regulations adopted by Order No. 544. This amendment has no impact on the Commission's certification in Order No. 544 that this rulemaking will not have a significant economic impact on a substantial number of small entities.

## VII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant effect on the quality of the human environment.[16] The Commission has categorically excluded certain actions from these requirements on the ground that they do not have a significant effect on the human environment.[17] This order on rehearing amends the final rule adopted in Order No. 544 by reducing the number of § 2.55(b) replacement projects that must be reported to the Commission in an annual report. This action involves information gathering and is categorically excluded by § 380.4(a)(5) of the regulations. Accordingly, no environmental analysis is necessary.

## VIII. Information Collection Statement

OMB's regulations require that it approve certain information collection requirements imposed by an agency.[18] The information collection requirement revised by this order on rehearing is FERC–577(A), Gas Pipeline Certificates: Environmental Impact Statement, (1902–0161). The information collected under FERC–577(A) enables the Commission to carry out its legislative mandate under the NGA, NGPA, and NEPA. Specifically, the information collected allows the Commission to review certain construction and replacement activities of pipelines prior to their commencement, and, where necessary, to take action.

An estimated 50 respondents will be affected by this order. The respondents will consist mostly of large interstate pipeline companies.

The Commission is notifying OMB of this change in its information collection

[15] 5 U.S.C. 601–612.

[16] See 18 CFR part 380.

[17] See 18 CFR part 380.4.

[18] See 5 CFR part 1320.

requirements. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415). Comments on the requirements of this order can also be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

### IX. Administrative Findings and Effective Date

This order is in response to issues raised on rehearing. Therefore, we find that no further notice and comment period is required.

The amendment to the Commission's regulations adopted in this order on rehearing will be effective on November 26, 1993.

### List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

In consideration of the foregoing, the Commission: (1) Grants rehearing, in Docket No. RM92–13–003, as discussed above; (2) grants rehearing in part and denies rehearing in part, in Docket No. RM92–13–002, as discussed above; and (3) amends part 2 of chapter I, title 18, Code of Federal Regulations, as set forth below.

## PART 2—GENERAL POLICY AND INTERPRETATIONS

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

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Section 2.55 is amended by revising the section heading and adding new language at the end of the last sentence of paragraph (b)(4)(ii), to read as follows:

**§ 2.55 Definition of terms used in section 7(c).**

* * * * *

(b) * * *

(4) * * *

(ii) * * * *Exception.* A company does not have to include in this annual report any above-ground replacement project that did not involve compression facilities or the use of earthmoving equipment.

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[FR Doc. 93–26415 Filed 10–26–93; 8:45 am]
BILLING CODE 6717–01–M

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## 18 CFR Part 36

**[Docket No. RM93–22–000]**

## Provisions for Applications for Transmission Services Under Section 211 of the Federal Power Act; Order No. 560

Issued: October 21, 1993.

**AGENCY:** Federal Energy Regulatory Commission; Energy.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations to add a new part to govern the procedures for applications for transmission services under section 211 of the Federal Power Act. The final regulations address the statutory provision requiring public notice of an application and notice to each affected State regulatory authority, electric utility, and Federal power marketing agency.

**EFFECTIVE DATE:** The final rule is effective on October 27, 1993. The information collection provisions, however, will not become effective until approved by the Office of Management and Budget. Notice of this date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Hadas Z. Kozlowski, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, Telephone: (202) 208–2284.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

### I. Introduction

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

The Commission is amending 18 CFR chapter I to add a Part 36 to address the notice requirement for applications for transmission services under section 211 of the Federal Power Act (FPA),[1] as amended by the Energy Policy Act of 1992 (Energy Policy Act).[2]

The Energy Policy Act expanded the Commission's authority to order transmission services. Under section 211, the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of electric systems affected by the order, and would meet the requirements of amended section 212.[3] Section 211 allows any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale to apply for an order requiring a "transmitting utility" to provide transmission services for the applicant.[4]

Section 211(a) provides that, upon receipt of an application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue an order on the application.[5] This rule establishes the regulations to govern this notice provision.

### II. Public Reporting Burden

By adopting this rule, the Commission is establishing the notice procedures to be followed when an application under section 211 is filed. The proposed rule would require the applicant to provide

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[1] 16 U.S.C. 824j.

[2] Pub. L. No. 102–486, 106 Stat. 2776 (1992).

[3] 16 U.S.C. 824k.

[4] Section 3(23) of the FPA, 16 U.S.C. 796(23), as amended by the Energy Policy Act, defines a "transmitting utility" as any electric utility, qualifying cogeneration facility, or Federal power marketing agency that owns or operates electric power transmission facilities that are used for the sale of electric energy at wholesale.

[5] This notice provision was not amended by the Energy Policy Act.

to the Commission a form of notice suitable for publication in the **Federal Register**, as well as to notify affected entities, as specified in section 211(a), of the filing.

The public reporting burden for the new information collection requirements contained in the rule is estimated to average five hours per response. This estimate includes time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information. The Commission estimates that approximately twenty applications for transmission services will be received each year. Accordingly, the public reporting burden is estimated to be no more than 100 hours.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standard Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission].

## III. Discussion

### *A. Notice of Proposed Rulemaking*

On July 27, 1993, the Commission issued a Notice of Proposed Rulemaking in this proceeding.[6] The Commission proposed that applicants for transmission services under section 211 of the FPA include the following in their filing: (1) A form of public notice suitable for publication in the **Federal Register** and; (2) a sworn statement that the applicant has provided actual notice to affected entities. The proposed rule also defined the "affected" entities to whom actual notice must be provided: (1) Any electric utility that has made the arrangements for the sale of electric energy to the applicant and any transmitting utility being requested to transmit the electric energy; (2) a State regulatory authority, as defined in section 3(21) of the FPA, regulating the rates and charges of any affected electric utility; and (3) a Federal power marketing agency that operates in the service area of any affected electric utility.

### *B. Comments*

The Commission received six comments in response to the notice of proposed rulemaking. On August 20, 1993, the American Public Power Association (APPA) filed comments. APPA supports the proposed rule and believes that the proposed rule provides appropriate guidance to parties preparing applications for transmission services.

On August 26, 1993, the Edison Electric Institute (EEI) filed comments. EEI points out that the proposed rule assumes that the applicant is the utility which is purchasing electric energy being sold by another utility. EEI believes that the proposed rule should be modified to require notice to "any electric utility that has made arrangements for the sale of electric energy to, *purchase of electric energy from, or has been requested to provide transmission of electric energy for, the applicant.*"[7] EEI also requests that the Commission expand the meaning of "affected" electric utility to include other utilities, where: (1) Substantial portions of the transaction at issue could flow over the other utility's transmission system; (2) the transaction at issue could impose a substantial impact on the other utility's ability to use its system; or (3) the transaction at issue could unreasonably impair the reliability of the other utility.

On August 30, 1993, Northeast Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives) filed comments. The East Texas Cooperatives support the proposed rule, which places the obligation to provide actual notice on the applicant and defines the "affected" parties such that the applicant can know in advance exactly whom to notify. The East Texas Cooperatives also believe that by explicitly defining the "affected" parties, the Commission properly precludes late intervention by parties such as frustrated power sellers, third parties seeking load flow claims, or rivals for transmission access.

On September 1, 1993, New England Power Company (NEP) and the Detroit Edison Company (Detroit Edison) separately filed comments. NEP recommends that the Commission expand the definition of "affected electric utility" to include other utilities whose transmission systems may be affected by the requested transmission service (as determined in a utility study conducted pursuant to section 213(a) of the Federal Power Act).[8] Detroit Edison argues that the proposed rule contains an inherent, but erroneous, presumption that applicants for transmission services under section 211 of the FPA must always be the purchasing entities. Detroit Edison also maintains that the definition of "affected electric utility" described in the 1978 PURPA Conference Report[9] conflicts with the new definition of "transmitting utility" introduced by the Energy Policy Act, because a commercial "contract path" often will not include all utilities whose transmission facilities will be physically used in carrying out a particular transmission transaction.

On September 2, 1993, Midwest Power Systems Inc. (Midwest Power) filed comments. Midwest Power requests that the phrase "brief description of the transmission services sought" in the delineation of the requirements for the public notice should be broadened to also require the applicant to state the dates for initiating and terminating the requested service, the total amount of power transmitted, the point of origin, the point of ultimate delivery, and other descriptive characteristics. Midwest Power also wishes to broaden the definition of "affected electric utility" to include a utility which will carry a significant portion of the power flow.

### *C. Commission Response*

We believe that the obligation to provide actual notice should be placed on the applicant seeking transmission service. We also believe that we should explicitly define who the "affected" entities are so that the applicant can know in advance exactly whom to notify. Accordingly, as in the proposed rule, we have placed the burden of providing actual notice on the applicant, and we have identified who is entitled to receive actual notice.

In reference to the point raised by EEI and Detroit Edison that the proposed rule contains an assumption that the applicant will always be the entity purchasing electric energy, we have amended the final rule to also provide that, if the applicant is the entity selling electric energy, it likewise must provide actual notice to, *inter alia*, the entity that has made arrangements to purchase the electric energy to be transmitted.

EEI, NEP, Detroit Edison, and Midwest Power all request that we expand the definition of "affected electric utility." Each provides slightly

[6] Provisions for Applications for Transmission Services Under Section 211 of the Federal Power Act, 58 FR 41074 (Aug 2, 1993), IV FERC Statutes and Regulations ¶ 32,499 (1993).

[7] EEI Comments at 2 (emphasis added).

[8] 16 U.S.C. 824*l*(a).

[9] See *infra* note 10.

different criteria for who should be considered to be "affected." However, none of the parties has provided a clear, easily-determined line of demarcation between those who should be considered "affected," and those who should not. Because of the nature of interconnected transmission systems, as EEI admits, virtually every electric utility could potentially be affected in some way by every request for transmission services. Moreover, actual power flows over the grid can vary greatly even from hour to hour, and they are not always predictable. In contrast, the definition we suggested in the proposed rule—the definition provided for in the legislative history of section 211 [10]—is clear and allows for ready determination of who is "affected." We see no reason to expand the definition in such a way as to place a greater, and more uncertain, burden on the applicant. Accordingly, we decline to expand the definition of "affected electric utility" as requested by certain of the parties. In addition, we are continuing to provide for submission of a draft **Federal Register** notice with each application for transmission services. Publication of notice in the **Federal Register** will provide notice to other utilities that requests for transmission services have been filed so that they may take whatever action they believe appropriate (*e.g.*, communicating with the applicant, filing a protest or motion for intervention, etc.).

Midwest Power requests that, in the required brief description of the transmission services requested, the Commission require applicants to provide more specific information. We agree that we should require, with more particularity, what information applicants must provide. We will require that an applicant include in its brief description of the transmission services requested: the proposed dates for initiating and terminating the requested transmission services; the total amount of transmission capacity requested; a brief description of the character and nature of the transmission services requested; and whether the transmission services requested are firm or non-firm.[11]

[10] H.R. Rep. 95–1750, 95th Cong., 2d Sess. 91 (1978) ("For purposes of providing notice, the conferees intend that the phrase 'affected electric utility', as used in this subsection and subsection (b), be interpreted to apply to the two electric utilities which have made the arrangements for the sale of power as well as the utility being requested to wheel the power.").

[11] These information requirements for purposes of notice are consistent with the Commission's recent Policy Statement Regarding Good Faith Requests for Transmission Services, *et al.*, 58 FR 38964 (July 21, 1993), III FERC Statutes & Regulations ¶30,975 (1993). However, it is not our intention that information required for purposes of **Federal Register** and actual notice be as complete and detailed as a good faith request for transmission services. For purposes of such notice, such detail is not necessary.

## IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [12] requires that rulemakings contain either a description and analysis of the effect the rule will have on small entities or a certification that the rule will not have a substantial economic impact on a substantial number of small entities. The entities that would be required to comply with the rule are electric utilities, Federal power marketing agencies, or persons generating electric energy for sale for resale and for the most part do not fall within the RFA's definition of small entities.[13] In addition, given the limited amount of information required to be provided, the rule will not impose a significant economic impact. Accordingly, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

## V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant effect on the human environment.[14] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[15] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural, or that does not substantively change the effect of legislation or regulations being amended.[16] Because this final rule is merely procedural, no environmental consideration is necessary.

## VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations [17] requires that OMB approve certain information and recordkeeping requirements imposed by an agency.

The information collection requirements in the final rule are contained in FERC–716A, "Notice of Application for Order Requesting Transmission Services". The Commission will use the data collected to carry out its responsibilities under Part II of the Federal Power Act.

The final rule has been submitted to OMB for its review. Interested persons may obtain information on the information collection requirements of the final rule by contracting the Federal Energy Regulatory Commission, 941 North Capitol St., NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415]. Comments on the requirements of the final rule can be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

## VII. Effective Date

This rule is merely procedural and does not affect the substantive rights of any party. The Commission, therefore, finds good cause to make this rule effective immediately upon publication in the **Federal Register**. However, the information collection provisions will not become effective until approved by OMB. Notice of this date will be published in the **Federal Register**.

## List of Subjects in 18 CFR Part 36

Administrative practice and procedure, Electric power.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

In consideration of the foregoing, the Commission adds part 36, chapter I, title 18 of the Code of Federal Regulations, as set forth below.

1. Part 36 is added to read as follows:

## PART 36—RULES CONCERNING APPLICATIONS FOR TRANSMISSION SERVICES UNDER SECTION 211 OF THE FEDERAL POWER ACT

Sec.

36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

**Authority:** 5 U.S.C. 551–557; 16 U.S.C. 791a–825r; 31 U.S.C. 9701; 49 U.S.C. 1–27.

### § 36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

(a) *Definitions.* (1) *Affected party* means each affected electric utility, each affected State regulatory authority, and

[12] 5 U.S.C. 601–612.

[13] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a "small-business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632(a).

[14] Regulations Implementing National Environmental Policy Act of 1969, 52 FR 47897 (Dec. 17, 1987), FERC Statutes & Regulations, Regulations Preambles 1986–90 ¶ 30,783 (1987).

[15] 18 CFR 380.4.

[16] 18 CFR 380.4(a)(2)(ii).

[17] 5 CFR 1320.13.

each affected Federal power marketing agency.

(2) *Affected electric utility* means each electric utility that has made arrangements for the sale or purchase of electric energy to be transmitted pursuant to the particular application for transmission services, and each transmitting utility, as defined in section 3(23) of the Federal Power Act, 16 U.S.C. 796(23), being requested to transmit such electric energy.

(3) *Affected State regulatory authority* means a State regulatory authority, as defined in section 3(21) of the Federal Power Act, 16 U.S.C. 796(21), regulating the rates and charges of each affected electric utility.

(4) *Affected Federal power marketing agency* means a Federal power marketing agency that operates in the service area of each affected electric utility.

(b) *Additional filing requirements.* Any person filing an application for transmission services pursuant to section 211 of the Federal Power Act, 16 U.S.C. 824j, shall include the following:

(1) A statement of public notice, suitable for publication in the **Federal Register**. The notice shall state the applicant's name, the date of the application, the names of the affected parties, and a brief description of the transmission services sought. The notice shall be in the following form:

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

[Name of Applicant] _____
Docket No. TX [ ]-[ ]-000

NOTICE OF APPLICATION FOR ORDER REQUESTING TRANSMISSION SERVICES

On [date application was filed], [name and address of applicant] filed with the Federal Energy Regulatory Commission an application requesting that the Commission order [name of transmitting utility subject to the request for transmission services] to provide transmission services pursuant to section 211 of the Federal Power Act.

[Brief description of the transmission services sought, including the proposed dates for initiating and terminating the requested transmission services; the total amount of transmission capacity requested; a brief description of the character and nature of the transmission services being requested, and whether the transmission services requested are firm or non-firm.]

Any person desiring to be heard or objecting to the granting of the requested transmission services should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests must be filed on or before _____ and must be served on the applicant. 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.

(2) A sworn statement that actual notice, including the applicant's name, the date of the application, the names of the affected parties, and a brief description of the transmission services sought (including the proposed dates for initiating and terminating the requested transmission services, the total amount of transmission capacity requested, a brief description of the character and nature of the transmission services being requested, and whether the transmission services requested are firm or non-firm) has been served, pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, § 385.2010 of this chapter, on each affected party. Such statement shall enumerate each person so served.

(c) *Other filing requirements.* All other filing requirements of the Commission's Rules of Practice and Procedure remain in effect for applications under this section.

[FR Doc. 93-26416 Filed 10-26-93; 8:45 am]
BILLING CODE 6717-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 133

**[T.D. 93-87]**

## Exchange of Briefs in Copyright Infringement Action

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to provide that in cases where imported goods are detained by Customs on suspicion of copyright infringement, the importer and copyright owner, before submitting documents to Customs supporting their views in regard to the disputed claim of infringement, shall first provide each other with a copy of all briefs and related materials. The same procedure shall be followed regarding any follow-up rebuttal arguments. The submission of all material relating to the disputed claim of infringement to Customs must be accompanied by a written statement confirming that a copy has already been provided to the opposing party.

Also, in this connection, the Customs Regulations are amended to provide that when the copyright owner has posted the required bond necessary to protect the importer from possible loss or harm should the detained article be found noninfringing, such bond may not be withdrawn by the copyright owner until a decision on the issue of infringement has been reached.

Affording each party the opportunity, as a matter of course, to view and respond to the opposing presentation will result in reduced costs and increased efficiency by eliminating individual requests having to be processed by Customs under the Freedom of Information Act to obtain these materials, in addition to producing more accurate and better-informed follow-up submissions by these parties, and better decision-making by customs.

**EFFECTIVE DATE:** November 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** John F. Atwood, International Trade Compliance Division, (202-482-6960).

**SUPPLEMENTARY INFORMATION:**

### Background

Currently, § 133.43(c)(1) of the Customs Regulations (19 CFR 133.43(c)(1)) provides that in cases where goods are detained by Customs on suspicion of copyright infringement, the importer and the copyright owner may submit legal briefs and other pertinent materials to Customs in support of their respective positions on the disputed claim of infringement. These submissions are forwarded to Customs Headquarters for decision. Frequently, the copyright owner and importer will request a copy of the other's brief and related materials under the Freedom of Information Act (FOIA), 5 U.S.C. 552, following which rebuttal arguments are then usually made to Customs.

By notice published in the **Federal Register** on July 10, 1992 (57 FR 30703), it was proposed to amend § 133.43(c)(1) to permit the exchange of briefs in copyright infringement actions. Specifically, the proposed amendment of § 133.43(c)(1) provided that in cases where imported goods were detained on suspicion of copyright infringement, the importer and copyright owner would furnish each other with a copy of all additional evidence, briefs, or other material, which each thereafter intended to submit to Customs in regard to the disputed claim of infringement, and would accompany the submission of this information to Customs with a written statement confirming that a

copy had already been provided to the opposing party.

Concomitant with this, the notice further proposed to amend § 133.43(c)(4) to expressly provide that once a copyright owner posted the required bond necessary to protect the importer from possible loss or harm should the detained article be found noninfringing (see § 133.43(b)(2)), such bond could not be withdrawn by the copyright owner until a decision on the issue of infringement was reached.

As observed in the notice, affording each party the opportunity to routinely view and respond to the opposing presentation would result in reduced costs and increased efficiency for Customs by eliminating individual requests having to be processed under the FOIA to obtain these materials, in addition to producing more accurate and better informed follow-up submissions by these parties, and better decision-making by Customs.

Five commenters responded to the notice of proposed rulemaking. One commenter made a number of recommendations concerning Customs handling of copyright infringement matters in general, but did not specifically address the merits of the proposed amendments under consideration. A description of the specific issues that were raised with respect to the proposal under review, together with Customs analysis thereof, is set forth below.

**Discussion of Comments**

*Comment:* It is asserted that proposed § 133.43(c)(1)(i) is too limited in that a copyright owner would apparently only have to furnish the importer with any "additional" evidence which is thereafter submitted to Customs to substantiate an initial claim of infringement, thus excluding any evidence which may have accompanied the initial claim itself. It is further declared that the importer should have a full opportunity, in advance of defending the claim of infringement, to review and respond to all evidence which is to be considered by Customs, regardless of the timing or circumstance of the submission, or the formality or informality thereof.

*Response:* Customs intent by this regulation is to afford each party the opportunity to view and respond to the opposing presentation without the burden of having to resort to the FOIA to obtain these materials, thereby reducing costs, increasing efficiency, and facilitating better decision-making by Customs. To this end, § 133.43(c)(1)(i), as proposed, basically states that before submitting the additional materials to Customs, the importer and copyright owner must first provide each other with a copy of all such information. Thus, the language used in the proposed amendment is intended to permit both the importer and the copyright owner an equal opportunity to review the same evidence which will later be reviewed by Customs, including evidence accompanying the initial claim or denial of infringement.

To avoid confusion on this score, § 133.43(c)(1)(i) is revised to make clear that the exchange of information includes the initial claim or denial of infringement. Furthermore, to ensure that all evidence, including rebuttal arguments, will be made available to both parties, § 133.43(c)(1)(i) is revised to provide that during the period within which rebuttal arguments may be made to Customs, each party shall first furnish the other with a copy of all such rebuttal material before timely submitting it to Customs, and that no other material will be accepted by Customs from either party in regard to the disputed claim of infringement after the 30-day rebuttal period expires.

*Comment:* Proposed § 133.43(c)(1)(i) should be more specific in terms of the timing and mechanics relating to the exchange of information.

*Response:* Customs believes that § 133.43(c)(1)(i), as revised, clearly requires that the exchange of information between the importer and the copyright owner take place within the initial 30-day period specified in § 133.43(c)(1), and that the exchange of rebuttal arguments take place during the 30-day rebuttal period and before their submission to Customs.

*Comment:* Proposed § 133.43(c)(1)(i) fails to allow for the respective parties to the dispute to test the accuracy of the information which each submits to the other and to Customs. It is suggested that the amendment allow for depositions, as well as for the production of relevant documents underlying the evidence presented, so that assertions of fact can be explored and examined for accuracy.

*Response:* Customs is satisfied that the current administrative practices which it follows in copyright infringement cases permit a complete and accurate review at the agency level.

*Comment:* To further facilitate the exchange of briefs, it is proposed that Customs provide the importer and the copyright owner with the name and address of the proper party to receive the briefs. It is noted that if one or both parties are large corporations, the identity of the proper person to receive the briefs is essential to avoid delay and confusion. It is also suggested that the proposed amendment require that the brief be sent by certified mail, with a return receipt requested, in order to reduce the number of disputes as to whether the brief was timely submitted to the opposing party.

*Response:* Customs believes that the present procedures furnish sufficient information to enable the receipt of briefs by the appropriate parties, and that the parties involved should be personally responsible for ensuring that a timely exchange has taken place.

*Comment:* The time period for the exchange of briefs should be shortened; as proposed, it is unduly long and further extends the detention period of the imported article, thereby causing irreparable injury to the importer. In this connection, the importer should be given the option of posting a bond in order to permit the continued importation of the allegedly infringing article during this time, with Customs allowing the parties to present arguments on the amount of any bond imposed either on the copyright owner or the importer.

*Response:* It is Customs opinion that the time periods set forth in the final rule are necessary in order to allow the parties adequate opportunity for the preparation and exchange of briefs, as well as for the review and rebuttal thereof. Nor should these time periods cause undue injury to the importer. In this latter regard, the importer may raise any concerns about the amount of the copyright owner's bond with the appropriate district director of Customs who specifies the amount of this bond, which amount must be sufficient to protect the importer from possible harm should the detained article be found noninfringing.

*Comment:* The proposed amendments should be implemented by Customs as quickly as possible.

*Response:* The final rule in this matter will become effective 30 days following its publication in the **Federal Register**, as provided under the Administrative Procedure Act.

**Conclusion**

After careful consideration of the comments received and further review of the matter, Customs has concluded that the amendments, with the modifications discussed above, should be adopted.

**Regulatory Flexibility Act**

Based on the explanation given in the preamble, it is certified, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the amendment will not have a significant

economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12866**

It has been determined that these rules do not constitute a significant regulatory action as defined in E.O. 12866.

**Paperwork Reduction Act**

No new recordkeeping or data collection burdens are imposed upon the public as a result of this amendment. Accordingly, it is not subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

**Drafting Information**

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 133**

Copyrights, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade names, Trademarks.

**Amendment to the Regulations**

Part 133, Customs Regulations (19 CFR Part 133), is amended as set forth below.

## PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The authority citation for Part 133 is revised to include the specific sectional authority thereunder, as follows:

**Authority:** 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 133.1 also issued under 15 U.S.C. 1096, 1124;

Sections 133.2 through 133.7, 133.11 through 133.13, and 133.15 also issued under 15 U.S.C. 1124;

Section 133.21 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526;

Sections 133.24 and 133.46 also issued under 19 U.S.C. 1623;

Section 133.53 also issued under 19 U.S.C. 1558(a).

2. Section 133.43 is amended by revising paragraphs (c)(1) and (c)(4) to read as follows:

**§ 133.43 Procedure on suspicion of infringing copies.**

* * * * *

(c) * * *

(1) *Demand and bond; exchange of briefs.* If the copyright owner files a written demand for exclusion of the suspected infringing copies together with a proper bond, the district director shall promptly notify the importer and copyright owner that, during a specified time limited to not more than 30 days, they may submit any evidence, legal briefs or other pertinent material to substantiate the claim or denial of infringement. The burden of proof shall be upon the party claiming that the article is in fact an infringing copy.

(i) *Exchange of briefs.* Before timely submitting the additional evidence, legal briefs, or other pertinent material to Customs, pursuant to paragraph (c)(1) of this section, in regard to the disputed claim of infringement, the importer and the copyright owner shall first provide each other with a copy of all such information, including the importer's denial of infringement and the copyright owner's demand for exclusion. The subsequent submission of this information to Customs shall be accompanied by a written statement confirming that a copy has already been provided to the opposing party. The district director shall notify the importer and the copyright owner that they shall have additional time, not to exceed 30 days, in which to provide a response to the arguments submitted by the opposing party, and that rebuttal arguments, timely submitted, shall be fully considered in the decision-making process. During this rebuttal period and before timely submitting the rebuttal arguments to Customs, the importer and the copyright owner shall first provide each other with a copy of all such material. The submission of this rebuttal material to Customs shall be accompanied by a written statement confirming that a copy has been provided to the opposing party. The district director shall not accept any additional material from the parties to substantiate the claim or denial of infringement after the final 30-day rebuttal period expires.

(ii) *Decision.* Upon receipt of rebuttal arguments, or 30 days after notification if no rebuttal arguments are submitted, the district director shall forward the entire file, together with a sample of each style that is considered possibly infringing, to Customs Headquarters, (Attention: International Trade Compliance Division, Office of Regulations and Rulings), for decision on the disputed claim of infringement. The final decision on the disputed claim of infringement shall be forwarded to the district director who shall send a copy thereof to the copyright owner as well as to the importer.

* * * * *

(4) *Withdrawal of bond.* Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

* * * * *

Approved: October 8, 1993.

**George J. Weise,**

*Commissioner of Customs.*

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 93-26367 Filed 10-26-93; 8:45 am]

BILLING CODE 4820-02-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 05-93-053]**

## Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** Special local regulations are being adopted for the Blue Angels Airshow held annually over the Severn River in the vicinity of the U. S. Naval Academy, Annapolis, Maryland. These regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect of these regulations will be to restrict general navigation in the regulated area for the safety of spectators and participants.

**EFFECTIVE DATE:** This rule become effective November 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published a notice of proposed rulemaking concerning this regulation in the **Federal Register** on August 4, 1993 (58 FR 41449). Interested persons were requested to submit comments. The 45-day comment period ended on September 20, 1993. The Coast Guard received one letter from a recreational boater asking that we consider reducing the effective period from 1 hour to 30 minutes before a scheduled event. The effective period has been revised.

**Drafting Information**

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

**Background and Purpose**

The Blue Angeles Airshow, sponsored by the U.S. Naval Academy is an annual event on the Severn River. As part of the application, the Naval Academy requested that the Coast Guard provide control of spectator and commercial traffic within the regulated area.

**Discussion of Regulations**

In the past, Coast Guard patrol was provided during practice sessions and the actual performance, which consists of six high performance jet aircraft flying at low altitudes in various formations over the Severn River. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. The Federal Aviation Administration regulations require closing the waterway to vessel traffic as a prerequisite for this event. Historically, commercial traffic has not been severely disrupted, and the Coast Guard does not anticipate any problems in the future.

**Regulatory Evaluation**

This regulation is not a significant regulatory action under Executive Order 12866 and is non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for five hours each day, for three days each year, and the impacts on routine navigation are expected to be minimal.

**Small Entities**

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

**Federalism Assessment**

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

**Environemtnal Assessment**

This regulation has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket, and is available for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

*Proposed Regulations*

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

**PART 100—[AMENDED]**

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

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

2. A new § 100.518 is added to read as follows:

**§ 100.518 Severn River, College Creek, and Weems Creek, Annapolis, Maryland**

(a) *Definitions:* (1) Regulated area. The waters of the Severn River enclosed by:

| *Latitude* | *Longitude* |
|---|---|
| 38°58'40.0" N | 76°28'49.0" W |
| 38°58'33.0" N | 76°28'05.0" W |
| 38°58'58.0" N | 76°27'40.0" W |
| 38°59'51.0" N | 76°29'46.0" W |
| 39°00'14.0" N | 76°29'36.0" W |

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

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

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

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

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section but may not block a navigable channel.

(c) *Effective period.* This section is effective during, and 30 minutes before any scheduled event starts. The commander, Fifth Coast Guard District will publish a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that this section is in effect.

Dated: October 15, 1993.

**J.E. Schwartz,**

*Captain, U.S. Coast Guard, Fifth Coast Guard District Acting Commander.*

[FR Doc. 93–26464 Filed 10–26–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 100**

**[CCGD07–93–103]**

## Special Local Regulation; Key West Super Boat Race

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Key West Super Boat Race sponsored by Super Boat Racing, Inc. This event will be held on November 10 and 13, 1993, between 10 a.m. EDT (Eastern Daylight Time) and 3 p.m. EDT. The regulations are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATE:** These regulations become effective at 10 a.m. EDT on November 10, 1993, and terminate at 3 p.m. EDT on November 10, 1993, and became effective again at 10 a.m. EDT on November 13, 1993, and terminate at 3 p.m. EDT on November 13, 1993.

**FOR FURTHER INFORMATION CONTACT:** QMC Coyne, project officer, USCG Group Key West, (305) 292–8727.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold the event was not received until September 22, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

**Drafting Information**

The drafters of this regulation are QMC K.T. Coyne, project officer, USCG Group Key West, and LCDR B.R. Mozee,

project attorney, Seventh Coast District Legal Office.

**Discussion of Regulations**

Approximately 40 to 50 power boats are expected to participate in the Key West Super Boat Race. The event will begin at the Start/Finish area approximately 0.1 nautical miles east of Wisteria Island in Key West Harbor in approximate position 24°34'00" N, 81°48'20" W; thence southwestward to approximate position 24°30'33" N, 81°50'30" W; thence east to approximate position 24°30'27" N, 81°46'54" W; thence northerly to an area 0.5 nautical miles south of Key West in approximate position 24°32'18" N, 81°47'12" W; thence westerly to an area 0.4 nautical miles south of Fort Taylor Beach in approximate position 24°32'12" N, 81°48'24" W; thence into Key West Harbor remaining east of Key West Main Channel to an area 0.1 nautical miles west of Coast Guard Pier D2 in approximate position 24°33'54" N, 81°48'19" W; thence to Start/Finish area. Regulations are issued by Commander, Seventh Coast Guard District to provide for the safety of life on the navigable waters.

**Federalism**

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

**Environmental Assessment**

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

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

**Regulations**

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

## PART 100—[AMENDED]

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

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

2. A temporary § 100.35–T07–103 is added to read as follows:

**§ 100.35–T07–103 Special Local Regulation: Key West Super Boat Race.**

(a) *Regulated area.* All navigable waters within a line drawn through the following points:

| | |
|---|---|
| (1) 24° 30' 27" N | 81° 50' 36" W |
| (2) 24° 30' 21" N | 81° 46' 48" W |
| (3) 24° 32' 24" N | 81° 47' 06" W |
| (4) 24° 32' 18" N | 81° 48' 24" W |
| (5) 24° 32' 15" N | 81° 48' 47" W |
| (6) 24° 33' 00" N | 81° 48' 47" W |
| (7) 24° 33' 49" N | 81° 48' 23" W |
| (8) 24° 34' 00" N | 81° 48' 14" W |
| (9) 24° 34' 04" N | 81° 48' 25" W |

(b) Special local regulations.

(1) Entry into the restricted area is prohibited unless authorized by the patrol commander.

(2) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of a red distress flare from a patrol vessel will be a signal for any and all vessels to stop immediately.

(c) Effective dates. This section becomes effective at 10 a.m. EDT on November 10, 1993, and terminate at 3 p.m. EDT on November 10, 1993, and become effective again at 10 a.m. EDT on November 13, 1993, and terminate at 3 p.m. EDT on November 13, 1993.

Dated: October 7, 1993.

**William P. Leahy,**

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

[FR Doc. 93–26465 Filed 10–26–93; 8:45 am]

BILLING CODE 4910–14–M

## POSTAL SERVICE

## 39 CFR Part 20

## International Surface Air Lift Service

**AGENCY:** Postal Service.

**ACTION:** Interim rule and request for comment.

**SUMMARY:** Pursuant to its authority, the Postal Service is amending section 246 of the International Mail Manual (IMM) to allow customers to use International Surface Air Lift (ISAL) service to mail small packets. Currently, ISAL is limited to mail classified as printed matter. There is rising demand from mailers to have a means of sending small commercial samples and items of merchandise that is more economical than airmail service and faster than surface mail. This amendment provides a service to meet the demand.

Small packets will be accepted at the current ISAL rates, except they will not be eligible for the M-Bag rates.

**DATES:** Effective November 13, 1993; comments by November 26, 1993.

**ADDRESSES:** Written comments should be directed to the Manager, Mailing Standards, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza West, SW., Washington, DC 20260–2419. Copies of all written comments will be available for public inspection and photocopying between the hours of 9 a.m. and 4 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Grandjean, (202) 268–5180.

**SUPPLEMENTARY INFORMATION:**

International Surface Air Lift (ISAL) is a bulk mailing service for international shipment of publications, advertising mail, catalogs, directories, books, and other printed matter. The service is available from designated acceptance cities to approximately 125 countries. To use ISAL, a mailer must send at least 50 pounds of printed matter at one time, sorted and sacked by destination country.

ISAL mail is transported by air to the destination country. Once in the foreign country, the mail is entered into that country's surface mail system for delivery. As a result ISAL rates are lower than those for regular airmail, while service is faster than service for regular surface mail.

Many customers have requested permission to include small packets in ISAL shipments. Frequently, these requests occur because the item being mailed is classified as third-class domestically. Yet, because the item contains something that is not classified internationally as printed matter, the item may not be sent through ISAL. Moreover, since there is no service comparable to ISAL for small packets, these customers are forced to choose between regular airmail service and regular surface mail service.

After carefully considering the operational implications of allowing small packets to be sent through ISAL, the Postal Service has decided that it no longer is necessary to restrict the service to printed matter. The Universal Postal Convention classifies printed matter and small packets as AO (*Autres Objets*) and considers them together for terminal dues purposes. In addition, all ISAL mail must be sorted and sacked by destination country when it is tendered, and the Postal Service processes ISAL sacks intact. Consequently, the Postal Service's costs to process a given weight of ISAL mail should be the same regardless of whether the sack contains

printed matter, small packets, or a combination of both.

In light of the foregoing, effective, November 13, 1993, the Postal Service is allowing small packets in ISAL under the service's existing ISAL rates and conditions of mailing. Mailers must continue to adhere to the special requirements for small packets. ISAL small packets will not be eligible for the M-Bag rates because, under the Universal Postal Convention, this option is available only for printed matter.

Although 39 U.S.C. 410(2) does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedures Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address to help monitor the effectiveness of this service.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

**List of Subjects in 39 CFR Part 20**

Foreign relations, Incorporation by reference, international postal services.

## PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by revising section 246 to read as follows:

## CHAPTER 2—CONDITIONS FOR MAILING

* * * * *

### 246 INTERNATIONAL SURFACE AIR LIFT (ISAL) SERVICE

**246.1 Definition**

International Surface Air Lift (ISAL) is a bulk mailing system that provides fast, economical international delivery of publications, advertising mail, catalogs, directories, books, other printed matter, and small packets. The cost is lower than that of airmail, while the service is much faster than ordinary surface mail. Customers take ISAL shipments to designated U.S. acceptance cities, where the mail is flown to the foreign destinations and entered into that country's surface mail system for delivery.

**246.2 Qualifying Mail and Minimum Quantities**

Only printed matter as defined in 241 and small packets as defined in 260 that meet all applicable mailing standards may be sent in this service. There is a minimum volume requirement of 50 pounds per shipment except for the direct shipment option, which requires a minimum of 750 pounds to a single country destination. Mailers may present sacks of pound-rate and piece-rate mail to meet minimum quantity requirements. Small packets may not be enclosed in M-Bags and do not qualify for the full service or gateway/direct shipment M-Bag rates.

**246.3 General**

**246.31 Availability.** ISAL service is available to the foreign countries listed in Exhibit 246.71, through designated U.S. acceptance cities.

**246.32 Designated Acceptance Cities.** Exhibit 246.32 shows cities designated to accept ISAL.

EXHIBIT 246.32, DESIGNATED ISAL ACCEPTANCE CITIES

| | |
|---|---|
| Akron, OH* | Knoxville, TN.* |
| Albany, NY | Las Vegas, NV. |
| Albuquerque, NM | Little Rock, AR. |
| Anchorage, AK | Long Beach, CA.* |
| Atlanta, GA | Los Angeles, CA. |
| Austin, TX | Louisville, KY. |
| Baltimore, MD | Memphis, TN. |
| Bellmawr, NJ* | Miami, FL. |
| Billings, MT | Midland, TX. |
| Birmingham, AL | Milwaukee, WI. |
| Bismarck, ND | Minneapolis/St. Paul, MN. |
| Boise, ID | Mount Vernon, NY.* |
| Boston, MA | Myrtle Beach, SC. |
| Buffalo, NY | Nashville, TN. |
| Burlington, VT | New Haven, CT.* |
| Charleston, SC | New Orleans, LA. |
| Charlotte, NC | New York, NY. |
| Chicago, IL | Norfolk, VA. |
| Cincinnati, OH | Oklahoma, OK. |
| Cleveland, OH | Omaha, NE. |
| Colorado Springs, CO.*. | Orlando, FL. |
| Columbia, SC | Pittsburgh, PA. |
| Columbus, OH | Philadelphia, PA. |
| Dallas/Ft. Worth, TX | Providence, RI. |
| Dayton, OH | Phoenix, AZ. |
| Denver, CO | Portland, OR. |
| Des Moines, IA | Raleigh, NC. |
| Detroit, MI | Richmond, VA. |
| Duluth, MN | Rochester, NY. |
| El Paso, TX | Sacramento, CA. |
| Erie, PA* | St. Louis, MO. |
| Eugene, OR | Salt Lake City, UT. |
| Florence, SC | San Antonio, TX. |
| Grand Rapids, MI | San Diego, CA. |
| Greensboro, NC | San Francisco, CA. |
| Greenville, SC | San Juan, PR. |
| Harrisburg, PA | Santa Ana, CA.* |
| Hartford, CT | Seattle, WA. |
| Honolulu, HI | Sioux Falls, SD. |
| Houston, TX | Spokane, WA.* |
| Huntsville, AL* | Syracuse, NY. |
| Indianapolis, IN | Tampa, FL. |
| Jackson, MS | Toledo, OH.* |
| Jacksonville, FL | Tucson, AZ. |
| Jersey City, NJ | Tulsa, OK. |
| Kalamazoo, MI* | Washington, DC. |
| Kansas City, MO | Wichita, KS. |

*Provisional cities.

**246.4 Special Services**

Special services provided for in Chapter 3 are not available for items sent by ISAL.

**246.5 Customs Documentation**

See 244.6 and 264.5 for the requirements for customs forms.

**246.6 Permit or Customer Identification Number**

Each mailer must have a 10-digit ISAL permit number or customer identification number. The first five digits are the ZIP Code of the post office where the permit or customer identification number is issued. The second five digits are separated from the first five by a hyphen and are either the customer's permit imprint number or a sequential number issued by the post office of account. If the permit imprint number has fewer than five digits, precede the permit number with enough zeros to make a five-digit number. For example, a mailer with a permit imprint number of 29 whose business location is in New York City (10010) is assigned an ISAL permit number of 10010–00029. This number must be used on Form 3650, Statement of Mailing-International Surface Air Lift.

**246.7 Postage**

**246.71 Rates**

**246.711 Items Weighing Over 2 Ounces.** Postage is paid on a per-pound basis by rate group. M-Bags are also paid on a per-pound basis by rate group, even if they contain items weighing 2 ounces or less. Small packets are ineligible for the M-Bag rates and may not be included in M-Bags. Separate reduced rates are provided for mail transported by the mailer to the gateway airport mail facilities at New York (JKF); San Francisco, CA; and Miami, FL; or when direct shipment can be arranged from one of the acceptance cities (see Exhibit 246.32).

| Rate group | Full service | | Gateway/direct shipment | |
|---|---|---|---|---|
| | Regular | M-Bag* | Regular | M-Bag* |
| 1 | $2.90 | $2.32 | $2.60 | $2.08 |
| 2 | 3.25 | 2.60 | 2.95 | 2.36 |
| 3 | 3.40 | 2.72 | 3.10 | 2.48 |
| 4 | 4.20 | 3.36 | 3.90 | 3.12 |

See Exhibit 246.71 for network countries and individual postage rates
* Small packets may not be mailed at these rates.

**246.712 Items Weighing 2 Ounces or Less.** These items are subject to a charge of 32 cents per piece to all countries where service is available. Pieces sent in M-Bags are subject to the pound rates in 247.11. Small packets are ineligible for the M-Bag rates and may not be included in M-Bags. Mailings presented at one of the three gateway offices or under direct shipment arrangements receive a discount.

**246.713 Direct Shipment.** Mailers may be authorized direct shipment rates from the designated acceptance cities listed in Exhibit 246.32 (except Miami, FL; San Francisco, CA; and AMF–JFK, NY) when the Postal Service can arrange direct transportation to the destination country. To qualify, mailers must present a minimum of 750 pounds to each destination country. This 750-pound minimum may include piece-rate and pound-rate mail. Mailers should contact the postmaster at the designated acceptance city at least 14 days before the first desired mailing date. Postmasters must contact the distribution network office (DNO) to obtain a contract for transportation. If the DNO cannot arrange direct transportation, the direct shipment rate does not apply. The Postal Service may cancel direct shipment rates and service when direct transportation is no longer available.

### 246.72 Payment Methods

**246.721 Items Weighing 2 Ounces or Less.** The following methods apply for the payment of postage for items that weight 2 ounces or less:

a. Permit Imprint. Mailers may use permit imprints only with mailings that contain identical weight pieces. Any of the permit imprints for printed matter shown in Exhibit 152.3 are acceptable. The imprint must not denote "Presort Rate," "Bulk Rate," or "Nonprofit Organization." The postage charges are computed on Form 3650, Statement of Mailing-International Surface Air Lift, and deducted from the advance deposit account.

b. Postage Meter. If the mailing consists of non identical weight pieces, postage for the mailing must be paid by postage meter stamp on each piece.

c. Permit Imprints. Mailers may use permit imprint with non identical pieces if authorized under the postage mailing systems in DMM P710, P720, or P730.

d. Precanceled Stamps. Mailers authorized to use precanceled stamps may use this payment method.

**246.722 Items Weighing Over 2 Ounces.** Postage must be paid by a permit imprint subject to the standards in DMM P040. Any of the permit imprints for printed matter shown in Exhibit 152.3 are acceptable. The imprint must not denote "Presort Rate," "Bulk Rate," or "Nonprofit Organization." The postage charges are computed on Form 3650 and deducted from the advance deposit account.

**246.723 Direct Sacks (M–Bags).** For direct sacks to one addressee, Tag 158, M–Bag Addressee Tag, must be endorsed "ISAL U.S. Postage Paid" or show the permit imprint in the space reserved for postage. (If an M–Bag is presented with a mailing when all other postage is paid by meter, the postage on the M–Bag may be paid by a meter strip attached to the M–Bag tag.)

**246.73 Form 3650.** Form 3650 is required for all ISAL mailings.

### 246.8 Weight and Size Limits

Any item sent by ISAL must conform to the weight and size limits for the types of printed matter described in 243 or for small packets in 263.

### 246.9 Preparation

**246.91 Addressing.** See 122.

**246.92 Marking.** Items must be endorsed with the appropriate markings as shown in 244.2 for printed matter and in 264.2 for small packets. For publishers' periodicals (second-class publications), the imprint authorized under 244.21d(2) or 244.21d(3) may be used in place of the "PRINTED MATTER–SECOND–CLASS" endorsement.

**246.93 Sealing.** Printed matter and small packets sent by ISAL may be sealed at the sender's option.

### 246.94 Makeup

**246.941 Sortation.** All items must meet the makeup requirements in 244.4 for printed matter, 244.5 for publishers' periodicals and 264 for small packets. Items must be sorted to the destination country. Items weighing 2 ounces or less may not be placed in sacks with items weighing over 2 ounces unless mailings are made under special mailing programs (see 247.213).

**246.942 Residue.** Mail addressed to different countries may not be commingled. Consequently, no residual mail is allowed in an ISAL dispatch.

**246.943 Facing of Pieces and Packaging.** All pieces must be faced in the same direction and packaged in bundles that are securely tied or rubber-banded across the length and width. Pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack.

**246.944 Sacking.** Mail to each country must be sacked in disposable gray plastic sacks and labeled to that particular country with PS Tag 155, Surface Airlift Mail. The three classifications of printed matter, as well as small packets, may be mixed in the same sack. The combined weight of the contents and the sack may not exceed 66 pounds. PS Tag 155 must show the weight in kilograms. No minimum weight per sack applies.

**246.945 Direct Sacks to One Addressee (M–Bags) for ISAL.** M–Bags may be sent in the ISAL service to all countries except Ethiopia. Weight, makeup, sacking, and sorting requirements must conform to part 245. PS Tag 158 must show the complete address of the addressee and the sender and be attached securely to the neck of each sack. M–Bags may not contain small packets.

**246.95 Mailer Notification.** Mailers wanting to mail shipments that weigh over 750 pounds but not eligible for direct shipment rates, must notify the ISAL coordinator at the acceptance city at least 4 days before the planned date of mailing. Specific country information and weight per country must be provided. No prior notification is required for mailers with 750 pounds or less.

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BILLING CODE 7710–12–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL–4794–9]

### Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** The State of Arizona has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has completed its review of Arizona's two applications and has made a decision, subject to public review and comment, that Arizona's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Arizona's hazardous waste program revisions. Arizona's applications for program revision are available for public review and comment.

**DATES:** Final authorization for Arizona is effective December 27, 1993 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Arizona's program revision applications must be received by the close of business November 26, 1993.

**ADDRESSES:** Copies of Arizona's program revision applications are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

Arizona Department of Environmental Quality, Central Office, Office of Waste Programs, Waste Assessment Section, 3033 N. Central Avenue, Phoenix, Arizona 85012 Phone: 602/207–4211.

Arizona Department of Environmental Quality, Northern Regional Office, 2501 North 4th Street, suite #14, Flagstaff, Arizona 86004 Phone: 602/779–0313 or 1–800/234–5677.

Arizona Department of Environmental Quality, Southern Regional Office, 4040 East 29th Street, Tucson, Arizona 85711 Phone: 602/628–5651 or 1–800/234–5677.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, California 94105 Phone: 415/744–1510.

Written comments should be sent to April Katsura, U.S. EPA Region IX (H–2–2), 75 Hawthorne Street, San Francisco, California 94105 Phone: 415/744–2030.

**FOR FURTHER INFORMATION CONTACT:** April Katsura at the above address or phone: 415/744–2030.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, and 270.

#### B. Arizona

Arizona initially received final authorization for the base program on November 20, 1985. Arizona received final authorization for revisions to its program on August 6, 1991, July 13, 1992, and November 23, 1992. On August 31, 1993, Arizona submitted two applications for additional revision approvals. Today, Arizona is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Arizona's applications, and has made an immediate final decision that Arizona's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to approve final authorization for Arizona's hazardous waste program revisions. The public may submit written comments on EPA's immediate final decision up until November 26. 1993. Copies of Arizona's applications for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

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

Arizona is applying for authorization for the following Federal hazardous waste regulations:

| Federal requirement | State authority |
|---|---|
| Warfarin + Zinc Phosphide Listing (49 FR 19922, May 10, 1984). | Arizona Revised Statue (ARS) 49–922 (A) + (B); Arizona Administrative Code (AAC) R18–8–261(A), 262(A), 264(A), 265(A), 268 and 270(A). |
| Satellite Accumulation (49 FR 49568, December 20, 1984. | ARS 49–922 (A) + (B); AAC R18–8–262(A). |
| Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption (53 FR 27290, July 19, 1988). | ARS 49–922 (A) + (B); AAC R18–8–260(C) and 261(A). |
| Hazardous Waste Management System, Standards for Hazardous Waste Storage and Treatment Tank Systems (53 FR 34079, September 2, 1988) including HSWA and non-HSWA portions. | ARS 49–922 (A) + (B); AAC R18–8–260(C), 264(A) and 265(A). |
| Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification (53 FR 35412, September 13, 1988). | ARS 49–922 (A) + (B); AAC R18–8–261 (A) + (K), 262(A), 264(A), 265(A), 268 and 270(A). |
| Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities (53 FR 39720, October 11, 1988). | ARS 49–922 (A) + (B); AAC R18–8–264(A). |
| Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes (53 FR 43878, October 31, 1988). | ARS 49–922 (A) + (B); AAC R18–8–261(A), 262(A), 264(A), 265(A), 268 and 270(A). |
| Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes (53 FR 43881, October 31, 1988). | ARS 49–922 (A) + (B); AAC R18–8–261(A), 262(A) 264(A), 265(A), 268 and 270(A). |
| Standards for Generators of Hazardous Waste; Manifest Renewal (53 FR 45089, November 8, 1988). | ARS 49–922 (A) + (B), AAC R18–8–262(A). |

| Federal requirement | State authority |
|---|---|
| Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators (54 FR 615, January 9, 1989). | ARS 49–922 (A) + (B); AAC R18–8–270(A). |
| Amendment to Requirements for Hazardous Waste Incinerator Permits (54 FR 4286, January 30, 1989). | ARS 49–922 (A) + (B); AAC R18–8–270(A). |
| Delay of Closure Period for Hazardous Waste Management Facilities (54 FR 33376, August 14, 1989). | ARS 49–922 (A) + (B); AAC R18–8–264(A), 265(A) and 270(A). |
| Mining Waste Exclusion I (54 FR 36592, September 1, 1989). | ARS 49–922 (A) + (B); AAC R18–8–261(A). |
| Testing and Monitoring Activities (54 FR 40260, September 29, 1989). | ARS 49–922 (A) + (B); AAC R18–8–260(C) and 261(A). |
| Modification of F019 Listing, (55 FR 5340, February 14, 1990). | ARS 99–922 (A) + (B); AAC R18–8–261(A), 262(A), 264(A), 265(A), 268 and 270(A). |
| Testing and Monitoring Activities; Technical Corrections (55 FR 8948, March 9, 1990). | ARS 49–922 (A) + (B); AAC R18–8–260(C) and 261(A). |
| HSWA Codification Rule; Household Waste (50 FR 28702, July 15, 1985). | ARS 49–922 (A) + (B); AAC R18–8–261 (A) + (D), 264(A), 265(A), and 268. |
| HSWA Codification Rule; Research and Development Permits (50 FR 28702, July 15, 1985). | ARS 49–922 (A) + (B); AAC R18–8–270(A). |
| Land Disposal Restrictions (Solvents and Dioxins) (51 FR 40572, November 7, 1986 as amended on June 4, 1987 at 52 FR 21010). | ARS 49–922 (A) + (B); AAC R18–8–260 (C), (D) + (G), 261 (A) + (G), 262(A), 263(A), 264(A), 265(A), 266, 268 and 270 (A) + (O). |
| California List Waste Land Disposal Restrictions (52 FR 25760, July 8, 1987, as amended on October 27, 1987 at 52 FR 41295). | ARS 49–922 (A) + (B); AAC R18–8–260 (C), (D) + (G), 261 (A) + (G), 262(A), 263(A), 264(A), 265(A), 266, 268 and 270 (A) + (O). |
| Identification and Listing of Hazardous Waste; Technical Correction (53 FR 27162, July 19, 1988). | ARS 49–922 (A) + (B); AAC R18–8–261(A). |
| Farmers Exemption; Technical Corrections (53 FR 27164, July 19, 1988). | ARS 49–922 (A) + (B); AAC R18–8–262(A), 264(A), 265(A), 268 and 270. |
| Land Disposal Restrictions for First Third Scheduled Wastes (53 FR 31138, August 17, 1988, as amended on February 27, 1989 at 54 FR 8264). | ARS 49–922 (A) + (B); AAC R18–8–260 (C) + (D), 261 (A) + (G), 262(A), 263(A), 264(A), 265(A), 266, 268 and 270 (A) + (O). |
| Land Disposal Restriction Amendments to First Third Scheduled Wastes (54 FR 18836, May 2, 1989). | ARS 49–922 (A) + (B); AAC R18–8–260 (C) + (D), 261 (A) + (G), 262(A), 263(A), 264(A), 265(A), 266, 268 and 270 (A) + (O). |
| Land Disposal Restrictions for Second Third Scheduled Wastes (54 FR 26594, June 23, 1989). | ARS 49–922 (A) + (B); AAC R18–8–260 (C) + (D), 261 (A) + (G), 262(A), 263(A), 264(A), 265(A), 266, 268 and 270 (A) + (O). |
| Land Disposal Restrictions; Correction to the First Third Scheduled Wastes (54 FR 36967, September 6, 1989, as amended on June 13, 1990 at 55 FR 23935). | ARS 49–922 (A) + (B); AAC R18–8–260 (C) + (D), 261 (A) + (G), 262(A), 263(A), 264(A), 265(A), 266, 268 and 270 (A) + (O). |
| Reportable Quantity Adjustment Methyl Bromide Production Wastes (54 FR 41402, October 6, 1989). | ARS 49–922 (A) + (B); AAC R18–8–261(A), 262(A), 264(A), 265(A), 268 and 270(A). |
| Reportable Quantity Adjustment (54 FR 50968, December 11, 1989). | ARS 49–922 (A) + (B); AAC R18–8–261(A), 262(A), 264(A), 265(A), 268 and 270(A). |
| Toxicity Characteristic Revisions (55 FR 11798, March 29, 1990, as amended on June 29, 1990 at 55 FR 26986). | ARS 49–922 (A) + (B); AAC R18–8–261 (A) + (D), 264(A), 265(A) and 268. |
| Listing of 1, I-Dimethylhydrazine Production Wastes (55 FR 18496, May 2, 1990). | ARS 49–922 (A) + (B); AAC R18–8–261(A), 262(A), 264(A), 265(A), 268 and 270(A). |
| HSWA Codification Rule, Double Liners; Correction (55 FR 19262, May 9, 1990). | ARS 49–922 (A) + (B); AAC R18–8–264(A) and 265(A). |
| Land Disposal Restrictions for Third Third Scheduled Wastes (55 FR 22520, June 1, 1990) including HSWA and non-HSWA portions. | ARS 49–922 (A) + (B); AAC R18–8–261(A), 262(A), 264(A), 265(A), 268 and 270(A). |
| Organic Air Emission Standards for Process Vents and Equipment Leaks (55 FR 25454, June 21, 1990). | ARS–49–922 (A) + (B); AAC R18–8–260(C), 261(A), 264(A), 265(A) and 270(A). |
| Toxicity Characteristics; Hydrocarbon Recovery Operations (55 FR 40834, October 5, 1990, as amended on February 1, 1991 at 56 FR 3978 and on April 2, 1991 at 56 FR 13406). | ARS 49–922 (A) + (B); AAC R18–8–261(A). |
| Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038) (55 FR 46354, November 2, 1990, as amended on December 17, 1990, at 55 FR 51707). | ARS 49–922 (A) + (B); AAC R18–8–261(A). |
| Wood Preserving Listings (55 FR 50450, December 6, 1990). | ARS 49–922 (A) + (B); AAC R18–8–260 (C) + (E), 262 (A) + (B), 264(A), 265 (A) + (H) and 270(A). |
| Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments (56 FR 3864, January 31, 1991). | ARS 49–922 (A) + (B); AAC R18–8–261(A), 262 (A) + (B), 268 and 270(A). |
| Toxicity Characteristic; Chlorofluorocarbon Refrigerants (56 FR 5910, February 13, 1991). | ARS 49–922 (A) + (B); AAC R18–8–261(A). |
| Burning of Hazardous Waste in Boilers and Industrial Furnaces (56 FR 7134, February 21, 1991). | ARS 49–922 (A) + (B); AAC R18–8–260 (C), (E) + (F), 261(A), 264(A), 265(A), 266 (A) + (B) and 270(A). |
| Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment (56 FR 7567, February 25, 1991). | ARS 49–922 (A) + (B); AAC R18–8–261(A). |

| Federal requirement | State authority |
|---|---|
| Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment (56 FR 19290, April 26, 1991). | ARS 49-922 (A) + (B); AAC R18-8-264(A), 265(A) and 270(A). |
| Administrative Stay for K069 Listing (56 FR 19951, May 1, 1991). | ARS 49-922 (A) + (B); AAC R18-8-261 (A) + (K). |
| Revisions to F037 and F038 Listings (56 FR 21955, May 13, 1991). | ARS 49-922 (A) + (B); AAC R18-8-261(A). |
| Mining Exclusion III (56 FR 27300, June 13, 1991). | ARS 49-922 (A) + (B); AAC 418-8-261(A). |
| Wood Preserving Listings (56 FR 27332, June 13, 1991). | ARS 49-922 (A) + (B); AAC R18-8-261(A), 264(A) and 265(A). |

Arizona agrees to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Arizona agrees to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Arizona is not being authorized to operate any portion of the hazardous waste program on Indian lands.

### C. Decision

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

Arizona is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984) ("HSWA"). Arizona also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

### Compliance With Executive Order 12291

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

### Certification Under the Regulatory Flexibility Act

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

### List of Subjects in 40 CFR Part 271

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

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

Dated: October 6, 1993.

**John Wise,**

*Acting Regional Administrator.*

[FR Doc. 93-26408 Filed 10-26-93; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Part 69

**[CGD 93-069]**

## Measurement of Vessels; Water Ballast Exemption

**AGENCY:** Coast Guard, DOT.

**ACTION:** Policy statement.

**SUMMARY:** In response to an inquiry, the Coast Guard is publishing a policy statement to clarify its position concerning exemption of water ballast spaces from the gross tonnage of a vessel. This clarification will remove the tonnage limitation for exclusion from the calculation of gross tonnage of water ballast spaces carrying water to be used for underwater drilling, mining, and related purposes, including production, of all vessels carrying goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

**EFFECTIVE DATE:** October 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth C. Hixson, Vessel Documentation and Tonnage Survey Branch at (202) 267-1492.

**SUPPLEMENTARY INFORMATION:** Historically, spaces adapted for water ballast and certified as not available for the carriage of cargo, stores, supplies, or fuel were excluded from the calculation of a vessel's gross tonnage under 46 U.S.C. 77. During the 1950's as offshore oil-well drilling rigs began to appear in greater numbers, special purpose vessels were designed to serve the rigs. Most of these offshore supply vessels were designed to admeasure at less than 200 gross tons to avoid compliance with certain Coast Guard inspection and manning requirements. Since the rigs needed fresh water to mix cements and drilling muds, the supply vessels—which had been designed with ample ballast water spaces—began carrying fresh water in some of their ballast water tanks to discharge to the rigs. Under 46 U.S.C. 77 however, the carriage of drilling water in ballast water spaces had the effect of converting the spaces into cargo spaces, which were not exempt from gross tonnage. Including the converted spaces into the gross tonnage of the supply vessels would cause many of them to measure at more than 200 gross tons thereby subjecting them to many of the Coast Guard's inspection and manning requirements that they were designed to avoid. Public Law 85-654 (72 Stat. 611), approved on August 14, 1958, amended 46 U.S.C. 77 to permit the carriage of water for use in underwater drilling, mining, and related purposes in ballast waster spaces. The amendment authorized the exemption from gross tonnage of ballast water spaces certified as not available for the carriage of cargo—other than ballast water for use in underwater drilling, mining, and related purposes, including production—stores, supplies, or fuel. Although there was testimony before Congress that most of these supply vessels were designed to admeasure at less than 200 gross tons to avoid compliance with certain Coast Guard inspection and manning requirements, no tonnage parameter was ever inserted into the statute.

Influenced by the apparent purpose of the amended statute to benefit offshore supply vessels, the Coast Guard has over the years by policy interpreted the exclusion to include a tonnage limitation. Gradually, as the numbers and needs of the rigs changed, the size of the supply vessels increased. In response to the increasing size of the supply vessels, the Coast Guard's policy

tonnage limitation for the exclusion rose to include vessels of 500 gross tons or less. In 1980, Public Law 96–378 (94 Stat. 1513) statutorily defined offshore supply vessels as vessels of more than 15 gross tons but less than 500 gross tons regularly carrying goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources. With the statutory definition of offshore supply vessels apparently in harmony with the Coast Guard's policy on those vessels granted the ballast water space exemption, the policy was maintained and applied only to benefit of offshore supply vessels.

In 1983 title 46, U.S. Code was codified and section 77 was placed in title 46 appendix. On October 21, 1986, 46 U.S.C. app. sections 77 (including the amendment) was repealed by Public Law 99–509 (100 Stat. 1928) which, among other things, added chapter 145 to title 46, U.S. Code. Chapter 145, in section 14512, provides general regulatory authority for standard tonnage measurement with the requirement that the regulations must provide for tonnages comparable to those that could have been assigned under 46 U.S.C. app. section 75 and 77 prior to their repeal. The exemption from the calculation of gross tonnage for water ballast spaces, including the language permitting the carriage of drilling water in those spaces, is found in 46 CFR 69.117(f).

In response to an inquiry from industry questioning the application of the policy, the Coast Guard conducted a review of its policy and the statutes. As a result of that review, the Coast Guard has determined that imputing a tonnage limitation to 46 U.S.C. app. section 77 could not be supported and that a policy imposing a gross tonnage limitation for exemption of ballast water spaces is not justified. Therefore, spaces adapted only for water ballast and not available for stores, supplies, fuel, or cargo—other than water to be used for underwater drilling, mining, and related purposes, including production—may be excluded from the calculation of gross tonnage of all vessels carrying goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

Dated: October 21, 1993.

**A.E. Henn,**

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

[FR Doc. 93–26463 Filed 10–26–93; 8:45 am]

BILLING CODE 4910–14–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CC Docket No. 91–35, FCC 93–404]**

## Operator Service Access and Pay Telephone Compensation Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In its Memorandum Opinion and Order on Reconsideration, the Commission affirms certain aspects of the Second Report and Order and makes a number of modifications. First, the Commission affirms its holding that interexchange carriers (IXCs) must pay competitive payphone owners (PPOs) compensation in the amount of $6 per month per payphone. Second, the Commission modifies the Second Report and Order to allow IXCs to avoid the obligation to pay compensation if they do not receive access code calls from payphones to which they are not presubscribed. Third, the Commission affirms its decision to use to toll revenue standard for apportioning compensation among those IXCs required to pay. Fourth, the Commission clarifies in a number of respects its requirements pertaining to the customer-owned coin-operated telephone (COCOT) lists provided by local exchange carriers (LECs) to IXCs. In addition, the Commission denies Allnet's Application for Review of a decision by the Common Carrier Bureau relating to the list of IXCs required to pay compensation. The Commission's Memorandum Report and Order on Reconsideration ensures that PPOs receive fair compensation for the service they provide in originating interstate access code calls from their payphones.

**EFFECTIVE DATE:** September 16, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael Carowitz, Common Carrier Bureau, Policy and Program Planning Division, (202) 632-1303.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order on Reconsideration in CC Docket 91-35, adopted August 17, 1993 and released September 16, 1993.

The complete text of this Memorandum Opinion and Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 857-3800, room 246, 1919 M Street, NW., Washington, DC 20554.

1. On April 9, 1992, the Commission adopted a Second Report and Order, 57 FR 21038, May 18, 1992, prescribing a mechanism by which competitive payphone owners ("PPOs") may collect compensation from certain interexchange carriers ("IXCs") for originating interstate access code calls from their payphones. Eight parties filed petitions for reconsideration of this order. The Commission affirms the Second Report and Order, 57 FR 21038 (May 18, 1992), in certain respects and modifies it in others.

2. The Commission denies the motion of the American Public Communications Council (APCC) for reconsideration of the $6 compensation rate. Many of the arguments about the compensation amount were disposed of in the Second Report and Order, and the few, new arguments do not convince the Commission to revise the prescribed $6 amount.

3. The Commission concludes that an IXC that does not receive access code calls from payphones on which it is not the presubscribed carrier should be permitted to avoid the compensation requirement. The Commission modifies the Second Report and Order to establish a procedure by which these IXCs may have their names removed from the list of carriers required to pay compensation. Each year, typically in June, the FCC issues a staff report entitled "Long Distance Market Shares" which identifies those IXCs with annual toll revenues in excess of $100 million in the previous year. To remove its name from this list for PPO compensation purposes, an IXC must, within 30 days after public notice of the report, file with the Chief, Common Carrier Bureau, a notarized affidavit stating that the IXC does not receive end use-initiated access code calls from payphones on which it is not the presubscribed carrier. The affidavit must be signed by the corporate officer with principal responsibility for operator service operations of the IXC. Affidavits must be refiled each year.

4. The Commission affirms the decision in the Second Report and Order to apportion compensation based on toll revenues. While using the actual amount of access code traffic or revenues would be preferable, many IXCs do not currently track this information, and AT&T, the largest IXC, does not possess the technical capability to distinguish 10XXX access code calls from 0+ calls. None of the other methods proposed by parties, such as switched minutes or operator service

traffic, would represent a more accurate approach than using toll revenues.

5. Currently, LECs include the line number, PPO name, and billing address for each payphone on their COCOT list. The Commission declines to mandate the provision of additional information in the absence of a showing that it is necessary to verify a compensation obligation. The Commission also rejects a request that the Commission require LECs to make the COCOT list available to entities other than those required to pay compensation. In addition, the Commission prohibits any IXC that receives this list from using it for any purpose other than verifying its compensation obligation, and it requires those IXCs to restrict the availability of that list to personnel performing this function.

6. The Commission declines to require LECs to take extraordinary measures to identify competitive payphones in their region that do not subscribe to COCOT service. The Commission also holds that LECs may recover their reasonable costs in generating and producing these lists through direct charges to entities using them. The Commission also clarifies that a PPO seeking compensation for payphones that are not included on a LEC COCOT list satisfies its obligation to provide alternative reasonable verification to an IXC if it provides to that IXC a notarized affidavit, signed by the president of the company attesting that each of the payphones for which the PPO seeks compensation is a competitive payphone that was in working order as of the last day of the compensation period.

7. The Commission continues to believe that a per-call compensation mechanism is preferable to a flat fee per-phone. However, it cannot conclude that a per-call mechanism can be implemented at this time. Therefore, the Commission directs the Common Carrier Bureau to continue monitoring progress in this area and work with the industry to explore ways of moving to a per-call mechanism.

8. The Commission also concludes that the Common Carrier Bureau acted properly and within the scope of its authority in responding to a request by Allnet Communications Services, Inc. (Allnet) relating to the list of IXCs required to pay compensation. Therefore, the Commission denies Allnet's Application for Review.

**Further Final Regulatory Flexibility Analysis**

9. Need and purpose of this action. The Commission prescribed an interim compensation mechanism and rate of $6 per payphone per month for PPOs for originating interstate access code calls from their payphones. The compensation rate is designed to promote the Commission's regulatory reform initiatives by providing PPOs fair compensation for the service they provide in originating interstate access codes.

10. Summary of issues raised by public comments in response to the Initial Regulatory Flexibility Analysis. There were no comments filed on the Further Initial Regulatory Flexibility Analysis.

11. Significant alternatives considered and rejected. In this proceeding, the Commission received extensive comments on the issues. After carefully weighing all aspects of the issues and comments in this proceeding, the Commission has taken the most reasonable course of action pursuant to the Telephone Operator Consumer Services Improvement Act (TOCSIA), while simultaneously minimizing regulations that would impose undue economic burdens on small entities.

12. In considering the method by which compensation would be computed, the Commission concluded that compensation for interstate access code calls should be paid to PPOs on a per-phone, rather than a per-call basis. The Commission found that while per-call compensation would create greater incentives for PPOs to place payphones in locations that generate the most interstate traffic, it is not yet feasible to implement per-call compensation since no entity currently has the ability to determine accurately the number of access code calls that originate from competitive payphones.

13. The Commission determined that there was no single correct compensation rate and identified three reasonable approaches to establish a range of reasonable compensation rates. The Commission examined: (1) The access charge compensation that a LEC receives for its regulated provision of payphones; (2) the level of LEC 0– transfer service charges; and (3) AT&T 0+ commission levels. These three approaches yielded compensation rates in the range of $5.25 to $6.87 per payphone per month. The Commission decided on a rate of $6 per phone per month, which is in the middle of this range of reasonable rates.

14. Additionally, to minimize administrative burdens, the Commission limited compensation obligations to those IXCs who; (1) earn annual toll revenues in excess of $100 million; (2) provide operator services; and (3) receive interstate access code calls from payphones to which they are not presubscribed. To further minimize burdens, the Commission required the LECs to submit to each participating IXC a list of all phones taking COCOT service to each LEC's region. These lists permit IXCs to verify that a payphone exists, is in working order, and is owned by the PPO submitting a bill.

15. The actions that the Commission took in the Second Report and Order, and the modifications herein, do not have a significant economic impact on small business entities. The only mandatory obligations fall on two types of entities, neither of which are small businesses: (1) IXCs with annual toll revenues exceeding $100 million, and (2) LECs. IXCs with annual toll revenues exceeding $100 million are not small business entities under the Regulatory Flexibility Act. LECs are independently owned and operated, are dominant in their field, and also do not qualify as small businesses under the Regulatory Flexibility Act. In addition, even though LECs are not subject to the Act, the requirement that LECs submit lists to IXCs of phones taking COCOT service was narrowly tailored with the express purpose of minimizing the role of the LECs in the compensation mechanism.

**V. Ordering Clauses**

16. Accordingly, pursuant to authority contained in sections 1, 4, 201–205, and 226 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201–205, and 226, *it is ordered* That the policies, rules, and requirements set forth herein are adopted.

17. *It is further ordered* That the petitions for reconsideration of the Second Report and Order are denied in part and granted in part, as described herein.

18. *It is further ordered* That the provisions in this Memorandum Opinion and Order will be effective immediately upon its release.

19. *It is further ordered* That the Application for Review filed by Allnet is denied.

20. *It is further ordered* That the Final Further Regulatory Flexibility Analysis described herein be adopted.

21. *It is further ordered* That the Secretary shall cause a copy of this Order to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a) (1981). The Secretary shall also cause a copy of this Order to appear in the **Federal Register.**

**List of Subjects in 47 CFR Part 64**

Communications common carrier, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Amendment to the Code of Federal Regulations**

Title 47 of the CFR part 64, is amended as follows:

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read:

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201–4, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201–4, 218, 225, 226, 227 unless otherwise noted.

2. Section 64.1301 is amended by revising paragraph (b) and adding paragraph (f) to read as follows:

**§ 64.1301 Competitive payphone compensation.**

* * * * *

(b) This compensation shall be paid by interexchange carriers (IXCs) that both:

(1) Earn annual toll revenues in excess of $100 million, as reported in the FCC staff report entitled "Long Distance Market Shares;" and

(2) Provide live or automated operator services. Notwithstanding this provision, an IXC need not pay compensation if, within 30 days after public notice of the Long Distance Market Shares report, it files with the Chief, Common Carrier Bureau, a notarized affidavit stating that the IXC does not receive end user-initiated access code calls from payphones on which it is not the presubscribed carrier. The affidavit must be signed by the corporate officer with principal responsibility for operator service operations of the IXC. Each individual IXC's compensation obligation shall be set in accordance with its relative share of toll revenues among IXCs required to pay compensation. For example, if total toll revenues of IXCs required to pay compensation is $50 billion, and one of these IXCs earned $5 billion in total toll revenues, the IXC must pay $.60 per payphone per month.

* * * * *

(f) A competitive payphone owner (PPO) that seeks compensation for competitive payphones that are not included on a LEC COCOT list satisfies its obligation to provide alternative reasonable verification to an IXC if it provides to that IXC a notarized affidavit, signed by the president of the company, attesting that each of the payphones for which the PPO seeks compensation is a competitive payphone that was in working order as of the last day of the compensation period.

[FR Doc. 93–26364 Filed 10–26–93; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 659

**[Docket No. 930792–3265; ID 070693B]**

**RIN 0648–AD86**

## Shrimp Fishery Off the Southern Atlantic States

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). The FMP provides that when North Carolina, South Carolina, Georgia, or Florida closes the fishery for brown, pink, and white shrimp in its Atlantic state coastal waters following severe cold weather that results in an 80-percent or greater reduction in the population of white shrimp, NMFS may concurrently close the fishery for brown, pink, and white shrimp in the exclusive economic zone (EEZ) adjacent to the closed state waters. The intended effect of the FMP and this rule is to protect the white shrimp resource when unusually cold weather conditions are likely to cause severe depletion of spawning stocks.

**EFFECTIVE DATE:** November 26, 1993.

**ADDRESSES:** Requests for copies of the FMP, the final environmental impact statement (FEIS), the final regulatory impact review (RIR), and the final regulatory flexibility analysis (RFA) should be sent to the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Eldridge, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the South Atlantic Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The proposed rule (58 FR 40614, July 29, 1993) described the Atlantic shrimp fishery, discussed problems in the fishery, principally in the white shrimp component of the fishery, and specified the management measures in the FMP and the implementing regulations. These descriptions and discussions are not repeated here.

The FMP was approved on September 30, 1993. No comments were received on the proposed rule; accordingly, it is adopted as final with only minor editorial changes.

**Classification**

The Secretary of Commerce (Secretary) determined that the FMP is necessary for the conservation and management of the Atlantic shrimp fishery and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Council prepared an RIR as part of the FMP, which concludes that this rule would have the effects summarized as follows. Closures of the EEZ following freeze years should result in substantially increased fall white shrimp landings and net revenues, which should enhance stabilized aggregate employment in the shrimp industry. In addition, concurrent closures of EEZ waters would increase compliance with state closures following freeze years and reduce state and Federal law enforcement costs.

The Council prepared an initial RFA. The initial RFA has been adopted as final without change. The final RFA concludes that this rule would have a significant economic impact on a substantial number of small entities.

The Council prepared an FEIS for the FMP that was filed with the Environmental Protection Agency (EPA) on August 5, 1993. EPA published a notice of availability of the FEIS on August 13 inviting public comments through September 13, 1993.

A formal section 7 consultation under the ESA was initiated for the FMP. In a biological opinion dated August 19, 1992, the Assistant Administrator for Fisheries determined that: (1) Shrimp trawling in the southeastern United States is in compliance with the 1992 Revised Sea Turtle Conservation Regulations; and (2) fishing activities conducted under the FMP and its implementing regulations are not likely to jeopardize the continued existence of any threatened or endangered species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Florida, North Carolina, and South Carolina. Georgia does not have an approved coastal zone management program. This determination was submitted for review by the responsible state agencies under section 307 of the Coast Zone Management Act. Florida and South Carolina agree with the determination. North Carolina did not respond within the statutory time period; therefore, State agency agreement with the consistency determination is presumed.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

**List of Subjects in 50 CFR Part 659**

Fisheries, Fishing.

Dated: October 21, 1993.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries, Service.*

For the reasons set forth in the preamble, 50 CFR is amended by adding a new part 659 to read as follows:

## PART 659—SHRIMP FISHERY OFF THE SOUTHERN ATLANTIC STATES

**Subpart A—General Provisions**

Sec.



**Subpart B—Management Measures**



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

**Subpart A—General Provisions**

### § 659.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FPM) prepared by the South Atlantic Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of brown shrimp, pink shrimp, and white shrimp in the EEZ off the southern Atlantic states.

### § 659.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

*Brown shimp* means the species *Penaeus aztecus.*

*Off a southern Atlantic state* means—

(1) *For North Carolina,* the waters from a line extending directly east from the Virginia/North Carolina boundary (36°33′00.8″N. lat.) to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″N. lat., 78°32′32.6″W. long.;

(2) *For South Carolina,* the waters from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″N. lat., 78°32′32.6″W. long. to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary;

(3) *For Georgia,* the waters from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to a line extending directly east from the seaward terminus of the Georgia/Florida boundary (30°42′45.6″N. lat.); and

(4) *For Florida,* the waters from a line extending directly east from the seaward terminus of the Georgia/Florida boundary (30°42′45.6″N. lat.) to the eastern boundary of the Gulf of Mexico, which is a line from the outer limit of the EEZ north along 83°00′W. long. to 24°35′N. lat. (near Dry Tortugas), thence east to Marquesas Key, then through the Florida Keys to the mainland.

*Pink shrimp* means the species *Penaeus duorarum.*

*Southern Atlantic state* means North Carolina, South Carolina, Georgia, or Florida.

*White shrimp* means the species *Penaeus setiferus.*

### § 659.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

### § 659.4 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Trawl for white shrimp, pink shrimp, or brown shrimp in a closed area or possess such shrimp in or from a closed area, as specified in § 659.20(b)(1)(i), except possession authorized under § 659.20(b)(2).

(b) Use or have aboard a vessel trawling in that part of a closed area that is within 25 nautical miles of the baseline from which the territorial sea is measured, a trawl net with a mesh size less than 4 inches (10.2 cm), as specified in § 659.20(b)(1)(ii).

(c) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(d) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of brown shrimp, pink shrimp, or white shrimp.

### § 659.5 Facilitation of enforcement.

See § 620.8 of this chapter.

### § 659.6 Penalties.

See § 620.9 of this chapter.

**Subpart B—Management Measures**

### § 659.20 Closures.

(a) *Procedure.* When a southern Atlantic state finds that severe winter cold weather results in an 80-percent or greater reduction in the population of overwintering white shrimp in its waters as determined by standardized assessment sampling, and closes or expects to close all or a portion of its waters to the harvest of brown, pink, and white shrimp, such state may request that the South Atlantic Fishery Management Council (Council) recommend to the Director, Southeast Region, NMFS (Regional Director), concurrent closure of the EEZ adjacent to the closed state waters. Pursuant to the procedures and criteria established in the FMP, including review by the Council of the state's procedures for standardized assessment sampling and the state's conclusions regarding the amount of the reduction in the population of overwintering white shrimp, the Assistant Administrator upon receipt from the Regional Director of a closure recommendation from the Council, and upon a determination that such closure conforms to the Magnuson Act and other applicable law, will effect concurrent closure of the adjacent EEZ by filing a notice of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the ending date of the closure in state waters but may be ended earlier based on the state's request. In the latter case, the Assistant Administrator will terminate a closure of the EEZ by filing a notice to that effect with the Office of the Federal Register.

(b) *Restrictions during a closure.* (1) During a closure, as specified in paragraph (a) of this section—

(i) No person may trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ off a

southern Atlantic state (closed area); and no person may possess aboard a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from a closed area, except as authorized in paragraph (b)(2) of this section.

(ii) No person aboard a vessel trawling in that part of a closed area that is within 25 nautical miles of the baseline from which the territorial sea is measured may use or have aboard a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

(2) Brown shrimp, pink shrimp, or white shrimp may be possessed aboard a fishing vessel in a closed area provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taunt, are stowed below deck while transiting the closed area. For the purpose of this paragraph (b)(2), a vessel is in transit when it is on a direct and continuous course through a closed area.

**§ 659.21 Specifically authorized activities.**

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by this part.

[FR Doc. 93-26363 Filed 10-26-93; 8:45 am]
BILLING CODE 3510-22-M

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**50 CFR Parts 672 and 675**

**[Docket No. 930652-3258; I.D. 060893A]**

## Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing a regulatory amendment to change regulations that implement the limit on the amount of pollock roe that may be retained onboard a vessel during a fishing trip in the Alaska groundfish fisheries. These changes are necessary to curtail current fishing practices that undermine the intent of the limit, which is to prevent the wasteful use of the pollock resource by the stripping of roe (eggs) from female pollock and discarding female and male pollock carcasses without further processing, commonly known as pollock roe stripping. The intended effect of this action is to promote the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands management area (BSAI) with respect to groundfish management off Alaska.

**EFFECTIVE DATE:** November 26, 1993.

**ADDRESSES:** Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for Amendment 14 to the FMP for the Groundfish Fishery of the BSAI and Amendment 19 to the FMP for Groundfish of the GOA may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (telephone 907-271-2809).

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salveson, Fisheries Management Division, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

### Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA and BSAI is managed by the Secretary of Commerce (Secretary) according to the GOA and BSAI FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

At its April 1993 meeting, the Council recommended that NMFS conduct rulemaking to curtail fishing practices that undermine the intent of regulations at §§ 672.20(i) and 675.20(j) that are intended to implement, to the maximum extent practicable, the Magnuson Act prohibition of stripping pollock of its roe and discarding the flesh of the pollock (16 U.S.C. 1857 (1)(N)).

A proposed rule to implement the Council's recommendation was published in the **Federal Register** on July 29, 1993 (58 FR 40617). A complete description of, and justification for, changes to regulations that implement the limit on the amount of pollock roe that may be retained onboard a vessel during a fishing trip were discussed in the preamble to the proposed rule.

Public comment on the proposed rule was invited through August 30, 1993. No comments were received within the comment period.

Upon reviewing the reasons for, and the comments on, this action, NMFS has determined that this rule is necessary for fishery conservation and management. Therefore, NMFS is amending 50 CFR 672.20 (i) and (j) as follows:

1. The definition of "fishing trip" is revised for purposes of calculating the proportion of BSAI pollock roe retained;

2. The primary pollock product used to calculate the proportion of pollock roe retained must be only pollock product processed for long-term storage (frozen, canned, or meal product). At-sea discard of any primary pollock product used to calculate the proportion of pollock roe retained is prohibited; and

3. The term "pollock roe" is defined and any primary pollock product containing roe must not be used to calculate the round-weight equivalent of pollock for purposes of determining the proportion of pollock roe retained.

### Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and is consistent with the Magnuson Act and other applicable laws.

The AA determined that this final rule is not a significant rule for the purpose of E.O. 12866.

This action falls within the scope of alternatives addressed in the EA prepared for Amendments 14 and 19 to the FMPs. Therefore, this action is categorically excluded from the requirement to prepare an EA under section 6.02.c.3(f) of NOAA Administrative Order 216-6. A copy of the EA prepared for these amendments is available (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic effect on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. Consistency is automatically inferred because the appropriate State agency did not reply within the statutory time period.

This rule does not contain policies with federalism implications sufficient

to warrant preparation of a federalism assessment under E.O. 12612.

The Regional Director determined that fishing activities conducted under this final rule will not affect any endangered or threatened species listed under the Endangered Species Act (ESA) in a way that was not already considered in: (1) The formal consultations conducted on the BSAI and GOA groundfish fisheries (both dated April 19, 1991), the 1992 BSAI total allowable catch specifications (January 21, 1992), and Amendment 18 to the BSAI FMP (March 4, 1992); and, (2) the informal consultations conducted regarding the impacts of the 1992 GOA total allowable catch specifications (December 23, 1991), the 1993 BSAI and GOA total allowable catch specifications on Steller sea lions (January 20, 1993, and January 22, 1993, respectively), the impacts of the 1993 BSAI and GOA groundfish fisheries on listed species of salmon (April 21, 1993) and listed species of seabirds (U.S. Fish and Wildlife Service, February 1, 1993). Therefore, NMFS has determined that no further consultation pursuant to section 7 of the ESA is required for adoption of the final rule.

The Regional Director determined that fishing activities conducted under this rule will have no adverse impacts on marine mammals.

**List of Subjects in 50 CFR Parts 672 and 675**

Fisheries, Reporting and recordkeeping requirements.

Dated: October 22, 1993.

**Charles Karnella,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

## PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In § 672.20, paragraphs (i) (1) through (5) are redesignated as paragraphs (i) (2) through (6), respectively; the introductory text of paragraph (i) is redesignated as paragraph (i)(1); newly redesignated paragraphs (i) (1) and (2) are revised; and new paragraph (i)(7) is added to read as follows:

**§ 672.20 General limitations.**

* * * * *

(i) *Allowable retention of pollock roe.* (1) For purposes of this paragraph (i), pollock roe means product comprised of pollock eggs, either loose or in sacs or skeins. Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 10 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing as defined in this paragraph (i). Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. Pollock or pollock products from previous fishing trips that are retained onboard a vessel may not be used to determine the allowable retention of pollock roe for that vessel.

(2) For purposes of this paragraph (i), only one primary pollock product per fish, other than roe, may be used to calculate the round-weight equivalent. A primary pollock product that contains roe (such as headed and gutted pollock with roe) may not be used to calculate the round-weight equivalent of pollock. The primary pollock product must be distinguished from ancillary pollock products in the daily cumulative production logbook required under § 672.5. Ancillary products are those such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

* * * * *

(7) Any primary pollock product used to calculate retainable amounts of pollock roe under paragraph (i)(6) of this section must be frozen, canned, or reduced to meal onboard the vessel retaining the pollock roe. Any pollock product that has been frozen, canned, or reduced to meal may not be discarded at sea.

## PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for 50 CFR part 675 continues to read as follows:

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

4. In § 675.20, paragraphs (j)(1) through (5) are redesignated as paragraphs (j)(2) through (6), respectively; the introductory text of paragraph (j) is redesignated as paragraph (j)(1); newly redesignated paragraphs (j)(1), (2), and (5) are revised; and new paragraph (j)(7) is added to read as follows:

**§ 675.20 General limitations.**

* * * * *

(j) *Allowable retention of pollock roe.* (1) For purposes of this paragraph (j), pollock roe means product comprised of pollock eggs, either loose or in sacs or skeins. Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 10 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in this paragraph (j). Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. Pollock or pollock products from previous fishing trips that are retained onboard a vessel may not be used to determine the allowable retention of pollock roe for that vessel.

(2) For purposes of this paragraph (j), only one primary pollock product per fish, other than roe, may be used to calculate the round-weight equivalent. A primary pollock product that contains roe (such as headed and gutted pollock with roe) may not be used to calculate the round-weight equivalent of pollock. The primary pollock product must be distinguished from ancillary pollock products in the daily cumulative production logbook required under § 675.5 Ancillary products are those such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

* * * * *

(5) *Fishing trip.* For purposes of this paragraph (j), an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of pollock is begun or resumed until:

(i) The transfer or offloading of all pollock product;

(ii) The vessel leaves the subarea or district where fishing activity commenced; or

(iii) The end of a weekly reporting period, whichever comes first.

* * * * *

(7) Any primary pollock product used to calculate retainable amounts of pollock roe under paragraph (j)(6) of this section must be frozen, canned, or reduced to mean by the vessel retaining the pollock roe prior to any transfer of the product to another vessel. Any pollock product that has been frozen, canned, or reduced to meal may not be discarded at sea.

[FR Doc. 93-26437 Filed 10-26-93; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 58, No. 206
Wednesday, October 27, 1993

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Chapter I

**[Summary Notice No. PR-93-17]**

### Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before December 27, 1993.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 21, 1993.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

#### Petitions for Rulemaking

*Docket No.:* 27370
*Petitioner:* Mr. Antonio M. DeAngelo
*Sections of the FAR Affected:* 14 CFR 65.93(a)(4)
*Description of Rulechange Sought:* To include the word "each" prior to the phrase "12 month period preceding this application for renewal."
*Petitioner's Reason for the Request:* The petitioner feels that, if this proposed amendment is adopted, it will be in the public interest and will not jeopardize safety because: Many man hours, materials and supplies will be saved; the slowed growth of general aviation and subsequent reduction in new inspection authorization persons will not burden the renewal system; and inspection authorization persons possess a great deal of experience and currently take measures to keep updated on their specialties.

#### Dispositions of Petitions

*Docket No.:* 26427
*Petitioner:* Aircraft Owners and Pilots Association, Experimental Aircraft Association, Montana Antique Airplane Association, Montana Aeronautics Board, Montana Flying Farmers and Ranchers Association, Montana Chapter of International 99's, and Montana Pilots Association
*Regulations Affected:* 14 CFR 91.215(b)(5)(ii), and part 91 appendix D
*Description of Rule change Sought:* To eliminate the transponder with automatic altitude reporting equipment (Mode C transponder) requirement for aircraft conducting operations in the vicinity of Logan International Airport at Billings, Montana (Logan Airport), or to delay implementation of the requirement pending implementation of the Airspace Reclassification Rule (56 FR 65638: December 17, 1991).
*Petitioner's Reason for the Request:* The petitioner feels that the number of passenger enplanements is declining at Logan Airport and the number of instrument flight rule operations at Logan consist mainly of practice instrument approaches conducted during slow periods, when no air carrier activity is scheduled.
*Disposition: Denial, October 7, 1993.*

[FR Doc. 93-26479 Filed 10-26-93; 8:45 am]
BILLING CODE 4910-13-M

### 14 CFR Part 33

**[Docket No. 93-ANE-46; Notice No. 33-ANE-02]**

### Special Conditions; General Electric Aircraft Engines Model(s) GE90-75B/-85B/-76B Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the General Electric (GE) Aircraft Engines Model(s) GE90-75B/-85B/-76B turbofan engines. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from water and hail ingestion. This notice proposes the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards for aircraft engines of the Federal Aviation Regulations (FAR).

**DATES:** Comments must be submitted on or before December 13, 1993.

**ADDRESSES:** Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93-ANE-46, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments must be marked: Docket No. 93-ANE-46. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Thomas Boudreau, Engine and Propeller Standards Staff, ANE-110, Engine and

Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; telephone (617) 238–7117; fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES**. All communications received on or before the closing date for comments, specified under "**DATES**," will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ANE–46." The postcard will be date stamped and returned to the commenter.

**Background**

On December 16, 1991, General Electric Aircraft Engines applied for type certification of Model(s) GE90–76B/–85B/–76B turbofan engines. The FAA has determined that the current water and hail ingestion requirements of § 33.77(c) of the FAR do not represent the inclement weather threat encountered in service.

A study of in-service inclement weather events has indicated a need to modify the water and hail ingestion requirements of this section to ensure design integrity and demonstrate an adequate level of safety. This study indicated that a potential flight safety threat existed for engines when operating in severe weather environments. Although current requirements provide adequate validation of the engine's resistance to mechanical damage due to hail impact and case contractions from water ingestion, the study showed that the current standards did not adequately address engine power loss anomalies, such as rollback and flameout at lower than takeoff rated power settings.

The FAA has concluded that additional safety standards must be applied to General Electric Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines to demonstrate that they are capable of acceptable operation in severe weather environments.

**Type Certification Basis**

Under the provisions of § 21.101 of the FAR, General Electric Aircraft Engines must show that Model(s) GE90–75B/–85B/–76B turbofan engines meet the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21 and part 33, effective February 1, 1965, as amended through August 10, 1990, Amendment 33–14.

The Administrator finds that the applicable airworthiness regulations in Part 33, as amended, do not contain adequate or appropriate safety standards for General Electric Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines because of unique design criteria. Therefore, the Administrator proposes these special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

**Conclusion**

This action affects only GE Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these new design criteria on the engine.

**List of Subjects in 14 CFR Part 33**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

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

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the General Electric Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines.

In addition to the requirements of FAR § 33.77, the following tests and analyses must be conducted, unless compliance can be shown by alternate methods acceptable to the Administrator.

(a) The most critical operating point(s) for water and hail ingestion must be determined by test, analysis, or other acceptable methods, and must be based on the threat levels defined in Table 1 and Table 2 of this proposal. The critical point(s) determination must address the entire operating envelope of the engine. The critical operating point(s) is defined as those operating conditions within the engine flight envelope at which an engine operability margin is reduced to a minimum level.

TABLE 1.—RAIN THREAT

| Altitude (feet) | Liquid water content (LWC) (grams water per cubic meter air) |
|---|---|
| 0 | 20.0 |
| 20,000 | 20.0 |
| 26,300 | 15.2 |
| 32,700 | 10.8 |
| 39,300 | 7.7 |
| 46,000 | 5.2 |

Note: LWC and HWC values at other altitudes may be determined by linear interpolation.

TABLE 2.—HAIL THREAT

| Altitude (feet) | Hail water content (HWC) (grams water per cubic meter air) |
|---|---|
| 0 | 8.9 |
| 7,300 | 8.9 |
| 8,500 | 9.4 |
| 10,000 | 9.8 |
| 11,000 | 9.9 |
| 12,000 | 10.0 |
| 15,000 | 10.0 |
| 16,000 | 8.9 |
| 17,700 | 7.8 |
| 19,300 | 6.6 |
| 21,500 | 5.6 |
| 24,300 | 4.4 |
| 29,000 | 3.3 |
| 46,000 | 3.3 |

Note: LWC and HWC values at other altitudes may be determined by linear interpolation.

(b) The engine will be shown to operate at an acceptable level for a minimum of three minutes when subjected to the critical point conditions for water ingestion. The percentage of water to airflow by weight, at the critical point, is to be reproduced during the engine test. The test method should adequately model the inflight water concentration effect at the primary flow (core) inlet. Water droplet size and velocity distributions must be representative of the critical water ingestion point. All variable systems, whose position could effect engine operation during water ingestion, must be scheduled for the most critical positions.

(c) The engine will be shown to operate at an acceptable level for a minimum of 30 seconds when subjected to the critical point conditions for hail ingestion. The percentage of hail to airflow by weight, at the critical point, is to be reproduced during the engine test. The test should adequately model the inflight hail concentration effect at the primary flow (core) inlet. Hailstone size and velocity distributions must be representative of the critical hail ingestion point. All variable systems whose position could effect engine operation during hail ingestion, must be scheduled for the most critical positions.

(d) Acceptable engine operation, as noted in paragraphs (b) and (c) of this special condition, must preclude rundown, flameout, surge, loss of acceleration capability, limit exceedance, or any other engine anomaly which would negatively affect the operability of the engine.

(e) The engine, as operated under the conditions defined in paragraphs (b) and (c) of this special condition, must show that it will operate acceptably if exposed to other probable factors associated with normal operations. These other probable factors include, but are not limited to, performance losses, installation effects, inlet distortion, and throttle transients.

Issued in Burlington, Massachusetts, on September 23, 1993.

**Jack A. Sain,**

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

[FR Doc. 93-26469 Filed 10-26-93; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 93-NM-58-AD]**

## Airworthiness Directives; Gulfstream Model G-IV Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the revision of an existing airworthiness directive (AD), applicable to certain Gulfstream Model G-IV airplanes, that currently requires deactivating instrument landing systems (ILS) that utilize dedicated Bendix radios. This action would provide for an optional terminating action, which, if accomplished, would allow reactivation of the Bendix ILS systems. This proposal is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by the proposed AD are intended to prevent hazardous deviations from the intended course.

**DATES:** Comments must be received by December 22, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-58-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Steve Flanagan, Aerospace Engineer, Airframe Branch, ACE-120A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991-2910; fax (404) 991-3606.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-58-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-58-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion

On March 6, 1989, the FAA issued AD 89-02-12, Amendment 39-6155 (54 FR 11165, March 17, 1989), applicable to certain Gulfstream Model G-IV airplanes. That action requires deactivating instrument landing systems (ILS) that utilize dedicated Bendix radios, and modifying the wiring to the #1 and #2 electronic display controllers. That action was prompted by reports of airplanes turning inbound on an ILS approach before capturing the localizer signal. These incidents all occurred on approaches with large intercept angles while flying with the autopilot coupled to the dedicated Bendix ILS radio. The requirements of that AD are intended to prevent hazardous deviations from the intended course.

At the time that AD 89-02-12 was issued, the precise cause of the problem was not known. However, the manufacturer advises that the cause of the hazardous deviations is now known to be due to interference from AM/FM entertainment antennas. The manufacturer has developed a design change that meets the requirements for ILS operation when operated with a radome mounted antenna that is free from the effects of an AM/FM

entertainment antenna that is in close physical and frequency proximity.

The FAA has reviewed and approved Gulfstream Aircraft Service Change No. 110A, dated April 9, 1993, that describes procedures for modifying the ILS receivers hardware and traffic alert and collision avoidance system (TCAS) symbol generators software for the #1 and #2 electronic display controllers. This modification also involves removing decals, reactivating circuit breakers, and reconnecting wiring. Implementation of this design change will positively address the unsafe condition identified as hazardous deviations from the intended course.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 89–02–12 to continue to require deactivating the ILS utilizing dedicated Bendix radios and modifying the electronic display controller wiring. The proposed AD would also provide for an optional terminating action, which consists of modifying the ILS receivers hardware and TCAS symbol generators software for the #1 and #2 electronic display controllers. This modification, if accomplished, would be required to be performed in accordance with the revised service change described previously.

This proposal would also require that, if the optional terminating action is accomplished, the AM/FM entertainment antenna be relocated to a different location on the airplane. Affected operators should note that the ILS antenna must not be mounted with the AM/FM entertainment antenna inside the airplane radome. (It may be necessary to remove the radome mounted AM/FM entertainment antenna from within the radome.) In order to perform this relocation of the AM/FM entertainment antenna (including installation of a new antenna, if so desired), operators would be required to obtain FAA approval.

The format of the proposed revised AD has been revised to be consistent with the **Federal Register** style.

There are approximately 95 Model G–IV airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry would be affected by this proposed action.

The actions currently required by that AD 89–02–12 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the currently required actions on U.S. operators is estimated to be $9,735, or $165 per airplane.

This proposed revision of AD 89–02–12 would add no new additional costs to operators, since it would merely provide for an optional terminating action. Should an operator elect to accomplish the terminating action, the associated modification would take approximately 6 work hours per airplane to accomplish. The relocation and certification of a new AM/FM entertainment antenna would take approximately 120 work hours per airplane to accomplish. The average labor charge is $55 per work hour. All required parts would be provided free of charge by the manufacturer. Based on these figures, the total cost of accomplishing the proposed optional terminating action is estimated to be $6,930 per airplane.

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

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–6155 (54 FR 11165, March 17, 1989), and by adding a new airworthiness directive (AD), to read as follows:

**Gulfstream:** Docket 93–NM–58–AD. Revises AD 89–02–12, Amendment 39–6155.

*Applicability:* Model G–IV airplanes, as listed in Gulfstream Aircraft Service Change No. 110, dated January 24, 1989, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

**Note 1:** Paragraphs (a) and (b) of this AD merely restate the requirements of paragraphs A. and B. of AD 89–02–12, Amendment 39–6155. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 89–02–12 have already been accomplished, paragraphs (a) and (b) of this AD do not require that those actions be repeated. To prevent hazardous deviations from the intended course, accomplish the following:

(a) Prior to further flight after April 3, 1989 (the effective date of AD 89–02–12, Amendment 39–6155), discontinue use of the Bendix instrument landing system (ILS) radios for any type of approach. Pull both circuit breakers (C/B) on the co-pilot's C/B panel labeled "ILS #1" and "ILS #2." Tie-wrap the C/B's out, using TY23M or equivalent tie-wraps. Affix placards (Gulfstream decal #1159F40000–911 or equivalent) to the control heads and the C/B's, labeling them "INOP."

(b) Within 10 hours of airplane operation after April 3, 1989 (the effective date of AD 89–02–12, Amendment 39–6155), modify the wiring to the #1 and #2 electronic display controllers, in accordance with Gulfstream Aircraft Service Change No. 110, dated January 24, 1989.

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

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

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

(e) Accomplishment of the actions specified in both paragraphs (e)(1) and (e)(2) of this AD constitutes terminating action for the requirements of this AD:

(1) Modify the Bendix ILS systems in accordance with Gulfstream Aircraft Service Change No. 110A, dated April 9, 1993; and

(2) Prior to further flight after accomplishing the actions specified in paragraph (e)(1) of this AD, reactivate the Bendix ILS systems after relocating the forward radome mounted AM/FM entertainment antenna system in accordance with a method approved by the Manager, Atlanta ACO, FAA, Small Airplane Directorate.

Issued in Renton, Washington, on October 21, 1993.

**Darrell M. Pederson,**

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

[FR Doc. 93-26402 Filed 10-26-93; 8:45 am]

BILLING CODE 4910-13-P

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**14 CFR Part 39**

**[Docket No. 91-CE-88-AD]**

## Airworthiness Directives: de Havilland DHC-6 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede two existing airworthiness directives (AD), which currently require repetitively inspecting the wing attachment fittings and the wing front fittings for cracks on certain de Havilland DHC-6 series airplanes, and replacing any cracked part. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of repetitions of certain short-interval inspections when improved parts or modifications are available. The proposed action would require incorporating a modification that would eliminate the need for the repetition inspections currently required by the two existing ADs. The actions specified in the proposed AD are intended to prevent loss of control of the airplane caused by cracked wing attachment fittings.

**DATES:** Comments must be received on or before December 31, 1993.

**ADDRESSES:** Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-88-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; Telephone (516) 791-6220.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-CE-88-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-88-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate the need for, or, in certain instances, reduce the number of repetitions of those critical inspections. In determining what inspections are critical, the FAA considers: (1) The safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could eliminate the need for, or, in certain instances, reduce the number of repetitions of a critical inspection. With this policy in mind, the FAA recently conducted a review of existing ADs that apply to de Havilland DHC-6 series airplanes. Assisting the FAA in this review were: (1) Transport Canada, which is the airworthiness authority for Canada; (2) de Havilland, Inc.; (3) the Regional Airlines Association (RAA); and (4) several U.S. and foreign operators of the affected airplanes.

From this review, the FAA has identified AD 69-02-01, Amendment 39-2347, and AD 85-16-10, Amendment 39-5216, as ones that should be superseded with a new AD that would require a modification that could eliminate the need for the short-interval and critical repetitive inspections. AD 69-02-01 and AD 85-16-10 currently require repetitively inspecting the forward wing attachment fittings for cracks on de Havilland DHC-6 series airplanes, and replacing any cracked part.

De Havilland has issued Service Bulletin (SB) No. 6/476, Revision B, dated January 22, 1988, which specifies procedures for inspecting the wing front attachment adapters on certain de Havilland DHC-6 series airplanes; and SB 6/500, dated January 22, 1988, which specifies procedures for installing new steel adapter fittings on certain de Havilland DHC-6 series airplanes. This installation is referred to as Modification No. 6/1887.

As a result of the previously discussed AD review, Transport Canada considers Modification 6/1887 mandatory and has issued Transport Canada AD CF-85-12R3, dated June 1, 1991, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept

the FAA informed of the situation described above.

Based on its aging commuter-class aircraft policy and after reviewing all available information including that received from Transport Canada, the FAA has determined that AD action should be taken to eliminate the short-interval and critical inspections required by AD 69–02–01 and AD 85–16–10, and to prevent loss of control of the airplane caused by cracked wing attachment fittings.

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC–6 series airplanes of the same type design, the proposed AD would supersede AD 69–02–01 and AD 85–16–10 with a new AD that would: (1) Initially retain the repetitive inspections of the wing attachment fittings required by the current AD's; and (2) and eventually require installing new steel adapter fittings as terminating action for those repetitive inspections. The inspections would be accomplished in accordance with de Havilland SB No. 6/476, Revision B, dated January 22, 1988, and the installation would be accomplished in accordance with de Havilland SB No. 6/500, dated January 22, 1988.

The FAA estimates that 169 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 96 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $6,750 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,033,0720.

AD 69–02–01 and AD 85–16–10, both of which would be superseded by the proposed action, currently require inspecting the top inner faces of the wing attachment fittings for cracks at intervals of 500 hours time-in-service (TIS), but require removing both the left and right upper wing-fuselage fairings, dye penetrant inspecting them utilizing a 10-power glass, and reattaching the fairings. These inspections take approximately 3 workhours at an average cost of $55 per hour; approximately $165 per airplane or $297,440 for the entire fleet. The inspection procedures of the proposed AD would also take approximately 3 workhours at an average cost of $55 per hour.

The cost figures do not account for the recurring costs of the repetitive inspections required by AD 69–02–01 and AD 85–16–10. The proposed AD would only require these repetitive inspections until the mandatory modification was accomplished. This elimination of the repetitive inspections would reduce the cost of the proposed modification requirement.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 169 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 50 percent are operated in scheduled passenger service by 14 different operators. A significant number of the remaining 50 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 2,000 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 10 to 20 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 120 to 240 calendar months (about 10 to 20 years) before the proposed modification would be mandatory. In addition, replacing the fittings would terminate the need for the repetitive inspections.

The incremental costs of the proposed AD would depend on the utilization of a de Havilland DHC–6 series airplanes, and whether cracks were found during any of the repetitive inspections accomplished within 2,000 hours TIS after the effective date of the proposed AD. The discussion that follows assumes that no cracked fittings are found and operators/owners do not replace the fittings until required at 2,000 hours TIS after the effective date of the proposed AD.

The proposed AD would impose additional costs on most operators/owners of de Havilland DHC–6 series airplanes. Although the action proposes to eliminate the repetitive inspections upon replacement of the fitting, the cost of the replacement fittings would most likely be more than the cost of the repetitive inspections required for 2,000 hours TIS, but recurring inspections would be required at each 500-hour TIS interval. The following presents the greatest present value incremental costs for 10-, 20-, and 30-year remaining service lives (a chart that represents these is contained in the regulatory flexibility analysis and may be obtained by contacting the Docket at the location contained in the ADDRESSES section of the preamble of the proposed AD):

- 10-year remaining service life—Approximately $9,000 for de Havilland DHC–6 series airplanes utilized an average of 725 hours TIS annually;
- 20-year remaining service life—Approximately $8,200 for de Havilland DHC–6 series airplanes utilized an average of 560 hours TIS annually; and
- 30-year remaining service life—Approximately $7,800 for de Havilland DHC–6 series airplanes utilized an average of 525 hours annually.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to the proposed rule, or any number of small entities subject to the rule which is substantial in the judgment of the rulemaking official. A "significant economic impact" is defined as an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft owned and annualized cost threshold at $65,300 for scheduled operators and $4,600 for unscheduled operators (expressed in second quarter 1993 dollars).

The 169 U.S.-registered airplanes affected by the proposed AD are owned according to the following breakdown: 13 by individuals, 8 by U.S. government agencies, and 148 by businesses or not-for-profit enterprises. Of the 148 entities, one owns 26 airplanes, one owns 11 airplanes, nineteen own between 2 and 9 airplanes, and fifty own 1 airplane each.

The FAA cannot determine the sizes of all the 148 owner entities nor the relative significance of the costs or cost

savings estimated above. However, more than one-third of these entities operate their de Havilland DHC–6 series airplanes in scheduled service. According to statistics obtained by the FAA, these airplane operators in scheduled service utilize their airplanes an average of 1,383 hours TIS annually, and general aviation operators utilize their airplanes an average of 706 hours TIS annually. These figures may have a standard of error of 14.4 percent and the general aviation average may include some airplanes in commuter service. The FAA cannot reasonably estimate the distribution of these hours among the de Havilland DHC–6 fleet.

Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA solicits comments concerning the impact of this proposed AD on small entity owners of affected airplanes. Based on the possibility that this proposed AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

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

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this proposal that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.** After careful consideration, the FAA has determined that the proposed action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. Alternative actions and views are solicited from interested persons and will be considered by the FAA in the development of the final rule.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing AD 69–02–01, Amendment 39–2347, and AD 85–16–10, Amendment 39–5216, and adding the following new AD:

**De Havilland:** Docket No. 91–CE–88–AD. Supersedes AD 69–02–01, Amendment 39–2347, and AD 85–16–10, Amendment 39–5216.

*Applicability:* Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

*Compliance:* Required as indicated, unless already accomplished.

To prevent loss of control of the airplane caused by cracked wing attachment fittings, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 400 hours TIS, and thereafter at intervals not to exceed 500 hours TIS until compliance with paragraph (b) or (c) of this AD, accomplish the following:

(1) Remove both left and right upper wing-fuselage fairings in accordance with the applicable maintenance manual.

(2) Using dye penetrant procedures and at least 10-power magnification, visually inspect the top inner faces of the left and right forward wing attachment fittings, either part number (P/N) C6WM1031–1 and C6WM1031–2, P/N C6WM1133–1 and C6WM1133–2, or P/N C6WM1162–1 and C6WM1162–2, for cracks in accordance with the Accomplishment Instructions section of de Havilland Service Bulletin No. 6/476, Revision B, dated January 22, 1988.

(b) If cracks are found, prior to further flight, replace the forward wing attachment fittings with new front steel adapter fittings (Modification No. 6/1887), P/N C6WM1162–3 and C6WM1163–4, in accordance with the Accomplishment Instructions section of de Havilland SB No. 6/500, dated January 22, 1988.

(c) Within the next 2,000 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (b) of this AD, replace the forward wing attachment fittings with new front steel adapter fittings (Modification No. 6/1887), P/N C6WM1162–3 and C6WM1163–4, in accordance with the Accomplishment Instructions section of de Havilland SB No. 6/500, dated January 22, 1988.

(d) The installation of new front steel adapter fittings (Modification No. 6.1887) as specified in paragraphs (b) and (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

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

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, 181 Franklin Avenue, room 202, Valley Stream, New York 11581. The request shall be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

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

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 20, 1993.

**Michael K. Dahl,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–26400 Filed 10–26–93; 8:45 am]

**BILLING CODE 4910–13–U**

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**14 CFR Part 39**

**[Docket No. 93–CE–37–AD]**

## Airworthiness Directives: Beech Aircraft Corporation 35 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede two airworthiness directives that currently require the following on certain Beech Aircraft Corporation (Beech) 35 series airplanes: Checking the ruddervator static balance and adjusting as appropriate; fabricating and installing airspeed limitation placards; incorporating certain airspeed

limitations into the airplane flight manual (AFM); and installing stabilizer reinforcements. Several incidents where enpennage flutter occurred on the affected airplanes prompted the proposed action. This proposed action would incorporate and update the procedures and applicability of both AD's into one logical and simplified document. The actions specified by the proposed AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

**DATES:** Comments must be received on or before December 31, 1993.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–37–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4122; Facsimile (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–37–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–37–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

Several incidents involving certain Beech 35 series airplanes where empennage flutter occurred has prompted the FAA to re-evaluate current AD's that relate to the same subject, and apply to the same airplane models. These AD's are:

- AD 57–18–01, Amendment 39–1759, which currently requires repetitively inspecting the fuselage bulkhead for cracks, buckles, or distortion on certain Beech 35 series airplanes, and also requires checking the ruddervator to ensure that the static balance is within acceptable limits. The inspections and checks are accomplished utilizing information in Beech Service Bulletin (SB) No. 35–26, dated May 20, 1953. The Bonanza Maintenance Manual 35–590073 also specifies information for the ruddervator checks; and
- AD 87–20–02 R1, Amendment 39–5944, which currently requires the following on certain Beech 35 series airplanes: (1) Installing external stabilizer reinforcements; (2) inspecting the rear fuselage and bulkheads in the area of the empennage for cracks or distortion for those models equipped with an increased stabilizer chord length/overhang, and repairing or replacing any cracked or distorted parts; and (3) checking the ruddervator static balance to ensure that the static balance is within acceptable limits, and correcting if necessary.

After examining the circumstances and reviewing all available information including the incidents referenced above, the FAA has determined that AD action should be taken to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 35 series airplanes of the same type design, the proposed AD would supersede AD 57–18–01 and AD 87–20–02 R1 with a new AD that would require (1) checking the ruddervator static balance and adjusting as appropriate; (2) fabricating and installing airspeed limitation placards; (3) incorporating certain airspeed limitations into the airplane flight manual (AFM); and (4) installing stabilizer reinforcements. The proposed actions would be accomplished in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 39–4016–9, as applicable, and the applicable maintenance manual.

The FAA estimates that approximately 10,200 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 40 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $27,540,000. AD 57–18–01 and AD 87–20–02 R1, which both would be superseded by the proposed action, currently require the same actions as are proposed. This proposed action incorporates and updates the procedures of both the current AD's into one logical and understandable document. With this in mind, the proposed action would not provide any additional cost impact upon U.S. operators than that which is already required.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing both AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944, and by adding the following new airworthiness directive:

**Beech Aircraft Corporation:** Docket No. 93–CE–37–AD. Supersedes AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944.

*Applicability:* 1. Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, and P35 airplanes (all serial numbers), certificated in any category;

2. Models S35, V35, V35A, and V35B airplanes (all serial numbers), certificated in any category, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE; and

3. Model Super V airplanes (all serial numbers), certificated in any category.

*Compliance:* Required initially within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated.

To prevent structural failure of the V-tail, which could result in loss of control of the airplane, accomplish the following:

Note 1: Any of the actions specified by this AD may have already been accomplished in accordance with either AD 57–18–01 and AD 87–20–02 R1, which are superseded by this AD. The intent of this AD is to clarify, update, and incorporate the actions of those AD's into one concise and understandable AD while maintaining the repetitive inspections schedules already established by the superseded AD's.

Note 2: The paragraph structure of this AD is as follows: Level 1: (a), (b), (c), etc. Level 2: (1), (2), (3), etc. Level 3: (i), (ii), (iii), etc. Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) For all airplane models, balance the elevator/rudder (ruddervator) control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B; and verify that the ruddervators are within the manufacturers specified limits of 16.8 to 19.8 inch-pound.

(1) If any ruddervator is found outside of the specified limits, prior to further flight, obtain manufacturer's modification instructions by contacting the Wichita Aircraft Certification Office at the address specified in paragraph (j) of this AD, and modify the ruddervator in accordance with these instructions.

(2) Repeat these requirements any time the ruddervator is repaired or painted.

(b) For all airplane models, visually inspect the fuselage bulkheads at Wing Station (WS) 256.9 and WS 272 for damage (cracks, distortion, loose rivets, etc.). Visually inspect the fuselage skin around the bulkhead for damage (wrinkles or cracks). Prior to further flight, repair or replace any damaged parts. Repeat this inspection at each 100-hour TIS interval thereafter.

(c) For all Model Super V airplanes, check the static balance of the ruddervator in accordance with Beech Shop Manual 35–590096A, Section 3, pages 12A, 12B, and 13. Repeat this check anytime the ruddervator is removed or repainted. Prior to further flight, make applicable corrections if any of the following is not achieved:

(1) With the root weight removed and a tip weight attached, static balance of 19.80 (plus or minus 1.00) inch-pounds tail heavy; and

(2) With the root weight added to the condition specified in paragraph (c)(1) of this AD, static balance of 7.00 (plus or minus 1.00) inch-pounds tail heavy.

(d) For Models 35, 35R, A35, B35, C35, D35, E35, F35, and G35 airplanes, accomplish the following:

(1) Fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Never exceed speed, Vne, 144 MPH (125 knots IAS; Maximum structural cruising speed, Vno, 135 MPH (117 knots) IAS; Maneuvering speed, VA, 127 MPH (110 knots) IAS." Install this placard on the airplane instrument panel next to the airspeed indicator within the pilot's clear view.

(2) Mark the outside surface of the airspeed indicator with lines of approximately 1/16-inch by 3/16-inch as follows:

(i) Red line at 144 MPH (125 knots);

(ii) Yellow line at 135 MPH (117 knots); and

(iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(3) Place a copy of this AD in the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).

(e) For Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B, accomplish the following:

(1) Fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Never exceed speed, Vne, 197 MPH (171 knots IAS; Maximum structural cruising speed, Vno, 177 MPH (154 knots) IAS; Maneuvering speed, VA, 132 MPH (115 knots) IAS." Install this placard on the airplane instrument panel next to the airspeed indicator within the pilot's clear view.

(2) Mark the outside surface of the airspeed indicator with lines of approximately 1/16-inch by 3/16-inch as follows:

(i) Red line at 197 MPH (171 knots);

(ii) Yellow line at 177 MPH (154 knots); and

(iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(3) Place a copy of this AD in the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).

(f) For all model airplanes, fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Normal Category Operation Only" and install this placard on the instrument panel within the pilot's clear view over the existing "Utility Category" placard.

(g) For all airplane models, accomplish the following:

(1) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 39–4016–9, as applicable. These kits are referenced in Beech Service Bulletin No. 2188, dated May 1987. Prior to further flight, accomplish the following:

(i) Replace or repair any damaged parts in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 39–4016–9, as applicable; and

(ii) Set the elevator controls, rudder and tab system controls, cable tensions, and rigging as specified in the applicable airplane maintenance or shop manual specified in the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 39– 4016–9, as applicable.

(2) Remove all external stabilizer reinforcements installed during incorporation of either Supplemental Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM. Seal or fill any residual holes with appropriate size rivets.

(i) The internal stub spar incorporated through SA1649CE and SA1650CE may be retained.

(ii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edge section to permit installing the stabilizer reinforcement referenced in paragraph (g)(3) of this AD.

(3) Install stabilizer reinforcements in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 39–4016–9, as applicable. Set the elevator nose down trim in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 39–4016–9, as applicable, and replace ruddervator tab control cables with larger diameter cables in accordance with the service information.

(h) Ensure correct accuracy of the airplane basic empty weight and balance information by accomplishing one of the three methods presented in Figures 1, 2a through 2c, and 3 of this AD. Prior to further flight, correct any discrepancies in accordance with the applicable maintenance manual.

Figure 1—Weight and Balance Information Accuracy Method No. 1

A. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

B. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation; and

C. If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (e.g., paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

Figure 2—Weight and Balance Information Accuracy Method No. 2

A. Assemble the following equipment: 1. One certified platform scale having a range of 750 to 1,000 pounds that is capable of supporting the nose wheel without contacting the rest of the airplane;

2. One scale ramp of sufficient incline to allow rolling the wheel onto the scale; and

3. One gear strut inflation system capable of inflating the gear struts to full extension.

B. Procedure: 1. Prepare the airplane for weighing in accordance with the Weighing Instructions in the Weight and Balance Section of the Pilot's Operating Handbook/Airplane Flight Manual (POH/AFM).

2. Ensure that the scale and airplane are on a level hangar floor and the airplane is shielded from any wind.

3. Inflate the main landing gear struts to the maximum extension and completely deflate the nose strut. Inflate the tires to correct tire pressure as listed in the applicable maintenance or shop manual.

**Note:** Extreme caution should be used when deflating the nose strut because the airplane could drop suddenly.

4. Adjust the height of the scale platform to 12 inches above the hangar floor.

5. Position the nose wheel onto the scale and ensure that the remainder of the airplane does not contact the scale. Verify the proper wheel weight. Set the parking brake and chock the main wheels.

6. Record the net weight registered on the scale.

7. Remove the nose wheel from the scale.

8. Adjust the gear struts to the proper extension lengths in accordance with the applicable maintenance or shop manual.

9. Subtract the following unusable (less undrainable) fuel from the current airplane Basic Empty Weight, CG, and Moment:

| Category | Weight (lbs) | Arm (in.) | Moment (in-lbs) |
|---|---|---|---|
| All Airplanes | 34.5 | 79.1 | 2,730 |
| Airplanes with 10-gallons wing auxiliary tanks | 5 | 94 | 470 |
| Airplanes with 20-gallon auxiliary fuselage tanks | 3 | 133 | 399 |

10. Multiply the net weight obtained in paragraph 6. by 83.25 to obtain moment.

11. Divide the weight obtained in paragraph 9. into the moment obtained in paragraph 10. to determine a value for X.

12. Calculate a value of CG from: CG=92.5−1.01X.

13. Subtract the CG obtained in paragraph 12. from the CG obtained in paragraph 9.

D. Results: 1. If the results of paragraph C. 13., indicate that the difference in CG is equal to or less than .5 inches, then continue to use the basic empty airplane weight and CG data listed in the existing airplane records as the basis for computing the weight and CG for the loaded airplane while using the criteria specified in the POH/AFM, Weight and Balance Section.

2. If the results of paragraph C. 13, indicate that the difference in CG is more than .5 inches, then determine the basic weight and CG of the airplane using Method No. 3.

Example of Above—The following presents a sample calculation of the information specified in Method 2:

Basic Empty Weight=2,064.5 lbs.
Arm=78.3 in.
Moment=161,650 in.-lbs.
Paragraph C. 6: Nose Wheel Weight—341 lbs.
Paragraph C. 9:

| Weight (lbs) | Arm (in) | Moment (in-lbs) |
|---|---|---|
| 2064.5 | 78.3 | 161,650 |
| −34.5 | 79.1 | −2,730 |
| 2030.0 | (*) | 158,920 |

*Arm=18920÷2030=78.29.

Paragraph C.10.: Moment=(341 lbs)×(83.25 in)=28,388 in-lbs.

Paragraph C.11.: X=23,388 in-lbs÷2030.0 lbs=13.98 in.

Paragraph C.12.: CG=92.50 in.—(1.01)×(13.98)=78.38 in.

Paragraph C.13.:

Difference=(78.29)×−(78.38)=−09 in.

Airplane is within plus/minus 0.5 tolerance, therefore paragraph C.14., applies.

Figure 3—Weight and Balance Information Accuracy Method No. 3

Determine the basic empty weight and CG of the empty airplane using the Weighing Instructions in the Weight and Balance Section of the POH/AFM. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the POH/AFM, Weight and Balances Section.

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

(j) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

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

(k) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

(l) This amendment supersedes AD 57-18-01, Amendment 39-1759, and AD 87-20-02 R1, Amendment 39-5944.

Issued in Kansas City, Missouri, on October 20, 1993.

**Michael K. Dahl,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Office.*

[FR Doc. 93-26401 Filed 10-26-93; 8:45 am]
BILLING CODE 4910-13-U

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Parts 4, 5, and 7

**[Notice No. 784; Ref: Notice No. 776]**

## Nutrition Labeling for Wine, Distilled Spirits, and Malt Beverages (91F-072P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Advance notice of proposed rulemaking; extension of comment period.

**SUMMARY:** This notice extends the comment period for Notice No. 776, an advance notice of proposed rulemaking, published in the **Federal Register** on August 10, 1993. ATF has received three requests to extend the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the advance notice.

**DATES:** Written comments must be received on or before February 7, 1994.

**ADDRESSES:** Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; Attn: Notice No. 784.

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 10, 1993, ATF published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** soliciting comments from the public and industry on whether the regulations should be amended to require nutrition labeling for wine, distilled spirits, and malt beverages (Notice No. 776; 58 FR 42517).

The comment period for Notice No. 776 was scheduled to close on November 8, 1993. Prior to the close of the comment period ATF received three requests from national trade associations to extend the comment period. The American Brandy Association (ABA), which represents the interests of producers and marketers of more than 80 percent of American brandy, requested an extension of a minimum of 60 days. The Distilled Spirits Council of the United States, Inc. (DISCUS), which represents producers and marketers of distilled spirits sold in the U.S., requested a 90 day extension of the comment period. Both the ABA and DISCUS stated that an extension was necessary in order to review and analyze fully the issues raised in the ANPRM.

The National Association of Beverage Importers, Inc. (NABI), representing the companies that import 90 percent of all alcoholic beverages brought into the U.S., requested an extension of 120 days. NABI stated that it must coordinate the comments of its members, many of whom are foreign companies importing their products into the U.S. Additional time is needed in order to adequately analyze and communicate the impact that the ANPRM will have on NABI member companies.

In consideration of the above, ATF finds that an extension of the comment period is warranted. However, the comment period is being extended 90 days, until February 7, 1994. The Bureau believes that a comment period totaling 180 days is a sufficient amount of time for all interested parties to respond.

**Drafting Information**

The principal author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects**

*27 CFR Part 4*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

*27 CFR Part 5*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

*27 CFR Part 7*

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

**Authority and Issuance**

This advance notice of proposed rulemaking is issued under the authority in 27 U.S.C. 205.

Dated: October 21, 1993.

**John W. Magaw**

*Director.*

[FR Doc. 93–26430 Filed 10–26–93; 8:45 am]

BILLING CODE 4810–31–U

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**27 CFR Part 9**

**RIN 1512–AA07**

**[Notice No. 783]**

## The Hames Valley Viticultural Area (93F–009P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in the State of California to be known as "Hames Valley." The proposed area is located in southern Monterey County. This proposal is the result of a petition submitted by Mr. Barry C. Jackson of the Harmony Wine Company on behalf of Valley Farm Management, Soledad, California, and Mr. Bob Denney & Associates, Visalia, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

**DATES:** Written comments must be received by December 27, 1993.

**ADDRESSES:** Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 783). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area,

based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

*Petition*

ATF has received a petition from Mr. Barry C. Jackson of the Harmony Wine Company proposing to establish a new viticultural area in southern Monterey County, California, to be known as "Hames Valley." Mr. Jackson submitted the petition on behalf of Valley Farm Management, Soledad, California, and Mr. Bob Denney & Associates, Visalia, California. The proposed Hames Valley viticultural area is located approximately three miles west of the town of Bradley and some seven miles north of Lake Nacimiento. It is located totally within the larger and previously established Monterey viticultural area. As stated in the original petition and letter from the petitioner dated April 27, 1993, there are several existing vineyards within the area that comprise approximately 630 acres planted to grapes. However, there are no wineries currently located within the proposed Hames Valley area. The petitioner also asserts that the size of the proposed area is about sixteen square miles or approximately 10,240 acres. The petition provides the following information as evidence that the proposed area meets the regulatory requirements discussed previously.

*Evidence That Viticultural Area Name Is Widely Known*

According to the petitioner, the name Hames Valley has been associated with this area since the latter part of the nineteenth century. The petitioner cites Donald T. Clark, *Monterey County Place Names*, p. 201 (1991), which states that the valley was named for John Hames who had extensive land holdings in the area. The petitioner further observes that the name Hames Valley appears on the U.S.G.S. Bradley Quadrangle, 15 minute series, map of Bradley, California, and that there is also a U.S.G.S. 7.5 minute series map entitled Hames Valley. Additionally, the petitioner notes that there is a creek which runs through the valley named Hames Creek.

*Evidence of Boundaries*

As stated by the petitioner, Hames Valley is located in the eastern foothills of the Santa Lucia Range, west of the confluence of the Salinas, San Antonio, and Nacimiento Rivers. The watershed of Hames Creek is the defining feature of the proposed appellation. Hames Valley is located wholly within the larger, previously approved Monterey viticultural area. A portion of the boundaries of the Monterey viticultural area form the northern and western boundaries of Hames Valley. Swain Valley and the Salinas River form part of the eastern boundary. The ridgeline that separates Hames Valley from the San Antonio River forms the balance of the eastern and southern boundaries.

*Geographical Features*

The petitioner indicates that Hames Valley is a small east-west oriented valley, west of the generally north-south orientation of the meandering Salinas River. Formed by the watershed of Hames Creek, Hames Valley thrusts its way seven miles into the eastern flank of the Santa Lucia Mountains. The petitioner states that Hames Creek empties into the Salinas River approximately two miles downstream from the confluence of the San Antonio and Salinas Rivers. The petitioner further states that Hames Valley is separated from the San Antonio River by a ridge averaging 1,500 feet in elevation, the highest peak at 1,984 feet. A similar ridgeline forms the northern boundary and separates Hames Valley from the Salinas River.

According to the petitioner, the general topography within the valley consists of gently sloping alluvial fans and associated terraces. Drainages are generally well defined.

*Soils*

The petitioner has submitted a composite map of the Hames Valley area compiled from the Soil Survey of Monterey County, California, U.S.D.A. Soil Conservation Service, U.S. Forestry Service, University of California Agricultural Experiment Station (1972). According to this map, the principal soils in the area are gravelly sandy loams of the Lockwood series. These comprise approximately 75 percent of the soil types present. Lesser amounts of Chamise shaly loams and Nacimiento silty clay loams are also present. The petitioner asserts that all viticulture takes place in the Lockwood series soils. Soils in the surrounding areas are also silty and shaly loams, but are located on 30 to 50 percent slopes and are of different compositions. The preponderance of the Lockwood shaly clay loam and the geomorphology (flat, well defined valley floor) set the Hames Valley apart from the surrounding mountainous areas.

*Climate*

With regard to climate, the petitioner has submitted a study by A.N. Kasimatis, Extension Viticulturist, University of California, Davis (August 7, 1970). As interpreted by the petitioner, the study shows that heat summation for the Hames Valley-Bradley area is generally in the 3200 to 3500 degree-day range. This corresponds to a warm region III, similar to the King City and Paso Robles areas. This differs from the generally cooler climate (region I/II) for the Gonzales, Soledad, and Greenfield area, farther north.

Regarding other climatic factors, the petitioner states that rainfall in the Hames Valley area averages 10 to 12 inches annually.

The petitioner further asserts that the east-west axis of the Hames Valley relative to the north-south orientation of the Salinas Valley results in a reduced wind stress factor in the Hames Valley area. Windspeed builds up later in the day and at reduced velocities relative to the "wind-tunnel" effect in the Gonzales-Soledad-Greenfield area. This results in shorter overall exposure to wind stress, from both a time and wind velocity standpoint.

In sum, the petitioner asserts that the following factors differentiate the Hames Valley from the adjacent Salinas Valley:

(a) An east-west axis relative to the general north-south orientation of the Salinas Valley.

(b) A generally warmer microclimate: region III vs. region I/II.

(c) Higher overall elevation: 500 to 800 feet for Hames Valley, 100 to 500 feet for the Salinas Valley.

(d) Later daily windspeed build-up and duration of wind.

(e) More homogeneous soil profile: Hames Valley with one principal soil type; Salinas Valley, over 70 soil types.

(f) Geographically distinct and separate from the Salinas River Valley.

*Proposed Boundary*

The boundary of the proposed Hames Valley viticultural area may be found on one United States Geological Survey map, entitled Bradley Quadrangle, 15 minute series, with a scale of 1:62,500. The boundary is described in proposed § 9.147.

**Executive Order 12866**

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly this proposal is not subject to the analysis required by this Executive Order.

**Regulatory Flexibility Act**

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

**Public Participation**

ATF requests comments from all interested parties. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

**Drafting Information**

The principal author of this document is Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

**Authority and Issuance**

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Par. 1.** The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Subpart C is amended by adding § 9.147 to read as follows:

### Subpart C—Approved American Viticultural Areas

* * * * *

**§ 9.147 Hames Valley.**

(a) *Name.* The name of the viticultural area described in this section is "Hames Valley."

(b) *Approved maps.* The appropriate map for determining the boundary of the Hames Valley viticultural area is one U.S.G.S. 15 minute series topographical map, titled Bradley Quadrangle, California, edition of 1961, with a scale of 1:62,500.

(c) *Boundary.* The Hames Valley viticultural area is located in southern Monterey County in the State of California. The boundary is as follows:

(1) Beginning at the southeast corner of section 26, T. 23 S., R. 10 E., which coincides with the point where the 640 foot contour line crosses the Swain Valley drainage, the boundary proceeds in a straight line across section 26 to the northwest corner of section 26, T. 23 S., R. 10 E.;

(2) Then west northwest in a straight line across sections 22, 21, 20, and 19, T. 23 S., R. 10 E., to the northwest corner of section 24, T. 23 S., R. 9 E.;

(3) Then southeast in a straight line across sections 24, 25, 30, 31, and 32, to the southeast corner of section 5, T. 24 S., R. 10 E.;

(4) Then east southeast in a straight line across section 9 to the southeast corner of section 10, T. 24 S., R. 10 E.;

(5) Then east southeast in a straight line for approximately 2.25 miles to Hill 704, located in section 18, T. 24 S., R. 11 E.;

(6) Then north northwest in a straight line for approximately 1.35 miles to Hill 801, located near the northwest corner of section 7, T. 24 S., R. 11 E., and then continue in a straight line to the northwest corner of section 6, T. 24 S., R. 11 E.;

(7) Then in a generally northwesterly direction along the Salinas River for approximately 1 mile to where the Swain Valley drainage enters the Salinas River about .11 mile south of the northern boundary line of section 36, T. 23 S., R. 10 E.;

(8) Then in a westerly direction for approximately .75 mile along the Swain Valley drainage to the southeast corner of section 26, T. 23 S., R. 10 E., the point of beginning.

Approved: October 18, 1993.

**Daniel R. Black,**

*Acting Director.*

[FR Doc. 93-26429 Filed 10-26-93; 8:45 am]

BILLING CODE 4810-31-U

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Parts 701, 784 and 817

**RIN 1029-AB69**

### Permanent Regulatory Program; Underground Mining Permit Application Requirements; Underground Mining Performance Standards

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Office of Surface Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) published a proposed rule which would amend the regulations applicable to underground coal mining and the control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. OSM has received requests for a public hearing on the proposed rule and is announcing that a public hearing will be held.

**DATES:** A public hearing is scheduled for November 9, 1993, in Columbus, Ohio. The hearing will begin at 9 a.m. local time.

**ADDRESSES:** The public hearing will be held in the Dover Room of the Ramada Inn East, 2100 Brice Road, Columbus, Ohio.

**FOR FURTHER INFORMATION CONTACT:** Nancy R. Broderick, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement,

U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone (202) 208–2564.

**SUPPLEMENTARY INFORMATION:** On September 24, 1993 (58 FR 50174), OSM published a proposed rule which would require all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage to noncommercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations; rehabilitate, restore, or replace identified structures and compensate owners in the full amount of the diminution in value resulting from the subsidence; replace water supplies which have been adversely affected by underground coal mining operations; perform a pre-subsidence survey and repair or compensate for subsidence-related damage caused by underground mining activities to structures or facilities; and provide, when necessary, an additional performance bond to cover subsidence-related material damage. The proposed rule provides for broader protection of structures by removing the provision that imposes a State law limitation on an underground coal mine operator's liability for damage to structures. Performance standards required by the Energy Policy Act of 1992 would be enforceable nationwide immediately upon the effective date of the final rule.

OSM has received a request to hold a public hearing on the proposed rule. As a result, OSM has scheduled a public hearing for November 9, 1993, which will begin at 9 a.m. local time at the location specified (see **ADDRESSES**). This hearing will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at the hearing give the transcriber a written copy of their testimony.

Dated: October 22, 1993.

**Brent Wahlquist,**

*Assistant Director, Reclamation and Regulatory Policy.*

[FR Doc. 93–26462 Filed 10–26–93; 8:45 am]

BILLING CODE 4310–05–M

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**30 CFR Part 917**

## Kentucky Permanent Regulatory Program; Surface and Underground Coal Mining Permits

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

**ACTION:** Proposed rule; reopening and extension of comment period on proposed amendment.

**SUMMARY:** OSM is announcing the receipt of revisions to a previously prepared amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of July 21, 1992 (Administrative Record No. KY–1167), Kentucky resubmitted a proposed program amendment that completed the Kentucky promulgation process under Kentucky Revised Statutes (KRS) Chapter 13A. The amendment consists of proposed modifications to Kentucky Administrative Regulations (KAR) at 405 KAR 8:030, 8:040, 16:180 and 18:180 relating to surface and underground coal mining permits, and fish and wildlife resources, and replaces two earlier proposed program amendments submitted on June 28, 1991 (Administrative Record No. KY–1059), and March 13, 1992 (Administrative Record No. KY–1119).

This document sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on November 26, 1993. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on November 22, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on November 12, 1993.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2896

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220. Telephone: (412) 937–2828

Department of Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564–6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

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

**SUPPLEMENTARY INFORMATION:**

### I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16 and 917.17.

### II. Discussion of Amendment

By letter of July 21, 1992 (Administrative Record No. KY–1167), Kentucky resubmitted a proposed program amendment that completed the Kentucky promulgation process under KRS Chapter 13A. This proposed amendment replaces two earlier proposed program amendments dated March 13, 1992 (Administrative Record No. KY–1119), and June 28, 1991 (Administrative Record No. KY–1059).

This resubmission contains revisions to 405 KAR 8:030 (Surface coal mining permits), 405 KAR 8:040 (Underground coal mining permits), and 405 KAR 16:180/18:180 (Protection of fish, wildlife, and related environmental values). The proposed revisions pertaining to fish and wildlife resources as set forth at 405 KAR 8:030 and 8:040 sections 20 and 36, and 405 KAR 16:180 and 18:180 sections 1, 2 and 3, were previously considered by OSM, and the Director's decision on those provisions are discussed in the final rule dated December 9, 1992 (57 FR 58139–58144). However, OSM inadvertently failed to finalize the portion of the amendment dealing with non-fish and wildlife resources revisions to 405 KAR 8:030/8:040 contained in Kentucky's submissions dated June 28, 1991, March

13, 1992, and July 21, 1992. Therefore, OSM is reopening the public comment period in order to insure that appropriate opportunity for comment on the following revisions has been provided.

*1. 405 KAR 8:030/8:040 Section 1*

Subsections (4) (a) and (b), which contain a listing of the required permit application forms and the location at which they may be obtained, are being deleted.

*2. 405 KAR 8:030/8:040 Section 2*

Subsections (3), (4) and (5) are being revised to delete cross-references to section dealing with the definitions of terms. Subsection (6), which requires a statement identifying any pending permit applications, and current or previous coal mining permits held during the preceding five years by a permit applicant, partner or principal shareholder, is proposed to be deleted. Kentucky proposes to add subsection (11) which requires the permittee to notify the State immediately of any changes in the permittee's address, if changed at any point prior to final bond release. Kentucky also proposes to add a new subsection (12) which: (1) Requires the permittee to submit updates of certain information within thirty days of the effective date of any such changes, (2) discusses the effect of failure to provide the updates, and (3) provides for suspension of the permit, after opportunity for hearing, for failure to provide update information upon request. Finally, Kentucky proposes to delete the former subsection (12) which required the applicant to submit required information on appropriate forms which were incorporated by reference in section 1(4).

*3. 405 KAR 8:030/8:040 Section 3*

Kentucky proposes to revise subsection (5) by deleting a cross-reference to the definition of "small operator" in KRS 350.450(4)(d).

*4. 405 KAR 8:030/8:040 Section 4*

Kentucky proposes to revise subsection (2) regarding the information required to be submitted with the permit application if the private mineral estate to be mined has been severed from the private surface estate.

*5. 405 KAR 8:030/8:040 Section 5*

Kentucky proposes to add a new subsection (4) which requires that the requirements of 405 KAR 24:040 section 2(6) be met if the applicant proposes to conduct surface mining activities within 100 feet of a public road.

*6. 405 KAR 8:030/8:040 Section 10*

Kentucky proposes to revise section 10 to require the filing of a copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit, as well as filing proof of publication which is acceptable to the cabinet.

*7. 405 KAR 8:030/8:040 Section 37*

Kentucky proposes to revise the information required in the postmining land use mining and reclamation plan, to include a discussion of how the proposed postmining land use is to be achieved, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses.

*8. 405 KAR 8:030/8:040 Section 38*

Kentucky proposes to delete section 38 which deals with the mining and reclamation plan for transportation on public roads.

In addition, Kentucky is proposing a number of editorial changes which serve to improve the clarity and organization of the State's regulatory program.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on November 12, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

*Executive Order No. 12866*

This proposed rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the **Federal Register.**

*Executive Order 12778*

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 21, 1993.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

[FR Doc. 93–26428 Filed 10–26–93; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 110

**[CGD05–93–103]**

## Anchorage Ground; Spa Creek, Annapolis, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal from the City of Annapolis, MD to consolidate Anchorages A and B, in Spa Creek, into one anchorage. The City has experienced difficulty in enforcing proper and safe boating operations and activities of mariners within the separate anchorages and anticipates placing a permanent mooring system inside one composite anchorage to control the use and access to the anchorage and to enhance vessel safety.

**DATES:** Comments must be received on or before December 13, 1993.

**ADDRESSES:** Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawford Street, Portsmouth, VA, room 116. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** LT Tom Flynn, (804) 398–6285.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD05–93–103 and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this notice are LT Tom Flynn, project officer and LT John Gately, project attorney, Fifth Coast Guard District Legal Office.

**Discussion of Proposed Regulations**

In August 1982, this regulation was revised to inform the public that the City of Annapolis Harbor Master would enforce local ordinances concerning the anchorages. The City of Annapolis had encountered problems in enforcing the anchorage of vessels and controlling vessels around the anchorage. The City anticipates placing a permanent mooring system within the proposed anchorage and creating a better flow of traffic by having one discrete anchorage.

**Economic Assessment and Certification**

This proposal is not a significant regulatory action under Executive Order 12866 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

There are no businesses located adjacent to the anchorage, therefore there is no direct or indirect impact. The City will assess a nominal per day mooring fee for each of the 40 mooring sites. The fee will be used to offset operating expenses of the Harbor Master.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations as follows:

## PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In section 110.159, paragraph (a)(6) is removed and paragraph (a)(5) and the note at the end of paragraph (a) are revised to read as follows:

**§ 110.159 Annapolis Harbor, Md.**

(a) * * *

(5) *Spa Creek Anchorage.* The waters bounded by a line connecting the following points:

| Latitude | Longitude |
|---|---|
| 38°58'37.3" N | 76°28'48.1" W |
| 38°58'36.1" N | 76°28'57.8" W |
| 38°58'31.6" N | 76°29'03.3" W |
| 38°58'26.7" N | 76°28'59.5" W |

and thence to the point of beginning.

Note: The City of Annapolis has promulgated local ordinances to control the construction of structures, and moorings and the anchoring of vessels in anchorages (a)(2), (a)(3), and (a)(5). These local ordinances will be enforced by the local Harbor Master.

* * * * *

Dated: September 15, 1993.

**W. T. Leland,**

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

[FR Doc. 93-26466 Filed 10-26-93; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 227

### Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Five Stocks of Oregon Coho Salmon

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

**ACTION:** Notice of receipt of petition and request for information on expanded status review.

**SUMMARY:** NMFS has received a petition to list five stocks of Oregon coho salmon (*Oncorhynchus kisutch*) and to designate critical habitat under the Endangered Species Act of 1973 (ESA). In accordance with section 4 of the ESA, NMFS has determined that the petition presents substantial scientific information indicating that the action may be warranted. Moreover, in light of the general decline in many west coast populations of coho salmon, NMFS has determined that it is now prudent to conduct a comprehensive status review that will assess coho salmon stocks in Washington, Oregon, and California. To ensure that the expanded status review is comprehensive, NMFS is soliciting information and data regarding this action.

**DATES:** Comments and information must be received by December 27, 1993.

**ADDRESSES:** Copies of the petition are available from, and comments should be submitted to Merritt Tuttle, Chief, Environmental and Technical Services Division, NMFS, 911 NE 11th Avenue, room 620, Portland, OR 97232.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, NMFS, Northwest Region, (503) 230-5430; Jim Lecky NMFS, Southwest Region, (310) 980-4015; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-2322.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to designate critical habitat. Section 4(b)(3)(A) of the ESA requires that to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary determines whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

#### Petition Received

On July 21, 1993, the Secretary of Commerce received a petition from Oregon Trout, Portland Audubon Society, and Siskiyou Regional Education Project (Oregon Petition) to list five stocks of Oregon coho salmon, and to designate critical habitat under the ESA. The five stocks are identified as indigenous, naturally spawning populations of coho salmon in (1) the Clackamas River, (2) Umpqua River, (3) Coquille and Coos rivers, (4) rivers between the Nehalem and Umpqua rivers, and (5) rivers south of Cape Blanco. As required for a petition to list a Pacific salmon stock (May 18, 1992, 57 FR 21056), the petition presents information on and discusses whether the petitioned population qualifies as a "species" under the ESA, in accordance with NMFS' "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (November 20, 1991, 56 FR 58612). The Assistant Administrator for Fisheries, NOAA, has determined that the petition presents substantial scientific information indicating that the petitioned action may be warranted.

#### Expanded Status Review

On March 11, 1993, NMFS received a petition from the Santa Cruz County Planning Department (California Petition ) to list the central California coho salmon populations occurring in Scott and Waddell Creeks (Santa Cruz County, CA) as endangered and to designate critical habitat. The Santa Cruz County Planning Department prepared the petition at the request of the Santa Cruz County Fish and Game Advisory Commission after a year of investigations and three local public hearings. On June 18, 1993, NMFS published (58 FR 33605) its intent to conduct a status review on California coho salmon stocks occurring in Scott and Waddell Creeks.

In many west coast rivers, including those identified in the aforementioned petitions, coho salmon abundance has declined substantially from historical levels. Therefore, NMFS believes it is prudent to prepare a comprehensive status review which will address coho salmon stocks in Oregon, California, and Washington. This expanded status review will allow NMFS to conduct a more thorough assessment of the ecological and genetic diversity of west coast coho salmon populations, and identify evolutionarily significant units of the species.

#### Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available after taking into account any efforts made by any state or foreign nation to protect the species.

#### Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning (1) whether or not any stocks qualify as "species" under the ESA (November 20, 1991, 56 FR 56612) and (2) whether or not any stock is endangered or threatened based on the above listing criteria. Specifically, NMFS is soliciting information in the following areas: influence of historical and present hatchery fish releases on naturally spawning stocks of coho salmon; separation of hatchery and natural coho salmon escapement; alteration of coho salmon freshwater and marine habitats; disease epizootiology of coho salmon, especially in regards to ceratomyxosis; age structure of coho salmon, migration timing and behavior of juvenile and adult coho salmon; and interactions of coho salmon with other salmonids. Copies of the petition are available (see **ADDRESSES**).

It is important to note that the determination to list a species is based solely on the basis of the best available scientific and commercial information regarding a species' status without reference to possible economic or other impacts of such a determination (50 CFR 424.11(b)).

#### Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for all stocks of coastal coho

salmon off California, Oregon, and Washington. Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present distribution should also be identified if such areas are essential to the recovery of the species. Essential features should include but are not limited to:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing (1) the activities that affect the area or could be affected by the designation and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designations under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

Data, information, and comments should include (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications, and (2) the commentor's name, address, and association, institution, or business.

Dated: October 21, 1993.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–26365 Filed 10–26–93; 8:45 am]

BILLING CODE 3510–22–M

**50 CFR Part 641**

**[Docket No. 931070–3270; ID 100493A]**

## Reef Fish Fishery of the Gulf of Mexico

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 7 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 7 would require dealers who purchase Gulf of Mexico reef fish from fishing vessels to obtain Federal permits and maintain records of such purchases; restrict sale/purchase of reef fish from the exclusive economic zone (EEZ) to permitted vessels/dealers; allow the transfer of a fish trap endorsement with the transfer of the vessel's reef fish permit to an immediate family member; and allow the transfer or revision of a red snapper endorsement on a reef fish vessel permit upon the disability or death of a vessel owner or, in certain circumstances, an operator. The intended effects of this rule are to enhance enforceability of the regulations , improve quota monitoring of reef fish species, allow families that have historically fished in the Gulf of Mexico with fish traps to continue such fishing, and alleviate hardships caused by disability or death of owners/operators no longer able to use red snapper endorsements.

**DATES:** Written comments must be received on or before December 6, 1993.

**ADDRESSES:** Comments on the proposed rule should be sent to Robert Sadler, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements that would be imposed by this rule should be sent to Edward E. Burgess, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for NOAA).

Requests for copies of Amendment 7, which includes an environmental assessment/regulatory impact review on this action, and for copies of a minority report submitted by three members of the Gulf of Mexico Fishery Management Council (Council) should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

### Dealer Permits and Restrictions on Sales

Because of persistent allegations that a large portion of landings of reef fish are not being accounted for under the current quota monitoring system, the Council proposes to require dealers who receive from fishing vessels reef fish harvested from the EEZ of the Gulf of Mexico to obtain permits and maintain records of their purchases of such reef fish. A dealer is defined at 50 CFR 620.2 as a person who first receives fish by way of purchase, barter, or trade. The term would include restaurants that buy directly from fishing vessels. To obtain a dealer permit, an applicant would be required to have a permanent facility at a fixed location. This requirement would preclude a dealer from operating solely from a vehicle.

Permitted dealers would be required to maintain records of reef fish received from fishing vessels. Such records would be required to be retained at dealers' principal places of business for at least 1 year and would be required to be provided for inspection upon the request of an authorized officer or the Science and Research Director. "Science and Research Director" is defined as the Science and Research Director, Southeast Fisheries Science Center, NMFS, or a designee. Current designees include NMFS port agents and data collection agents of cooperating states. The records would show each fishing vessel from which reef fish were received by date, species and quantity. In addition, vehicles used to transport reef fish from fishing vessels to dealers' places of business would be required to carry a copy of the dealers' permits and maintain a record of fishing vessels from which reef fish have been loaded on the vehicle's present trip.

To ensure that reef fish are properly accounted for, the sale of reef fish from a permitted vessel would be allowed only to permitted dealers, and permitted dealers would be allowed to purchase only from permitted vessels.

These requirements would (1) improve quota monitoring by providing a census of reef fish dealers; (2) enhance the enforceability of the vessel trip limits; and (3) aid in verifying required vessel logbook submissions.

**Transfer of Fish Trap Endorsements**

A 3-year moratorium on new entrants into the fish trap segment of the reef fish fishery has been proposed under Amendment 5 to the FMP. A proposed rule to implement Amendment 5 was published October 6, 1993 (58 FR 52063). That proposed rule would restrict the use of fish traps to vessels for which nontransferable fish trap endorsements are issued. Since submission of Amendment 5, the Council has learned of cases where fish trapping is conducted as a family business. Some vessel owners of vessels for which fish trap endorsements would be issued would be precluded from transferring to a family member a fish trap endorsement with his/her vessel and its reef fish permit. To prevent negative economic impacts on the families of current fish trap fishermen, the Council proposes to allow the transfer of a fish trap endorsement for a vessel when there is a change of ownership of the vessel and transfer of its reef fish permit from one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father.

**Transfer of Red Snapper Endorsements**

Amendment 6 to the FMP implemented a two-tier trip limit system for red snapper, with higher trip limits conditioned on the presence of a nontransferable red snapper endorsement on a vessel's reef fish permit. The Council has learned of hardships that have resulted from the nontransferability of such endorsements upon the disability or death of the vessel owner or of an operator whose presence on board the permitted vessel is a condition for the validity of the endorsement. To alleviate such hardships, the Council proposes that the Director, Southeast Region, NMFS, have authority to transfer or revise a red snapper endorsement, either temporarily or permanently, upon the disability or death of such owner or operator. Transfer/revision would be in accordance with instructions of the owner/operator or his/her legal guardian, in the case of a disabled owner/operator, or of the will or executor of the estate, in the case of a deceased owner/operator. This proposed rule would also clarify that a change of ownership of a vessel with a reef fish permit upon disability or death of an owner is considered a purchase of a permitted vessel for which the current provisions of the regulations at 50 CFR 641.4(1)(3) apply.

**Availability of Amendment 7**

Additional background and rationale for the measures discussed above are contained in Amendment 7, the availability of which was announced in the **Federal Register** (58 FR 52073, October 6, 1993).

**Minority Report**

A minority report signed by three Council members objected to the requirements for dealer permits and recordkeeping and the prohibition on sale of reef fish except between permitted dealers and permitted fishing vessels. The three Council members believe these measures constitute restrictions on free enterprise and duplication of reporting requirements. Copies of the minority report are available (see ADDRESSES). The final rule will address the concerns of the minority report and respond to comments on the proposed rule received by NMFS during the 45-day public comment period.

**Additional Changes Proposed by NMFS**

The current regulations allow an owner to transfer a reef fish vessel permit or a red snapper endorsement to another vessel "owned by him or her" (50 CFR 641.4(l)(2) and (n)(2)). In recognition that vessels are frequently owned by corporations, for clarity, and for consistency with language proposed in Amendment 5, NMFS proposes to revise the quoted language to read "owned by the same entity."

The current regulations require dealers to provide certain information "on forms provided" (50 CFR 641.5(d)). In practice, designees of the Science and Research Director obtain the required information directly from dealers without the dealers having to fill out a form. Accordingly, NMFS proposes to remove the language regarding a reporting form.

**Relationship to Amendment 5**

The provisions in this proposed rule—in particular, the transfers of reef fish trap endorsements—should be read in conjunction with changes in the management regime for reef fish that are contained in Amendment 5. The proposed rule to implement Amendment 5 was published on October 6, 1993 (58 FR 52063).

**Classification**

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 7, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a regulatory impact review (RIR) as part of Amendment 7, which concludes that this rule, if adopted, would have effects summarized as follows. Requiring dealers to have permits and to maintain records of reef fish purchased would result in net economic benefits. Allowing transfers of reef fish trap endorsements and red snapper endorsements would have net social benefits, but essentially no effects in terms of economic efficiency. Additional analysis and discussion are contained in the RIR, a copy of which is available (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Although the "substantial number" threshold would be met in the measure requiring dealer permits and recordkeeping, the minimal costs of permits and recordkeeping would not constitute a "significant economic impact" on those small entities. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impacts on the environment as a result of this rule. The EA is available (see **ADDRESSES**) and comments on it are invited.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

An informal consultation under the Endangered Species Act was concluded for Amendment 7 on August 31, 1993. As a result of the informal consultation, the Regional Director determined that fishing activities under this rule are not likely to adversely affect endangered or threatened species or critical habitat.

This proposed rule contains two new collection-of-information requirements

subject to the Paperwork Reduction Act, specifically, applications for dealer permits and the requirement that dealers maintain for at least 1 year their records of reef fish purchases from fishing vessels. The dealer permitting requirement would add the reef fish fishery as an additional option on the current dealer permit application form. The maintenance of dealer records of reef fish purchased from fishing vessels would formalize what is considered to be the standard industry practice of maintaining such records and, for dealers currently conforming to that standard, would not be an additional requirement. These collection-of-information requirements have been submitted to the Office of Management and Budget for approval. The public reporting burden for the dealer permitting collection of information is estimated to average 5 minutes per response. The public reporting burden for the maintenance of dealer records collection of information is estimated to average 40 minutes per response for those few dealers who are not currently maintaining such records. These burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, and to the Office of Management and Budget (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

**List of Subjects in 50 CFR Part 641**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 21, 1993.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

## PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.4, paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a)(1)(i) through (a)(1)(v) and paragraphs (c) through (n) are redesignated as paragraphs (d) through (o); paragraph (o), as published as a proposed rule at 58 FR 52063, October 6, 1993, is redesignated as paragraph (p); in newly designated paragraph (m) introductory text, the reference to "this paragraph (l)" is revised to read "this paragraph (m)"; in newly designated paragraphs (m)(2) and (n)(2), the phrase "owned by him or her" is revised to read "owned by the same entity"; paragraph (b) heading and newly designated paragraphs (d) through (i) and (p)(3) are revised; and new paragraph (a)(1) heading, and paragraphs (a)(2), (c), and (n)(3) are added to read as follows:

**§ 641.4 Permits and fees.**

(a) * * *

(1) *Annual vessel permits.* * * *

(2) *Annual dealer permits.* A dealer who receives from a fishing vessel reef fish harvested from the EEZ of the Gulf of Mexico must obtain an annual dealer permit. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state(s) where he/she operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Application for an annual vessel permit.* * * *

(c) *Application for an annual dealer permit.* (1) An application for a dealer permit must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Business name; mailing address, including zip code, of the principal office of the business; telephone number; employer identification number, if one has been assigned by the Internal Revenue Service; and the date the business was formed.

(iii) The address of each physical facility at a fixed location where the business receives fish.

(iv) Name, official capacity in the business, mailing address including zip code, telephone number, social security number, and date of birth of the applicant.

(v) Any other information requested by the Regional Director that may be necessary for the issuance or administration of the permit.

(d) *Change in application information.* The owner or operator of a vessel with a permit or a dealer with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) or (c) of this section. The permit is void if any change in the information is not reported within 30 days.

(e) *Fees.* A fee is charged for each permit application submitted under paragraph (b) or (c) of this section and for each fish trap identification tag required under § 641.6(d). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application or request for fish trap identification tags.

(f) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and, in the case of an application for a vessel permit, the applicant meets the earned income requirement specified in paragraph (b)(2)(xi) of this section. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 641.5.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(g) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the vessel or dealership is sold.

(h) *Transfer.* A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided under paragraph (m) of this section for a vessel permit, as provided under paragraph (n) of this section for a red snapper endorsement, or as provided under paragraph (p) of this section for a fish trap endorsement. A person who acquires a vessel or dealership who desires to conduct activities for which a permit or endorsement is required must apply for a permit or endorsement in accordance with the provisions of this section. The application must be accompanied by a copy of a signed bill of sale or equivalent acquisition papers.

(i) *Display.* A vessel permit or endorsement issued under this section must be carried on board the vessel and such vessel must be identified as provided for in § 641.6. A dealer permit issued under this section must be

available at the dealer's principal place of business. In addition, a copy of the dealer's permit must accompany each vehicle that is used by that dealer to pick up from a fishing vessel reef fish harvested from the EEZ of the Gulf of Mexico. The operator of a vessel, a dealer, or a vehicle operator must present the permit or, in the case of a vehicle operator, a copy of the permit, for inspection upon the request of an authorized officer.

* * * * *

(n) * * *

(3) The provisions of paragraph (n)(2) of this section notwithstanding, special provisions apply in the event of the disability or death of the owner of a vessel with a red snapper endorsement or the disability or death of an operator whose presence on board the vessel is a condition for the validity of a red snapper endorsement.

(i) In the event that a vessel with a red snapper endorsement has a change of ownership that is directly related to the disability or death of the owner, the Regional Director may issue a red snapper endorsement, temporarily or permanently, with the reef fish permit that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a reef fish permit upon disability or death of an owner is considered a purchase of a permitted vessel and paragraph (m)(3) of this section applies regarding a reef fish permit for the vessel under the new owner.)

(ii) In the event of the disability or death of an operator whose presence on board a permitted vessel is a condition for the validity of a red snapper endorsement, the Regional Director may revise and reissue an endorsement, temporarily or permanently, to the permitted vessel. Such revised endorsement will contain the name of a substitute operator specified by the operator or his/her legal guardian, in the case of a disabled operator, or by the will or executor/administrator of the estate, in the case of a deceased operator. As was the case with the replaced endorsement, the presence of the substitute operator on board and in charge of the vessel is a condition for the validity of the revised endorsement. Such revised endorsement will be reissued only with the concurrence of the vessel owner.

* * * * *

(p) * * *

(3) A fish trap endorsement is not transferable upon change of ownership of a vessel with a fish trap endorsement, except when such change of ownership is from one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father.

* * * * *

3. In § 641.5, paragraph (d) is revised to read as follows:

**§ 641.5 Recordkeeping and reporting.**

* * * * *

(d) *Dealers.* A person who receives reef fish by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for or lands reef fish from the EEZ or adjoining state waters, must maintain records and submit information as follows:

(1) A dealer must maintain at his/her principal place of business a record of reef fish harvested from the Gulf of Mexico that he/she receives. The record must contain the name of each fishing vessel from which reef fish were received and the date, species, and quantity of each receipt. A dealer must retain such record for at least one year after receipt date and must provide such record for inspection upon the request of an authorized officer or the Science and Research Director.

(2) When requested by the Science and Research Director, a dealer must provide the following information from his/her record of reef fish received: total poundage of each species received during the requested period, average monthly price paid for each species by market size, and proportion of total poundage landed by each gear type.

(3) The operator of a car or truck that is used to pick up from a fishing vessel reef fish harvested from the Gulf of Mexico must maintain a record containing the name of each fishing vessel from which reef fish on the car or truck have been received. The vehicle operator must provide such record for inspection upon the request of an authorized officer.

* * * * *

4. In § 641.7, paragraphs (a), (b), and (c) are revised and new paragraphs (bb), (cc) and (dd) are added to read as follows:

**§ 641.7 Prohibitions.**

* * * * *

(a) Falsify information specified in § 641.4 (b) or (c) on an application for a permit, information on an application for an endorsement on a permit, or information regarding a transfer or revision of an endorsement on a permit.

(b) Fail to display a permit or endorsement, as specified in § 641.4(i).

(c) Falsify or fail to maintain, submit, or provide records or information required to be maintained, submitted, or provided, as specified in § 641.5 (b) through (h).

* * * * *

(bb) Receive from a fishing vessel, by purchase, trade, or barter, reef fish harvested from the EEZ without a dealer permit, as specified in § 641.4(a)(2).

(cc) Sell, trade, or barter or attempt to sell, trade, or barter reef fish harvested aboard a vessel for which a permit has been issued under § 641.4 to a dealer that does not have a permit issued under § 641.4, as specified in § 641.28(a).

(dd) As a permitted dealer, purchase, trade, or barter or attempt to purchase, trade, or barter reef fish harvested aboard a vessel that does not have a permit issued under § 641.4, as specified in § 641.28(b).

5. Sections 641.28 and 641.29 are redesignated as §§ 641.29 and 641.30 and new § 641.28 is added to read as follows:

**§ 641.28 Restrictions on sale/purchase.**

(a) Reef fish harvested aboard a vessel for which a currently valid permit has been issued under § 641.4 may be sold, traded, or bartered or attempted to be sold, traded, or bartered only to a dealer who has a currently valid permit issued under § 641.4.

(b) Reef fish may be purchased, traded, or bartered or attempted to be purchased, traded, or bartered by a dealer who has a currently valid permit issued under § 641.4 only from a vessel for which a currently valid permit has been issued under § 641.4.

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**50 CFR Part 651**

**[Docket No. 931076-3276; I.D. 100193A]**

**RIN 0648-AD33**

## Northeast Multispecies Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement the conservation and management measures contained in Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). If approved, Amendment 5 would substantially revise management of the

Northeast Multispecies Fishery, especially regarding permits, reporting and recordkeeping requirements and effort control in the fishery. The intent of this Amendment is to reduce the fishing mortality rate to eliminate the overfished condition of the principal stocks of multispecies finfish.

**DATES:** Comments on the proposed rule must be received on or before December 6, 1993. Information from vendors supporting their request for VTS certification must be received by November 26, 1993.

**ADDRESSES:** Comments on proposed Amendment 5 or its supporting documents should be sent to Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Street, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Multispecies Plan."

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should be sent to the Northeast Regional Director (ADDRESS LISTED ABOVE) and the Office of Management and Budget (Attention NOAA Desk Officer), Washington, DC 20503.

Copies of Amendment 5, its regulatory impact review (RIR) and the initial regulatory flexibility analysis (IRFA) contained within the RIR, and the final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097.

Comments from sources interested in certifying fishing vessel tracking systems should be sent to Richard B. Roe, Northeast Regional Director (ADDRESS LISTED ABOVE). Mark the outside of the envelope "Comments on VTS."

**FOR FURTHER INFORMATION CONTACT:** John G. Terrill, Fishery Policy Analyst, 508–281–9252.

**SUPPLEMENTARY INFORMATION:**

## Background

The New England Fishery Management Council (Council) approved at its June meeting a package of measures for inclusion in Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP). The FMP has been in effect since 1986, and has been amended four times. The two main objectives of Amendment 5 are to eliminate the overfished condition of the principal groundfish stocks (cod, haddock, and yellowtail flounder) by reducing the rate at which fish are caught by 50 percent over the next 5 to 7 years, and to reduce the bycatch of harbor porpoise in the sink gillnet fishery.

The FMP manages the stocks of cod, haddock, pollock, yellowtail flounder, winter flounder (blackback), witch flounder (grey sole), windowpane flounder, American plaice (dabs), redfish, white hake, red hake, silver hake (whiting), and ocean pout. The first ten species listed are referred to as "large-mesh" groundfish because they are caught with nets that have a specified minimum size. These species are defined as "regulated species" in this rule. The last three are caught with mesh smaller than the minimum size.

This proposed rule includes: A moratorium on most new entrants into the multispecies finfish fishery; limitations on upgrading of vessel size and engine horsepower; exceptions to the moratorium for vessels using fewer than 4,500 rigged hooks or fishing under a possession limit; an effort-reduction program where vessels fish using a combination of blocks of time out of the fishery and time spent at the dock (Fleet days-at-sea), unless they elect to take an allocation of actual Individual Days-At-Sea (DAS) that vessels may fish for multispecies finfish; exceptions to the effort-reduction program for vessels 45 feet (13.7 m) and less in length, vessels fishing fewer than 4,500 hooks, vessels fishing sink gillnet gear, and vessels at sea for less than a day; a possession limit restriction for scallop dredge vessels; a requirement to purchase and install a Vessel Tracking System (VTS) unit for vessels fishing individual DAS and vessels that have historically fished with a scallop dredge and otter trawl; a card monitoring or call-in system for other vessels in the Fleet DAS reduction program; a minimum mesh size in the Southern New England/Mid-Atlantic area; an increase in the minimum mesh size in the Gulf of Maine/Georges Bank area; exceptions to the mesh-size regulations for vessels possessing less than the possession limit, and for vessels fishing with purse seine or midwater trawl gear; minimum fish sizes; a prohibition on pair trawling; seasonal mesh requirements in the Stellwagen Bank/Jeffreys Ledge area; a suspension of the closure of Area I except for fixed gear; a modification of Closed Area II in area and time; a closure of an area in the vicinity of the Nantucket Lightship when a research trawl survey index is reached; a requirement that vessels fishing for northern shrimp use a finfish excluder device; permits for vessel operators and dealers; mandatory reporting for permitted vessels and dealers; mandatory observers on vessels if required by the Regional Director; and framework measures to adjust the effort-control program and other measures. This proposed amendment also includes definitions of overfishing for ocean pout, pollock, red hake, white hake, and windowpane flounder.

The following summarizes the Council's Amendment 5 as submitted to the Secretary on September 27, 1993: A moratorium during the effort-reduction period would be imposed on the issuance of permits to vessels that have not historically participated in the multispecies fishery, except that after the third year the Council may recommend on an annual basis the issuance of new permits. The Council established a control date of February 21, 1991 (56 FR 22846, May 17, 1991), as a cutoff date for determining future participation in the multispecies finfish fishery. A vessel would qualify for full participation in the multispecies fishery if it obtained a Federal multispecies permit as of the control date or renewed a Federal multispecies permit in 1991, and had landings of multispecies finfish between January 1, 1990, and the control date. Provisions would be made for vessels under construction or refitting at the time of the control date as well as for replacement of eligible vessels. Exceptions to the moratorium are proposed for boats fishing exclusively with fewer than 4,500 hooks and boats possessing or landing per trip 500 pounds (226.8 kg) or less of regulated species.

The Amendment includes an effort-reduction program in which the number of days spent fishing for groundfish would be limited. Vessel owners would be subject to one of two alternatives while fishing for large-mesh groundfish: (1) The vessel would be limited to possessing or landing per trip 500 pounds or less of regulated species for four periods of time of at least 20 consecutive days (of the vessel owner's choosing), and the vessel would have to layover 1 day at the dock for every 2 days spent fishing for groundfish; or (2) the vessel could elect to receive an individual allocation of days at sea, based on the vessel's history of fishing for groundfish, which would be reduced in equal annual increments.

An exemption from these effort-reduction requirements would apply to boats 45 feet (13.7 m) or smaller and all boats groundfishing exclusively throughout the year with fewer than 4,500 hooks per day.

All vessels possessing more than the "possession limit" (500 pounds (226.8 kg)) of the ten large-mesh groundfish

species would have to fish with nets in compliance with the appropriate mesh size regulations described below. Vessels issued Federal scallop permits and fishing with scallop dredges would be prohibited from possessing more than the possession limit at any time.

In the Gulf of Maine/Georges Bank (GOM/GB) area, vessels would be required to fish a 6 inch (15.24 cm) diamond or square minimum mesh size throughout the net. In the Nantucket Lightship regulated mesh area, vessels would be required to fish with a 5½ inch (13.97 cm) diamond or square minimum mesh size throughout the net in 1994, and a 5½ inch (13.97 Inch) diamond or 6 inch (15.24 cm) square minimum mesh size in 1995 and thereafter. In addition, with the exception of vessels fishing in an area designated as a small mesh area of the GOM/GB that possess or land less than 500 pounds (226.8 kg) of regulated species, vessels in these areas would be prohibited from having on board net or pieces of net with mesh smaller than the minimum size.

In the Southern New England regulated mesh area, vessels would be required to fish with a minimum mesh size of 5½ inch (13.97 cm) diamond or square mesh in the first year when in possession of more than 500 pounds (226.8 kg) of regulated species. In the second year and thereafter, the minimum mesh size would be 5½ inch (13.97 cm) diamond or 6 inch (15.24 cm) square mesh. When in possession of more than 500 pounds (226.8 kg) of regulated species in the Mid-Atlantic regulated mesh area, the minimum mesh size would be the same as the mesh requirements of the Summer Flounder Fishery Management Plan (currently 5½ inch (13.97 cm) diamond or 6 inch (15.24 cm) square mesh in the codend for at least 75 continuous meshes forward of the terminus of the net, or the terminal one-third portion of the entire net, whichever is less). In this area, all vessels, including vessels possessing on board or landing per trip more than 500 pounds (226.8 kg) regulated species, could have mesh smaller than the minimum size on board, provided the small mesh is stowed in accordance with the regulations whenever the vessel possesses more than the 500 pound (226.8 kg) limit.

In this proposed rule, the boundaries of the regulated mesh areas are extended, beyond the provision in Amendment 5, to the shoreline. This modification is necessary to reconcile the provision with a competing FMP measure that vessels permitted under § 651.4 of these regulations, and in possession of more than 500 pounds (226.8 kg) of regulated species, are subject to the mesh restrictions, regardless of whether fishing occurs in state or Federal waters. Without this change, it would appear that Federal mesh size restrictions stop at states' seaward boundaries for Federally permitted vessels, a result that would contravene the Council's intent. Therefore, references in Amendment 5 to the term "territorial sea" are replaced in the proposed rule by the term "shoreline."

There are proposed exceptions to the mesh size regulations for purse seiners and midwater-trawl vessels fishing for pelagic species.

Gillnet regulations are proposed to reduce harbor porpoise bycatch using four-day blocks of time when all gear is out of the water. The Council would evaluate the harbor porpoise bycatch reduction measures for their impact on groundfishing effort reduction, and make appropriate adjustments through the framework mechanism to implement effort-reduction measures commensurate with the other sectors of the fishery.

Effort monitoring would be required through either an electronic Vessel Tracking System (VTS) or a card reporting system. In addition to these systems, a call-in system is included in these proposed regulations as an alternative, in the event the Regional Director determines that either of the required systems is not feasible or available in time for implementation of Amendment 5 or thereafter. This alternate system is deemed necessary and appropriate under 16 U.S.C. 1855(d) of the Magnuson Act, which states that the Secretary may promulgate regulations necessary to discharge his responsibility to carry out the Magnuson Act.

All vessels and dealers permitted for the multispecies fishery would be required to report all catch and landing data.

A prohibition on pair trawling for groundfish is proposed.

Adjustments to the minimum fish sizes are also proposed. With the exception of winter flounder, which would increase to 12 inches (27.9 cm), the minimum fish sizes would be the same as specified in current regulations in 50 CFR part 651 in year one. In year two, the minimum fish sizes would be evaluated and would be set at the length at which, based on the best scientific information, 25 percent of the fish (at the minimum size) are retained by the regulated mesh size. For the flounders managed by the FMP, the mesh selectivity size and type use to determine minimum fish sizes would be 5½ inch (13.97 cm) diamond mesh, while for the cod-like species, the mesh size and type would be 6-inch (15.24 cm) diamond mesh. Fillets or fish parts would have to meet the minimum size requirements, although there are provisions allowing persons on a vessel to possess up to 25 pounds of fillets smaller than the minimum size provided they were cut from a legal-size fish, and not sold, traded, or bartered.

A seasonal 6 inch (15.24cm) square mesh requirement is proposed to protect concentrations of juvenile cod on Stellwagen Bank and Jeffreys Ledge from March through July.

The Amendment also proposes a frameworking provision to allow closure of the Nantucket Lightship Area for up to one year when there are very large year classes of juvenile yellowtail detected by the NMFS bottom trawl survey index.

Proposed measures also include an expansion of Area II (the Georges Bank haddock spawning area closure) in size beginning the first year of implementation, and in time from four to six months (January through June) in the third year of implementation. The current Area I closure would be revised to apply only to gillnet gear from February through May. The closure of Area I could be applied to other gear types under framework measures included in Subpart C of the regulations if it is determined that spawning fish are located in the area.

A finfish excluder device requirement is proposed for the northern shrimp fishery.

Required permits are proposed for all vessel operators landing multispecies finfish and all dealers processing multispecies finfish, with potential suspension or revocation of the permits for violations of the regulations. Vessel operators with suspended or revoked permits could not be on board a Federally permitted vessel in any capacity.

To gather more specific data on the multispecies resource, Federally permitted vessels would be required to take an observer if requested by the Regional Director. The observer requirement could be waived by the Regional Director if the vessel is unsafe or not equipped to carry an observer on board. The cost of an observer's accommodations and food would be borne by the vessel owner.

In accordance with Federal guidelines, the Amendment provides measurable definitions of overfishing for those stocks in the plan for which overfishing had not yet been defined. These stocks are: red hake, white hake,

ocean pout, windowpane flounder, and pollock.

**Framework Measures**

Amendment 5 includes framework measures to implement adjustments to the effort-control and other measures, as needed, to meet the Amendment's objectives. At least annually, the Regional Director would provide the Council with information on the status of the multispecies finfish resource and provide harvest targets for the upcoming year. The annual harvest targets would be determined by the Stock Assessment Review Committee and would be based on the projected fishing mortality rate reductions required for the principal multispecies stocks (Gulf on Maine cod, Georges Bank cod, Georges Bank haddock, Georges Bank yellowtail flounder, and Southern New England yellowtail flounder.

Within 60 days of receipt of that information, the Council's Plan Development Team (PDT) would assess the condition of the multispecies finfish resource to determine the adequacy of the total allowable DAS reduction schedule, to achieve the target fishing mortality rate and the annual harvest targets determined from that rate. In addition, the PDT would make a determination whether other resource conservation issues exist that require a management response to meet the goals and objectives outlined in the FMP. The PDT would report its findings and recommendations to the Council. In its report to the Council, the PDT would provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

After receiving the PDT's findings and recommendations, or at any other time deemed necessary, the Council would determine whether adjustments or additions to the management measures are necessary to meet the goals and objectives of the FMP. The Council would then develop and analyze appropriate management measures, over the span of at least two Council meetings. The Council would have to select management measures from the list specified in the proposed rule or as otherwise contained in the FMP. After developing the proposed management measures the Council would be required to make a recommendation to the Regional Director. The recommendation would have to include supporting rationale and, if management measures are recommended, an analysis of the impacts and a recommendation whether to publish the management measures as a final rule without first publishing them as a proposed rule.

To recommend that the management measures be published as a final rule without first publishing them as a proposed rule, the Council would have to consider at least the following factors and provide supporting analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based provides adequate time to publish a proposed rule and have the regulations in place for the entire fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to provide further protection for the multispecies finfish resource; and

(4) Whether there would be a continuing evaluation of management measures adopted following their promulgation as a final rule. The Regional Director would consider these factors in determining whether to promulgate critical management measure adjustments without a proposed rule and to determine whether there is good cause under the Administrative Procedure Act to waive the public comment and delayed-effectiveness period.

If the Council recommends additions or adjustments to management measures and if the Regional Director concurs with the Council's recommendations, including any recommendation to publish the management measures as a final rule without a proposed rulemaking, the action would be published as a final rule without additional public comment. The Regional Director could choose the option of publishing the recommended management measures as a proposed rule, however, regardless of the Council's recommendation. If the Regional Director does not concur with the Council's recommendation, the Council would be notified in writing of the non-concurrence. If the Council does not recommend any additions or adjustments to current management measures, no further action would be required.

**Disapproved Measures**

Two of the measures contained in Amendment 5 have been disapproved by the Secretary and are not included in this proposed rule. A 5,000 pound (2,268 kg) haddock possession limit and an exemption for vessels fishing in state waters for winter flounder have been determined to be inconsistent with the national standards of the Magnuson Act.

The haddock spawning stock levels are at all-times lows; current landings, which continue to decline, reflect this situation. Further declines in the spawning stock will occur unless the fishing mortality rate is reduced significantly from its current level.

The 5,000 pound (2,268 kg) possession limit even in combination with other measures would not reduce fishing mortality sufficiently to ensure the possibility of restoring this stock and in fact may be counter-productive to meet the Amendment's objectives pertaining to elimination of overfishing. In 1991, only 1.3% of the total trips that landed haddock would have been affected by the haddock possession limit. Much greater reductions are necessary to allow the haddock stocks to rebuild to viable commercial levels. In addition, with continued declines in landings and a closure of many of the Canadian fisheries, haddock prices can be expected to increase; the increased demand in conjunction with a 5,000 pound (2,268 kg) limit would create an incentive to target haddock, with an increased potential for highgrading. NMFS has requested the Council to consider much more restrictive measures regarding haddock, including a prohibition on landing haddock.

The winter flounder exemption would have allowed vessels to fish under state regulations in state waters provided that the state's regulations conform with the Atlantic States Marine Fisheries Commission (ASMFC) Winter Flounder Fishery Management Plan. This would have allowed vessels to fish with a smaller mesh size or possess multispecies smaller than the minimum size that is contained in Federal regulations. This measure was added to the Amendment without adequate analysis, was poorly defined, and likely would have increased mortality of winter flounder and other multispecies. Further, the measure raised problems with consistency among state regulations and other fishery management plans as well as significant enforcement and administrative concerns. The ASMFC has since sent a letter to NMFS requesting that this measure be disapproved so that the Council may immediately consider more acceptable alternate measures.

The Council will have the opportunity to reconsider, modify, and possibly resubmit these measures under the Magnuson Act's 60-day accelerated review schedule.

**Vessel Tracking System Specifications**

This amendment proposes that vessel owners electing to fish under the Individual DAS effort-reduction program or as combination vessels (scallop vessels that also have a history of trawling for groundfish), be required to purchase and install NMFS-certified electronic tracking systems to enable a vessel's DAS to be monitored. Proposed § 651.28 of these implementing regulations sets forth technical specifications these systems would be required to meet to be certified. Concurrent with this proposed rule, NMFS is requesting vendors interested in having systems certified by NMFS for use in this fishery to submit information to the Northeast Regional Director (see **ADDRESSES**) showing that the system meets each of the specifications included in proposed § 651.28(a)(2). This information must be received no later than November 26, 1993. A similar request was made in a proposed rule (58 FR 46606, September 2, 1993) for Amendment 4 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery. Vendors that have responded to the request for certification contained in that proposed rule need not resubmit the information for this proposed rule. The Regional Director will publish a list of certified systems in the **Federal Register**.

To provide interested members of the public with a clear understanding of what would be required if Amendment 5 is approved, and because this amendment would substantially revise every provision of the current requirements, 50 CFR part 651 is published here in its entirety, as it is proposed to be amended.

If Amendment 5 is approved, dates of implementation of various administrative management measures in the Amendment may be staggered to some extent to minimize any adverse financial impacts on fishermen and to provide them a reasonable amount of time to become familiar with permit requirements, VTS or other monitoring requirements, and reporting requirements.

**Classification**

Section 304(a)(1)(D)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires the Secretary to publish implementing regulations proposed by a Council within 15 days of the receipt of an amendment and proposed regulations. At this time, except for the haddock possession limit and winter flounder state waters exemption, the Secretary has not determined whether the Amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared a final supplemental environmental impact statement (FSEIS) for Amendment 5 describing the possible impacts on the environment as a result of this rule. A copy of the FSEIS may be obtained from the Council (see **ADDRESSES**).

A formal consultation under the Endangered Species Act was conducted for the initial FMP in 1986. The known level of endangered species interactions with fishing gear used under the FMP was described and determined not likely to jeopardize the continued existence of those species. The issue was re-evaluated in a Biological Opinion for the Marine Mammal Exemption Program (MMEP) initiated in 1989 under the Marine Mammal Protection Act of 1972. New information regarding incidental take levels was introduced and the same conclusion of no jeopardy was reached. One of the goals of Amendment 5, as requested by NMFS, is to develop appropriate measures to reduce the incidental take of marine mammals and endangered species in the fisheries. The extensive observer effort placed on groundfish sink gillnet fisheries under the MMEP and the large whale observation network that has developed in the Northeast Region have increased the monitoring of entanglement events in the Region. However, the number of entangled whales observed has not increased. The combination of a stable level of entanglements since the issue was first addressed in 1986, and the implementation of significant effort reduction under Amendment 5, makes it likely that the earlier conclusion of no jeopardy is still valid. A Biological Assessment has been prepared by the Council that describes this determination in detail. A final Biological Opinion is in preparation and will be available during the comment period for the FSEIS.

The Council prepared an initial regulatory flexibility analysis (IRFA) that concludes that this proposed rule, if adopted, may have significant economic impacts on a substantial number of small entities. There are approximately 1,500 active vessels that participate in the fishery; almost all of them are considered small entities according to the criteria established by the Small Business Administration. Amendment 5 excludes the majority of small vessels, the boats 45 feet and under, from effort reduction measures. Therefore, the proposed regulations would probably not have a significant impact on these vessels, which constitute about 64 percent of the qualified vessels and landed approximately 15 percent of the groundfish in 1991. However, the proposed reduction in effort may have considerable impacts on those vessels that are longer than 45 feet (36 percent of the qualified vessels that landed approximately 85 percent of the groundfish in 1991). These vessels are expected to incur significant short-term losses in revenue that will be offset by long-term gains. Therefore, this action is expected to be significant in terms of the Regulatory Flexibility Act. A copy of the IRFA may be obtained from the Council (see **ADDRESSES**).

The proposed rule contains eight new collection-of-information requirements and revises seven existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. The public's reporting burdens for these collection-of-information requirements are indicated in the parentheses in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements are:

(1) Dealer permits, OMB #0648–0202 (5 minutes/response);

(2) Operator permits, OMB #0648–0202 (1 hour/response);

(3) Notice requirements for observer deployment, OMB #0648–0202 (2 minutes/response);

(4) Proof of installation of vessel tracking system, OMB #0648–0202 (2 minutes/response);

(5) Automated vessel tracking system, OMB #0648–0202 (0 minutes/response);

(6) Vessel call-in or electronic card reporting requirement, OMB #0648–0202 (2 minutes/response);

(7) Notice of entry/exit of Closed Area II due to hazardous weather, OMB #0648–0202 (2 minutes/response);

(8) Vessel logbooks, OMB #0648–0212 (5 minutes/response).

Revisions to the existing requirements are:

(1) Three new vessel permit categories, OMB #0648–0202, are created (limited access, hook gear only permits, possession limit only permits) with no increase in burden above that

currently associated with vessel permits;

(2) Limited access permits, OMB #0648–0202, will be issued to vessels with documented history of participation in the fishery. Appeal of denied permits will require written submission (0.5 hours/response);

(3) Limited access permits, OMB #0648–0202, will specify allowed days-at-sea. Appeal of the days-at-sea allocation will require written submission (2 hours/response);

(4) The Cultivator Shoals Exemption Program, OMB #0648–0202, will require vessel notification but reporting requirements are eliminated (2 minutes/response);

(5) The Midwater Trawl Exemption Program, OMB #0648–0202, will require vessel notification (2 minutes/response);

(6) Dealer purchase reports, which were previously voluntary, OMB #0648–0229, will be mandatory (2 minutes/response);

(7) Annual processed products reports, which were previously voluntary, OMB #0648–0018, will be mandatory (2 minutes/response).

Send comments regarding these burden estimates or any other aspect of these collections-of-information, including suggestions for reducing the burdens, to Richard Roe (see **ADDRESSES**), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 651**

Fisheries, Reporting and recordkeeping requirements.

Dated: October 20, 1993.

**Samuel W. McKeen,**

*Program Coordinator, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be revised to read as follows:

## PART 651—NORTHEAST MULTISPECIES FISHERY

**Subpart A—General Provisions**

Sec.



**Subpart B—Management Measures**



**Subpart C—Framework Adjustments to Management Measures**



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

**Subpart A—General Provisions**

**§ 651.1 Purpose and scope.**

This part implements the Fishery Management Plan for the Northeast Multispecies Fishery (FMP), as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

**§ 651.2 Definitions.**

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

*Atlantic sea scallop* or *scallop* means the species *Placopecten magellanicus* throughout its range.

*Bottom-tending gillnet or sink gillnet* means any gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

*Butterfish* means *Peprilus triacanthus.*

*Chair* means the Chair of the Multispecies (Groundfish) Oversight Committee of the Council.

*Charter and party boats* means vessels carrying recreational fishing persons or parties for a per captia fee or for a charter fee.

*Codend* means the terminal section of a trawl net in which captured fish may accumulate.

*COLREGS Demarcation Lines* means the lines of demarcation delineating those waters upon which mariners must comply with the International Regulations for Preventing Collisions at Sea, 1972 (33 CFR part 80), and those waters upon which mariners shall comply with the Inland Navigation Rules.

*Combination vessel* means a vessel that has fished in any one calendar year with scallop dredge gear and otter trawl gear during the period 1988 through 1990, and that is eligible for an allocation of DAS under the FMP and the Atlantic Sea Scallop Fishery Management Plan and has applied for or been issued a Federal limited access scallop permit.

*Committee* means the Multispecies (Groundfish) Oversight Committee of the Council.

*Council* means the New England Fishery Management Council.

*DAS (Day(s)-at-sea)* means the 24-hour periods of time during which a fishing vessel is absent from port for purposes of multispecies finfish fishing.

*Dealer* means any person who receives multispecies finfish for a commercial purpose from the owner or operator of a vessel, other than exclusively for transport on land.

*Dredge* or *dredge gear* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of Atlantic sea scallops.

*Fishery Management Plan (FMP)* means the Fishery Management Plan for Northeast Multispecies Fishery, as amended.

*Gillnet* means fishing gear comprised of a net hung from a float-line, with a lead-line on the bottom, such that it is designed to be or is configured vertically in the water column to entangle passing fish.

*Gross registered tonnage* means the gross tonnage specified on the U.S. Coast Guard documentation.

*Harbor porpoise* means *Phocoena phocoena.*

*Harbor Porpoise Review Team* (HPRT) means a team of scientific and technical experts appointed by the Council to review, analyze, and propose harbor porpoise take mitigation alternatives.

*Herring* means Atlantic herring, *Clupea harengus harengus,* or blueback herring, *Alosa aestivalis.*

*Hook gear* means fishing gear that is comprised of a hook attached to a line and includes, but is not limited to, longline, setline, jigs, troll line, rod and reel, and line trawl.

*Land* means to enter port with fish on board, to begin offloading fish, or to offload fish.

*Longline* gear means fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.

*Mackerel* means Atlantic mackerel, *Scomber scombrus.*

*Menhaden* means Atlantic menhaden, *Brevoortia tyrannus.*

*Midwater trawl gear* means trawl gear that is designed to fish for, capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

*Multispecies finfish or finfish* means the following finfish:

| | |
|---|---|
| *Gadus morhua* ..... | Atlantic cod. |
| *Glyptocephalus cynoglossus.* | Witch flounder. |
| *Hippoglossoides platessoides.* | American plaice. |
| *Limanda ferruginea* ..... | Yellowtail flounder. |
| *Macrozoarces americanus.* | Ocean pout. |
| *Melanogrammus aeglefinus.* | Haddock. |
| *Merluccius bilinearis* ..... | Silver hake. |
| *Pollachius virens* ..... | Pollock. |
| *Pseudopleuronectes americanus.* | Winter flounder. |
| *Scophthalmus aquosus* .. | Windowpane flounder. |
| *Sebastes marinus* ..... | Redfish. |
| *Urophycis chuss* ..... | Red hake. |
| *Urophycis tenuis* ..... | White hake. |

*NEFSC* means the Northeast Fisheries Science Center of the NMFS, NOAA.

*Northern shrimp* means *Pandalus borealis.*

*Offload* means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

*Operator* means the master, captain, or other individual on board a fishing vessel and in charge of that fishing vessel's operations.

*Pair trawl or pair trawling* means to tow a single net between two vessels for the purpose of, or that is capable of, catching multispecies finfish.

*Postmark* means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

*Purse seine gear* means an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear, or any net designed to be, or capable of being, used in such fashion.

*Recreational fishing* means fishing that is not intended to, nor does it result, in the barter, trade, or sale of fish.

*Recreational fishing vessel* means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are not considered recreational fishing vessels.

*Regional Director* means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

*Regulated species* means a subset of multispecies finfish that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

*Reporting month* means a period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

*Reporting week* means a period of time beginning at 0001 hours local time on Sunday; and ending at 2400 hours local time the following Saturday.

*Re-rig or re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for multispecies finfish.

*Rigged hooks* means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

*Scallop dredge vessel* means any fishing vessel, other than a combination vessel, that uses or is equipped for using dredge gear, and that has been issued or has applied for a Federal scallop permit.

*Squid* means *Loligo pealei* or *Illex illecebrosus.*

*Standard box* means a box, typically constructed of wax-saturated cardboard or wood, designed to hold 125 pounds (56.6 kg) of fish plus ice, and that has a volume of not more than 5,100 cubic inches (2.95 cubic feet or 83.57 cubic dm).

*Standard tote* means a box typically constructed of plastic, designed to hold 100 pounds (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 liters, or a volume of not more than 4320 cubic inches (2.5 cubic feet or 70.79 cubic dm).

*Transfer* means to begin to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another conveyance.

*Trip* is the period of time during which a fishing vessel is absent from port, beginning when the vessel leaves port and ending when the vessel returns to port.

*Under agreement for construction or reconstruction* means that the keel has been laid and that there is a written agreement to construct a fishing vessel.

*Vessel Tracking System* (VTS) means a vessel positioning system certified by NMFS for use on multispecies finfish vessels as required by this part.

*VTS unit* means a device installed on board a vessel used for vessel positioning as required by this part.

*Whiting* means *Merluccius bilinearis.*

**§ 651.3 Relation to other laws.**

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b), (c), (d) and (e) of this section.

(b) Additional regulations governing domestic fishing for squid, mackerel, and butterfish, which is affected by these rules, are found at 50 CFR part 655.

(c) Additional regulations governing domestic fishing for summer flounder, which is affected by these rules, are found at 50 CFR part 625.

(d) Additional regulations governing domestic fishing for Atlantic sea scallops, which is affected by these rules, are found at 50 CFR part 650.

(e) Nothing in these regulations supersedes more restrictive state management measures for multispecies finfish.

**§ 651.4 Vessel permits.**

Any vessel of the United States that fishes for, possesses, or lands multispecies finfish, except vessels that fish for multispecies finfish exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board an authorizing letter issued under § 651.4(a)(8)(v)(B), or a limited access permit, hook-gear-only permit, or possession-limit-only permit issued under this section.

(a) *Limited access permits.* Any vessel of the United States that possesses or lands more than the possession limit specified under § 651.27(a) of regulated species, except vessels fishing with fewer than 4,500 hooks that have been issued a hook-gear-only permit as specified in § 651.4(b), vessels fishing for regulated species exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board a valid Federal multispecies limited access permit, or an authorizing letter issued under § 651.4(a)(8)(v)(B). To qualify for a limited access permit under this part a vessel and its owner must meet the following criteria, as applicable:

(1) *Eligibility in 1994.* (i) To be eligible to obtain a limited access permit for 1994, a vessel and its owner must meet one of the following criteria:

(A) The vessel's owner held a Federal multispecies permit as of February 21, 1991, or renewed a Federal mutispecies permit in 1991, and the vessel landed multispecies finfish on at least one trip completed between January 1, 1990, and February 21, 1991, inclusive; or

(B) The vessel was under agreement for construction, reconstruction, or re-rigging, or was under written contract for purchase on or prior to February 21, 1991, and the vessel was issued a

Federal multispecies permit and landed multispecies finfish on at least one trip between February 21, 1991, and February 21, 1992; or

(C) The vessel is replacing a vessel that meets any of the criteria contained in paragraphs (a)(1)(i) (A) or (B) of this section, and the vessel meets the criteria described in paragraph (a)(4) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access permit based on that or another vessel's fishing and permit history, unless authorized by the Regional Director. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access permit and the DAS allocation according to paragraph (a)(3) of this section.

(iii) Applications for limited access permits under this section will not be accepted after December 31, 1994. This section does not affect annual permit renewals.

(2) *Eligibility in 1995 and thereafter.* To be eligible to renew or apply for a limited access permit after 1994, a vessel must have obtained a limited access permit for the preceding year, or the vessel must be replacing a vessel that had obtained a limited access permit for the preceding year, and, if applicable, the vessel must meet the criteria set forth in paragraph (a)(4). If more than one vessel owner claims eligibility to apply for a limited access permit based on one vessel's fishing and permit history after 1994, the Regional Director shall determine who is entitled to qualify for the limited access permit and the DAS allocation according to paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible for a limited access permit, the replacement vessel must meet the following criteria:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel it is replacing as of the date the vessel it is replacing was initially issued a 1994 limited access permit, as specified on a valid application for a permit under this section; except that, the horsepower of the replacement vessel may not exceed the horsepower of the vessel being replaced if the horsepower of the vessel being replaced has been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access permit; and

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel being replaced, based on specifications provided in the initial 1994 application for a limited access permit; except that, the length, gross registered tonnage, and net tonnage of the replacement vessel may not exceed the length, gross registered tonnage, and net tonnage of the vessel initially issued a limited access permit if any or all of these specifications have been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access permit. For the purposes of this paragraph, a state-registered or undocumented vessel will be considered to be 5 gross registered tons.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access permit, or to renew a limited access permit, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20% of the horsepower of the vessel initially issued a 1994 limited access permit, as specified in that vessel's permit application for a 1994 limited access permit; and

(ii) The vessel's length, gross registered tonnage, and net tonnage may be upgraded, whether through refitting or replacement, only once. Such an increase shall not exceed 10% each of the length, gross registered tonnage, and net tonnage of the vessel initially issued a 1994 limited access permit, as specified in that vessel's application for a 1994 limited access permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) A replacement of a vessel that does not result in increasing horsepower, length, gross registered tonnage, or net tonnage is not considered an upgrade for purpose of this section.

(6) *Notification of eligibility for 1994.* (i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence of meeting the criteria described in paragraph (a)(1) of this section, that they qualify for a limited access permit if they meet the additional requirements contained in paragraphs (d) through (h) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access permit by submitting the information described in paragraphs (a)(1) through (a)(5) of this section. In the event the application is denied, the applicant may request an appeal as specified in paragraph (a)(8) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access permit will be issued to the vessel.

(7) *Consolidation restriction.* Limited access permits and DAS allocations may not be combined or consolidated.

(8) *Appeal of denial of limited access permit.* (i) Any applicant denied a limited access permit may appeal the denial within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds and must be in writing, stating the grounds for the appeal:

(A) The information sued by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the appeal may be presented at a hearing before an officer appointed by the Regional Director. The hearing officer shall make a finding and recommendation to the Regional Director, which shall be advisory only.

(iv) Upon receiving the recommendation, the Regional Director will decide on the appeal. The Regional Director's decision is the final administrative decision of the Department of Commerce.

(v) *Status of vessels pending appeal of denial of a limited access permit.* A vessel for which a limited access permit has been denied may fish under the

Fleet DAS program if it has appealed the denial, the appeal is pending, and the vessel has on board a letter from the Regional Director, authorizing the vessel to fish under the Fleet DAS. The Regional Director will issue such a letter for the pendency of any appeal. If the appeal is denied, the Regional Director shall send a notice of denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(9) *Adjustments to limited access permits.* In 1996 and thereafter, the Council may adjust the criteria for issuance of a limited access permit. In making the adjustment, the Council shall take into consideration the fishing mortality goals and the objectives of the FMP. Any such adjustment may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(b) *Hook-gear-only permit.* Any vessel of the United States that does not have on board a valid limited access permit or a possession-limit-only permit, except vessels that fish exclusively in state waters for multispecies finfish and recreational fishing vessels, may possess and land multispecies finfish if it never sets, per day, or possesses, more than 4,500 rigged hooks as specified in § 651.33, and has on board a valid hook-gear-only permit. A hook-gear-only permit may be issued to a vessel regardless of whether it qualifies for a limited access permit.

(c) *Possession-limit-only permit.* Any vessel of the United States that does not have on board a valid limited access or hook-gear-only permit, and that possesses or lands no more than the possession limit specified under § 651.27(a) of multispecies finfish, except vessels that fish exclusively in state waters for multispecies finfish and recreational fishing vessels, must have aboard a valid possession-limit-only permit.

(d) *Condition.* Vessel owners who apply for a permit under this section must agree as a condition of the permit that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(e) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (a)(1) of this section. Applications for 1994 limited access permits must be submitted prior to the end of the 1994 calendar year. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, settlement sheets, grocery receipts, fuel receipts, and bridge logs.

(f) *Information requirements.* (1) An application for either a limited access, hook-gear-only, or possession-limit-only permit must contain the following information, and any other information required by the Regional Director: vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; and name and signature of the owner or the owner's authorized representative.

(2) Applications for a limited access permit must also contain the following:

(i) The engine horsepower of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before [insert effective date for these regulations implementing Amendment 5]. If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to [insert effective date for these regulations implementing Amendment 5] such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit before [insert effective date for these regulations implementing Amendment 5], sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within one year of the date of when the contract for the replacement engine was signed; and

(ii) The length, gross tonnage, and net tonnage of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before [insert effective date for these regulations implementing Amendment 5]. If the length, gross tonnage, or net tonnage was changed or a contract to change the length, gross tonnage or net tonnage had been entered into prior to [insert effective date for these regulations implementing Amendment 5] such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit, sufficient documentation to ascertain the different length, gross tonnage or net tonnage. However, the upgrade must be completed within one year of the date of when the contract for the upgrade was signed;

(iii) In 1994 and 1995, if the vessel owner is applying to fish under the individual DAS program specified in § 651.4, the application must include such election.

(iv) In 1995, if the vessel owner is applying to fish under a different DAS program than was assigned for 1994, the application must include such election.

(v) For 1996 and thereafter, the vessel must remain in the DAS program assigned to it in 1995.

(vi) If the vessel is a combination vessel, or if the applicant elects to take an Individual DAS allocation or to use a VTS unit although not required, a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described § 651.28(a).

(g) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and shall be specified with each application; if it does not, the application will be

considered incomplete for purposes of paragraph (h) of this section.

(h) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under § 651.4(a)(9), the Regional Director shall issue a Federal multispecies permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 651.7;

(ii) The application was not submitted and received in a timely fashion in accordance with paragraphs (a)(1) (iii) and (p) of this section;

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (a)(1) and (a)(2) of this section;

(iv) The applicant applying for a permit for a combination vessel, electing to participate in the Individual DAS program, or electing to use a VTS, has failed to meet all of the VTS requirements as described in § 651.28; or

(v) The applicant has failed to meet any other application requirement stated in 50 CFR part 651.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the applicant shall be considered abandoned.

(i) *Expiration.* A permit will expire upon the renewal date specified by the Regional Director.

(j) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR Part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (1) of this section. Federal Fisheries Permits issued under this section must be renewed annually.

(k) *Replacement.* Replacement permits for otherwise valid permits may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(l) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

(m) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, the permit holder must report the change in writing to the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(n) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(o) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(p) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(q) *Limited access permit renewal.* To renew a limited access permit, or apply for a limited access permit for a replacement vessel, in 1995 and thereafter, a completed application must be received by the Regional Director prior to the end of the year for which it is needed. Failure to renew or apply for a limited access permit in any year bars the renewal or issuance of the permit in subsequent years.

(r) *Voluntary relinquishment of limited access permits.* If a vessel's limited access permit is voluntarily relinquished to the Regional Director, no multispecies limited access permit may be re-issued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

(s) *Restriction on the issuance of limited access permits to vessels qualifying for other Federal limited access permits.* A multispecies limited access permit may not be issued to a vessel or its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

**§ 651.5 Operator permits.**

(a) *General.* Any operator of a vessel issued a Federal multispecies permit under § 651.4, or any operator of a vessel fishing for multispecies finfish in the EEZ or in possession of multispecies finfish in or harvested from the EEZ, must have in his/her possession a valid operator's permit issued under this part.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 651.4. The vessel and all such fishing, catch, and gear remain subject to all applicable State or local requirements. Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board, any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations. If a requirement of this part and a management measure required by State or local law differ, any vessel operator permitted to fish in the EEZ must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two color passport size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly

executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* A permit will expire upon the renewal date specified by the Regional Director.

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal Operator Permit number assigned. An applicant for a replacement permit must also provide two color passport size photographs of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* A change in the permit holder's name, address, or telephone number must be reported in writing to the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a Federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

**§ 651.6 Dealer permits.**

(a) All dealers must have in their possession a valid permit issued under this part.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a certificate of incorporation must be included with the application. If a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 651.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A permit will expire upon the renewal date specified by the Regional Director.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR Part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal Dealer Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, the permit holder must report the change in writing to the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal Dealer Permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

**§ 651.7 Recordkeeping and reporting.**

(a) *Dealers.* (1) *Weekly report.* Dealers shall mail at least the following information to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director. Or, if authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information and any other information required by the Regional Director must be provided: Name and mailing address of dealer; dealer number; name and permit number of the vessels from

which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish is purchased during the week, a report so stating must be submitted.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) are required to complete the "Employment Date" section of the Annual Processed Products Reports; the other information on that form is voluntary. Reports shall be submitted to an address supplied by the Regional Director.

(3) *Inspection.* The dealer shall make copies of the required reports that have been submitted, should have been submitted, or the records upon which the reports were based, available immediately upon request for inspection by an authorized officer or by an employee of NMFS designated by the Regional Director to make such inspections.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and available for review for one year after the date of the last entry on the report. The dealer shall retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be sent and, if mailed, postmarked within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(b) *Vessel owners.* (1) *Fishing log reports.* The owner of any vessel issued a Federal multispecies permit under § 651.4 shall maintain, on board the vessel, and submit an accurate daily fishing log for all fishing trips regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example, using the VTS, or through other media. The following information and any other information required by the Regional Director must be provided: Vessel name, USCG documentation number (or state registration number if undocumented), and permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Such log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. At the end of a fishing trip all information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Owners and operators shall, immediately upon request, make the fishing log reports currently in use or to be submitted available for inspection by an authorized officer, or an employee of the NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* Copies of fishing log reports must be retained and available for review for one year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

**§ 651.8 Vessel identification.**

(a) *Vessel name.* Each fishing vessel subject to this part and that is over 25 feet (7.6 m) in length must display its name on the port and starboard sides of its bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part that is over 25 feet 7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under Title 46 of U.S. Code.

(c) *Numerals.* The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 feet (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 feet (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

**§ 651.9 Prohibitions.**

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a permit under § 651.4 or § 651.5 or a letter under § 651.4(a)(8)(v)(B), to do any of the following:

(1) Possess or land multispecies finfish smaller than the minimum size specified in § 651.23(a).

(2) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 651.7(b).

(3) Fish for, possess, or land multispecies finfish unless the operator of the vessel has been issued an operator's permit under § 651.5, and a valid permit is on board the vessel.

(4) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 651.4(m) or 651.5(k).

(5) Fail to affix and maintain permanent markings as required by § 651.8.

(6) Sell, transfer, or attempt to sell or transfer to a dealer any multispecies finfish unless the dealer has a valid Federal Dealer's Permit issued under § 651.6.

(7) Land, offload, remove, or otherwise transfer or attempt to land, offload, remove, or otherwise transfer multispecies finfish or fish from one vessel to another vessel or other floating conveyance.

(8) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(9) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(10) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 651.31.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access permit under § 651.4(a) or a letter under § 651.4(a)(8)(v)(B) to do any of the following:

(1) Possess or land more than 500 pounds (226.8 kg) of regulated species per trip after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

(2) If required to have a VTS unit as specified in §§ 651.28(a) or 651.29(a):

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 651.28(a) on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage as specified in § 651.29(a).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess, or land multispecies finfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 651.4(a)(5)(i).

(5) Fish for, possess, or land multispecies finfish with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 651.4(a)(5)(ii).

(6) Fail to comply with any requirement regarding the DAS notification as specified in § 651.29.

(7) If not fishing under the VTS system, fail to have on board the vessel a card issued by the Regional Director, as specified in § 651.29(b).

(8) Fail to notify that a vessel is participating in the DAS program as specified in § 651.29(b).

(9) Fail to comply with the other methods of notification requirements, including a call-in system as specified in § 651.29(c), if required by the Regional Director.

(10) Provide notification of the beginning or ending of a DAS before leaving port or before returning to port, as required under § 651.29 (b) or (c).

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a hook-gear-only permit under § 651.4(b) to fish with, set, or haul back more than 4,500 rigged hooks per day, or to possess on board a vessel more than 4,500 rigged hooks.

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a possession-limit-only permit under § 651.4(c) to possess or land per trip more than 500 pounds (226.8 kg) of regulated species.

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a), (b), (c), and (d) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, or land multispecies finfish unless:

(i) The multispecies finfish were being fished for or harvested by a vessel that has been issued a Federal multispecies permit under § 651.4, or a letter under § 651.4(a)(8)(v)(B), and the operator on board such vessel has been issued an operator's permit under § 651.5 and has a valid permit on board the vessel, or,

(ii) The multispecies finfish were harvested by a recreational fishing vessel or a vessel not issued a Federal multispecies permit that fishes for regulated species exclusively in state waters.

(2) Possess or land regulated species in excess of 500 pounds (226.8 kg) per trip unless:

(i) The multispecies finfish were harvested by a vessel that has been issued a limited access permit under § 651.4(a), a hook-gear-only permit under § 651.4(b), or a letter under § 651.4(a), a hook-gear-only permit under § 651.4(b), or a letter under § 651.4(a)(8)(v)(B), or

(ii) The regulated species were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(3) Land, offload, cause to be offloaded, sell, or transfer, or attempt to land, offload, cause to be offloaded, sell, or transfer multispecies finfish from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 651.7, unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(4) Purchase or receive multispecies finfish or attempt to purchase or receive multispecies finfish, whether on land or at sea, as a dealer without accurately preparing, submitting in a timely fashion, and retaining the documents required by § 651.7.

(5) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless both vessels qualify under the exception specified in paragraph (e)(1)(ii) of this section.

(6) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any multispecies finfish from a trip unless the vessel has been issued a valid Federal multispecies permit under § 651.4, or a letter under § 651.4(a)(8)(v)(B), or the multispecies finfish were harvested by a vessel without a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters.

(7) Purchase, possess, or receives for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose in the capacity of a dealer, multispecies finfish taken from a fishing vessel, unless in possession of a valid dealer permit issued under § 651.6; except that this prohibition does not apply to multispecies finfish taken from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(8) Purchase, possess, or receive for commercial purposes multispecies finfish caught by a vessel other than one issued a valid Federal multispecies permit under § 651.4, or a letter under § 651.4(a)(8)(v)(B), unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(9) To be or act as an operator of a vessel fishing for or possessing multispecies finfish in or from the EEZ, or issued a Federal multispecies permit under § 651.4, without having been issued and possessing a valid operator's permit issued under § 651.5.

(10) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(11) Make any false statement, oral or written, to an authorized officer or employee of NMFS, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any multispecies finfish.

(12) Make any false statement in connection with an application under §§ 651.4 or 651.5 or on any report required to be submitted or maintained under § 651.7.

(13) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(14) Fish with or posses within the areas described in § 651.20(a)(1) nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is exempted under § 651.20(a)(3) or (a)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(15) Fish with or possesss within the area described in § 651.20(b)(1) nets of mesh smaller than the minimum size specified in § 651.20(b)(2), unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(16) Fish with or possess within the area described in § 651.20(c)(1), nets of mesh smaller than the minimum size specified in § 651.20(c)(2), unless the

vessel possesses no more regulated species than the possession limit specified in § 651.27(a), or unless the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(17) Fish with or possess within the areas described in § 651.20(d)(1), nets of mesh smaller than the minimum size specified in § 651.20(d)(2), unless the vessel possesses no more regulated species than the possession limit specified in § 651.27(a), or unless the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(18) Enter the area described in § 651.21(a) on a fishing vessel during a period in which the area is closed, except as specified in that section.

(19) Fish with, set, haul back, have on board a fishing vessel, or fail to remove sink gillnet gear in or from the area specified in § 651.21(a) during the time period specified in § 651.21(a)(1).

(20) Enter the area described in § 651.21(b) on a fishing vessel during the time period specified in § 651.21(b)(3), except as specified by § 651.21(b)(4).

(21) Fish in the area described in § 651.21(c), if the area has been closed as provided for in § 651.21(c), except as provided by § 651.21(c)(5).

(22) Fail to comply with the gear-marking requirements of § 651.25.

(23) Import, export, transfer, or possess regulated species which are smaller than the minimum sizes specified in § 651.23, unless the regulated species were harvested from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(24) Interfere with, obstruct, delay, or prevent by any means lawful investigation or search relating to the enforcement of this part.

(25) Fish within the areas described in § 651.20(a)(4) with nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is issued and possesses on board the vessel an authorizing letter issued under § 651.20(a)(4)(i).

(26) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.20(a)(4).

(27) Fish for, land, or possess multispecies finfish harvested by means of pair trawling or with pair trawl gear except under the provisions of § 651.20(e), or unless the vessels that engaged in pair trawling qualify for the exception specified in paragraph (e)(1)(ii) of this section.

(28) Fish for, harvest, possess, or land in or from the EEZ Northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.20(a)(3)(ii).

(29) Fail to comply with the requirements as specified in § 651.20(a)(5).

(30) Fish for the species specified in § 651.20 (e) or (f) with a net of mesh size smaller than the applicable mesh size by area fished specified in § 651.20, or possess or land such species, unless the vessel is in compliance with the requirements specified in § 651.20(e) or 651.20(f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(31) Fish with, set, haul back, possess on board a vessel, or fail to remove from the water, a sink gillnet during the times specified in § 651.32(b).

(32) Violate any provision specified under § 651.29.

(f) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(g) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 for sale will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

**§ 651.10 Facilitation of enforcement.**

See § 620.8 of this chapter.

**§ 651.11 Penalties.**

See § 620.9 of this chapter.

## Subpart B—Management Measures

**§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.**

All vessels fishing for, harvesting, possessing, or landing multispecies finfish in or from the EEZ and all vessels issued a Federal multispecies permit under § 651.4 must comply with the following restrictions on minimum mesh size, gear, and methods of fishing, unless otherwise exempted or prohibited.

(a) *Gulf of Maine/Georges Bank (GOM/GB) regulated mesh area*—(1) *Area definition.* The Gulf of Maine/Georges Bank regulated mesh area is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated (Figure 1):

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

| Point | Latitude | Longitude |
|---|---|---|
| G1 | The intersection of the shoreline and the U.S.-Canada maritime boundary [southward along the irregular U.S.-Canada maritime boundary]; | |
| G2 | 43°58′ N | 67°22′ W. |
| G3 | 42°53.1′ N | 67°44.4′ W. |
| G4 | 42°31′ N | 67°28.1′ W. |
| G5 | 41°18.6′ N | 66°24.8′ W.; and |

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

| Point | Latitude | Longitude | Approximate Loran C bearings |
|---|---|---|---|
| G6 | 40°55.5′ N | 66°38′ W | 5930–Y–30750 and 9960–Y–43500; |
| G7 | 40°45.5′ N | 68°00′ W | 9960–Y–43500 and 68°00′ W.; |
| G8 | 40°37′ N | 68°00′ W | 9960–Y–43450 and 68°00′ W.; |

| Point | Latitude | Longitude | Approximate Loran C bearings |
|---|---|---|---|
| G9 | 40°30.5′ N | 69°00′ W.; | |
| G10 | 40°50′ N | 69°00′ W.; | |
| G11 | 40°50′ N | 70°00′ W.; | |
| G12 | | 70°00′ W.; northward to its intersection with the shoreline of mainland Massachusetts | |

(2) *Mesh size restrictions.* Except as provided in paragraphs (a)(3) through (a)(5), (f), and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets of pieces of nets smaller than 3 feet (0.9 m)×3 feet (0.9 m) (9 square feet (8.1 square m)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(3) *Small mesh exemption area.* Notwithstanding the provisions of paragraph (a)(2) of this section, a vessel may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the GOM/GB regulated mesh area, if the vessel complies with the requirements specified in (a)(3)(i) and (a)(3)(ii) if applicable. The GOM/GB small mesh exemption area is defined by straight lines connecting the following points in the order stated:

GOM/GB SMALL MESH EXEMPTION AREA

| Point | Latitude | Longitude |
|---|---|---|
| SM1 | 41°35′ N. | 70°00′ W. |
| SM2 | 41°35′ N. | 69°40′ W. |
| SM3 | 42°49.5′ N. | 69°40′ W. |
| SM4 | 43°12′ N. | 69°00′ W. |
| SM5 | 43°41′ N. | 68°00′ W. |
| G2 | 43°58′ N. | 67°22′ W.; (the U.S.-Canada maritime Boundary). |
| G1 | Northward along the irregular U.S.-Canada maritime boundary to the shoreline. | |

(i) *Possession limit exemption.* A vessel may not possess on board or land per trip more than the possession limit of regulated species specified under § 651.27(a).

(ii) *Northern shrimp exemption.* A vessel issued a Federal multispecies permit under § 651.4 that is fishing for, harvesting, possessing, or landing northern shrimp, and a vessel fishing for, harvesting, or possessing northern shrimp in the EEZ, must have a properly configured and installed finfish excluder device in any net used to fish for or harvest northern shrimp, throughout the northern shrimp season as established by the Atlantic States Marine Fisheries Commission (ASMFC). The northern shrimp season is December 1 through May 30 or any modification of the season by the ASMFC. The finfish excluder device must be configured and installed consistent with the following specifications (See Figure 3 for an example of a properly configured and installed finfish excluder device.):

(A) The finfish excluder device must be a rigid or semi-rigid grate consisting of parallel bars of not more than 1 inch (2.54 cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl.

(B) The finfish excluder device must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having first passed between the bars of the grate.

(C) A fish outlet or hole must be provided to allow fish or other objects that are too large to pass between the bars of the grate to pass out of the net. The aftermost edge of this outlet must be at least as wide as the grate at the point of attachment. The fish outlet must extend forward from the grate toward the mouth of the net.

(D) A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(4) *Cultivator Shoal whiting (silver hake) fishery exemption area.* Notwithstanding the provisions of paragraph (a)(2) of this section, a vessel may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Cultivator Shoal whiting fishery exemption area, if the vessel complies with the requirements specified in (a)(4)(i) of this section.

The Cultivator Shoal whiting fishery exemption area is defined by straight lines connecting the following points in the order stated (Figure 1):

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

| Point | Latitude | Longitude | Approximate Loran coordinates |
|---|---|---|---|
| C1 | 42°10′ N. | 68°10′ W. | 13132 43970; |
| C2 | 41°25′ N. | 68°45′ W. | 13527 43767; |
| C3 | 41°05′ N. | 68°20′ W. | 13495 43627; |
| C4 | 41°55′ N. | 67°40′ W. | 13074 43861; |
| C1 | 42°10′ N. | 68°10′ W. | 13132 43970. |

(i) *Requirements.* Vessels fishing in this fishery must have on board an authorizing letter issued by the Regional Director. Vessel owners are subject to the following conditions:

(A) A bycatch limit of regulated species (as defined in § 651.2) not to exceed the possession limit specified in § 651.27(a);

(B) A minimum mesh size of 2½ inches (6.35 cm) applied to the first 160 meshes counted from the terminus of the net;

(C) A season of June 15 through October 31, unless otherwise specified by publication of a notice in the **Federal Register**.

(ii) *Sea sampling.* The Regional Director shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The Council shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make the appropriate recommendations to the Regional Director following the procedures specified in subpart C.

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area.* During the period March 1 through July 31 of each year, the minimum mesh size for nets in the following area shall be 6 inches (15.24 cm) in all sink gillnets and 6 inches (15.24 cm) square mesh in the last 140 bars of the codend and extension piece of all mobile net gear.

(i) The Stellwagen Bank/Jeffreys Ledge juvenile protection area is defined by straight lines connecting the following points in the order stated (Figure 1):

STELLWAGEN BANK JUVENILE PROTECTION AREA

| Point | Latitude | Longitude | Approximate Loran coordinates |
|---|---|---|---|
| SB1 | 42°34.0′ N. | 70°23.5′ W. | 13737 44295; |
| SB2 | 42°28.8′ N. | 70°39.0′ W. | 13861 44295; |
| SB3 | 42°18.6′ N. | 70°22.5′ W. | 13810 44209; |
| SB4 | 42°05.5′ N. | 70°23.3′ W. | 13880 44135; |
| SB5 | 42°11.0′ N. | 70°04.0′ W. | 13737 44135; |
| SB1 | 42°34.0′ N. | 70°23.5′ W. | 13737 44295. |

JEFFREYS LEDGE JUVENILE PROTECTION AREA

| Point | Latitude | Longitude | Approximate Loran coordinates |
|---|---|---|---|
| JL1 | 43°12.7′ N. | 70°00.0′ W. | 13369 44445; |
| JL2 | 43°09.5′ N. | 70°08.0′ W. | 13437 44445; |
| JL3 | 42°57.0′ N. | 70°08.0′ W. | 13512 44384; |
| JL4 | 42°52.0′ N. | 70°21.0′ W. | 13631 44384; |
| JL5 | 42°41.5′ N. | 70°32.5′ W. | 13752 44352; |
| JL6 | 42°34.0′ N. | 70°26.2′ W. | 13752 44300; |
| JL7 | 42°55.2′ N. | 70°00.0′ W. | 13474 44362; |
| JL1 | 43°12.7′ N. | 70°00.0′ W. | 13369 44445. |

(ii) Fishing for northern shrimp in the SB/JL juvenile protection area is allowed subject to the requirements of § 651.20(a)(3)(ii), except that no bycatch of regulated species is allowed on board vessels participating in the northern shrimp fishery in the area and during the time period specified in paragraph (a)(5) of this section.

(b) *Nantucket Lightship regulated mesh area.* (1) *Area definition.* The Nantucket Lightship regulated mesh area is that area bounded by straight lines connecting the following points in the order stated (Figure 1);

NANTUCKET LIGHTSHIP REGULATED MESH AREA

| Point | Latitude | Longitude |
|---|---|---|
| NL1 | 40°50′ N. | 69°40′ W.; |

NANTUCKET LIGHTSHIP REGULATED MESH AREA—Continued

| Point | Latitude | Longitude |
|---|---|---|
| NL2 | 40°18.7′ N. | 69°40′ W.; |
| NL3 | 40°22.7′ N. | 60°00′ W.; |
| G10 | 40°50′ N. | 60°00′ W.; |
| NL1 | 40°50′ N. | 69°40′ W. |

(2) *Mesh size restrictions.* (i) For 1994, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the Nantucket Lightship regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 feet (0.9 m) x 3 feet (0.9 m) (9 square feet (8.1 square m)).

(ii) For 1995 and thereafter, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the Nantucket Lightship regulated mesh area, shall be 5½ inches (13.97 cm) diamond mesh or 6 inches (15.24 cm) square mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 feet (0.9 m) ×3 feet (0.9 m) (9 square feet (8.1 square m)).

(c) *Southern New England regulated mesh area*

(1) *Area definition.* The Southern New England regulated mesh area is that area bounded on the east by straight lines connecting the following points in the order stated (Figure 1):

SOUTHERN NEW ENGLAND REGULATED MESH AREA

| Point | Latitude | Longitude |
|---|---|---|
| G5 | 41°18.6′ N. | 66°24.8′ W.; |
| G6 | 40°55.5′ N. | 66°38′ W.; |
| G7 | 40°45.5′ N. | 68°00′ W.; |
| G8 | 40°37′ N. | 68°00′ W.; |
| G9 | 40°30.5′ N. | 69°00′ W.; |
| NL3 | 40°22.7′ N. | 69°00′ W.; |
| NL2 | 40°18.7′ N. | 69°40′ W.; |
| NL1 | 40°50′ N. | 69°40′ W.; |
| G11 | 40°50′ N. | 70°00′ W.; |
| G12 | | 70°00′ W.; northward to its intersection with the shoreline of mainland Massachusetts; and on the west by a line running from the shoreline along 72°30′ west longitude to the outer boundary of the EEZ. |

(2) *Mesh size restrictions.* (i) For 1994, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(ii) For 1995 and thereafter, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or 6 inches (15.24 cm) square mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(3) *Exemptions.* (i) *Possession limit exemption.* Vessels in the Southern New England regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (c)(2) of this section, provided such vessels do not possess or land per trip more than the possession limit of regulated species specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels possessing regulated species in excess of the possession limit specified in § 651.27(a) may have nets with mesh less than the minimum size specified in paragraph (c)(2) of this section, provided that the net is stowed and is not available for immediate use in accordance with paragraph (c)(4) of this section

(4) *Net stowage requirements.* Except as provided in paragraphs (c)(3)(i) and (d)(3)(i) of this section, a vessel issued a Federal multispecies permit under § 651.4 and fishing in the Southern New England or Mid-Atlantic regulated mesh areas may not have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (c)(2) and (d)(2) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(i) A net stowed below deck, provided:

(A) It is located below the main working deck from which the net is deployed and retrieved;

(B) The towing wires, including the "leg" wires, are detached from the net;

(C) It is fan-folded (flaked) and bound around its circumference.

(ii) A net stowed and lashed down on deck, provided:

(A) It is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) A net that is on a reel and is covered and secured, provided:

(A) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) The codend is removed from the net and stored below deck.

(iv) Nets that are secured in a manner authorized in writing by the Regional Director.

(d) *Mid-Atlantic regulated mesh area.*

(1) *Area definition.* The Mid-Atlantic regulated mesh area is that area bounded on the east by a line running from the shoreline along 72°30′ west longitude to the intersection of the outer boundary of the EEZ.

(2) *Mesh size restrictions.* Except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Mid-Atlantic regulated mesh area shall be that specified in the Summer Flounder Regulations at § 625.24(a). This restriction does not apply to vessels that have not been issued a multispecies finfish permit under § 651.4 and are fishing exclusively in State waters.

(3) *Exemptions.* (i) *Possession limit exemption.* Vessels in the Mid-Atlantic regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section, provided such vessels do not possess or land per trip more than the possession limit of regulated species specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels possessing regulated species in excess of the possession limit specified in § 651.27(a) may have nets with mesh less than the minimum size specified in paragraph (d)(2) of this section, provided that the net is stowed and is not available for immediate use in accordance with paragraph (c)(4) of this section.

(e) *Midwater trawl gear exception.* (1) For regulated mesh areas south of 42°20′ N. latitude, fishing for Atlantic herring or blueback herring, mackerel, and squid may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size, provided that:

(i) Midwater trawl gear is used exclusively;

(ii) The vessel deploying midwater gear is issued an authorizing letter by the Regional Director;

(iii) The authorizing letter is on board the vessel; and

(iv) The bycatch of regulated species does not exceed the possession limit specified in § 651.27(a).

(2) For regulated mesh areas north of 42°20′ N. latitude, fishing for Atlantic herring or blueback herring and for mackerel may take place throughout the fishing year with midwater trawl gear of mesh size less than the regulated size, provided that the requirements of paragraphs (f)(1)(i)–(iv) of this section are met.

(f) *Purse seine gear exception.* Fishing for Atlantic herring or blueback herring, mackerel, and menhaden may take place throughout the fishing year with purse seine gear of mesh size less than the regulated size, provided that:

(1) Purse seine gear is used exclusively;

(2) The vessel deploying the purse seine gear is issued an authorizing letter by the Regional Director;

(3) The authorizing letter is on board the vessel; and

(4) The bycatch of regulated species does not exceed the possession limit specified in § 651.27(a).

(g) *Mesh measurements.* Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(h) *Restrictions on gear and methods of fishing.* (1) *Net obstruction or constriction.* A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, or the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the trawl net.

(2) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (i)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) No vessel may use a net capable of catching multispecies finfish in which the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for multispecies finfish while pair trawling, or possess or land multispecies finfish that have been harvested by means of pair trawling.

**§ 651.21 Closed areas.**

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may use, set, haul back, fish with, or have on board a vessel a sink gillnet in the area known as Closed Area I, defined by paragraph (a)(2) of this section, during the months of February through May.

(i) The use of other gear types may be prohibited in Closed Area I if it is determined that spawning fish are located in the area.

(ii) A determination that spawning fish are present in the area will be based upon available information such as sea sampling from the NMFS Domestic Sea Sampling Program or from state agency sources, research surveys, fishermen's reports, and any other source of information.

(iii) The determination will be made by the Regional Director, with concurrence from the Council, and implemented, following the procedures specified in subpart C.

(2) Closed Area I is bounded by six straight lines connecting the following points in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| CI1 | 40°53′ N | 68°53′ W.; |
| CI2 | 41°35′ N | 68°30′ W.; |
| CI3 | 41°50′ N | 68°45′ W.; |
| CI4 | 41°50′ N | 69°00′ W.; |
| CI5 | 41°30′ N | 69°00′ W.; |
| CI6 | 41°30′ N | 69°23′ W.; |
| CI1 | 40°53′ N | 68°53′ W. |

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may fish or be in the area known as Closed Area II, as defined in paragraph (b)(2) of this section, during the time period specified in paragraph (b)(3) of this section, except as specified in paragraph (b)(4) of this section (Figure 2).

(2) Closed Area II is bounded by four straight lines connecting the following points in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| CII1 | 41°00′ N | 67°20′ W.; |
| CII2 | 41°00′ N | 66°35.8′ W.; |
| G5 | 41°18.6′ N | 66°24.8′ W. (the U.S.-Canada Maritime Boundary); |
| CII3 | 42°22′ N | 67°20′ W. (the U.S.-Canada Maritime Boundary); |
| CII1 | 41°00′ N | 67°20′ W. |

(3) *Duration.* (i) For 1994 and 1995, no fishing vessel or person on a fishing vessel may fish or be in Closed Area II during the months of February through May.

(ii) For 1996 and after, no fishing vessel or person on a fishing vessel may fish or be in Closed Area II during the months of January through June.

(4) *Exceptions.* Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters;

(ii) Fishing with or using dredges designed and used to take scallops, or

(iii) Seeking safe haven from storm conditions in waters adjacent to the western edge of the closed area. Such fishing vessels may transit through the closed area providing that:

(A) Gale, storm, or hurricane conditions are posted for the area by the National Weather Service;

(B) Such vessels do not fish in the area;

(C) Fishing gear is stowed in accordance with § 651.20(c)(4) of this section; and

(D) The vessel provides notice to a patrolling U.S. Coast Guard aircraft or vessel in the vicinity of Georges Bank by high frequency radio (2.182 khz) of its intention of transmitting the closed area and the time and position when the vessel enters the area and the time and position when the vessel exits the closed area.

(5) The Regional Director may open Closed Area II to fishing prior to the scheduled openings in paragraph (b)(3) of this section by notification in the **Federal Register**, if the Regional Director determines that concentrations of spawning fish are no longer in the area.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may fish in the area known as the Nantucket Lightship Closed Area, defined in paragraph (c)(2) of this section, during the time period specified in the notification provided under (c)(3) of this section, except as specified in paragraph (c)(5) of this section, if the Regional Director determines that the NEFSC Spring standardized bottom trawl survey index of age-2 yellowtail flounder is 12.0 or higher based upon the number of

yellowtail flounder per standardized tow.

(2) The Nantucket Lightship Closed Area is bounded by four straight lines connecting the following points in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| G10 | 40°50′ N | 69°00′W.; |
| CN1 | 40°20′ N | 69°00′W.; |
| CN2 | 40°20′ N | 70°20′W.; |
| CN3 | 40°50′ N | 70°20′W.; |
| G10 | 40°50′ N | 69°00′W. |

(3) *Notification.* The Regional Director shall provide notification of the closure through publication in the **Federal Register.**

(4) *Duration.* The area shall remain closed until the end of June of the following year.

(5) *Exceptions.* The closure shall not apply to persons on board vessels or fishing vessels fishing with or using:

(i) Pot gear designed and used to take lobsters;

(ii) Dredge gear designed and used to take ocean guahogs or surf claims; or

(iii) Hook-and-line gear, except the possession of yellowtail flounder by persons or vessels fishing with hook-and-line gear within this area is prohibited.

**§ 651.22 Effort-control program for limited access vessels.**

(a) The owner of a vessel issued a limited access permit under the criteria specified in § 651.4(a), unless exempted under § 651.22(d), shall be subject to either the Individual Days-At-Sea (DAS) program as specified in paragraph (b) of this section or the Fleet DAS program as specified in paragraph (c) of this section. All such vessels shall automatically be assigned to the Fleet DAS program unless the vessel owner elects to apply for the Individual DAS program and is issued a limited access permit under § 651.4(a), or the vessel has been determined to be a combination vessel and the vessel owner has elected to apply for a limited access permit under § 651.4(a). Limited access permits will indicate the program under which the vessel owner will fish.

(b) *Individual Days-at-Sea.* (1) *Eligibility.* (i) Any vessel that is greater than 45 feet (13.7 m) in length and eligible for a limited access permit, except a combination vessel, may elect to fish under the Individual DAS program by making such election at the time of application for a renewal of a limited access permit in either 1994 or 1995. After 1995, no vessel applying for or renewing a limited access permit may elect to fish under the Individual DAS program unless the vessel was enrolled in the Individual DAS program in 1995.

(ii) The vessel owner of a vessel that has been determined to be a combination vessel and who has applied for a limited access permit under § 651.4(a) must fish under the Individual DAS program.

(2) *Criteria for determining a vessel's Individual DAS.* The initial DAS assigned to a vessel for purposes of determining that vessel's annual allocation as specified in paragraph (3) of this section shall be calculated as follows:

(i) Calculate the total number of the vessel's multispecies DAS for the years 1988, 1989, and 1990 based on data, information, or other credible evidence available to the Regional Director at the time of election to participate under the Individual DAS program. Multispecies DAS are deemed to be the total number of days the vessel was absent for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least multispecies DAS; and,

(iii) If two years of multispecies DAS are remaining, average those years' DAS, or, if only one year remains, use that year's DAS.

(3) *DAS allocations.* (i) Each vessel participating in the Individual DAS program shall be allocated, annually, the maximum number of days at sea it may fish in the multispecies finfish fishery according to the criteria and table specified in paragraph (b)(3)(ii) of this section. A vessel that has declared out of the multispecies finfish fishery pursuant to the provisions of § 651.29, or has used up its allocated DAS, may leave port without being assessed a DAS as long as it does not posses or land more than the possession limit of regulated species specified under § 651.27(a) and complies with the other requirements of this part.

(ii) *Annual DAS allocations.* Vessels fishing under the Individual-DAS program will receive and be subject to annual allocations of DAS as specified in the following table. These allocations are determined by reducing the vessel's Individual DAS as calculated under paragraph (b)(2) of this section by 10 percent each year, including the first, for the first five years of the effort reduction program.

Individual-DAS allocation=x days

| Year | Annual allocation |
|---|---|
| 1994 | x–10% days. |
| 1995 | x–20% days. |
| 1996 | x–30% days. |
| 1997 | x–40% days. |
| 1998 | x–50% days. |

(iii) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours. DAS for vessels that are under the VTS monitoring system described in § 651.29(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line upon its return to port.

(iv) All vessels fishing under the Individual DAS program must declare out of the multispecies finfish fishery for at least one 20-day period between March 1 and May 31 of each year, using the notification requirements specified under § 651.29(a).

(4) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(5) *Notice of initial DAS allocation.* The Regional Director will attempt to notify all owners of vessels that are deemed eligible to be issued a limited access permit pursuant to § 651.4(a)(6) based on data, information, and other evidence available to the Regional Director.

(6) *Appeal of DAS allocation.*

(i) *Appeal criteria.* Initial allocations of Individual DAS to a vessel may be appealed to the Regional Director within 30 days of receipt of the notice of a vessel's allocation. Any such appeal must be in writing and based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a

decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(7) *Status of vessels pending appeal of DAS allocations.* All vessels, while appealing their Individual-DAS allocation, may fish under the Fleet-DAS program and are subject to all requirements applicable to the Fleet-DAS program unless otherwise exempted, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for multispecies finfish shall be counted against the Individual-DAS allocation that the vessel may ultimately receive. If, before this appeal is decided, a vessel exceeds the number of days it is finally allocated after appeal, the excess days will be subtracted from the vessel's allocation of days in 1995.

(8) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the Coast Guard, will be credited for the time documented:

(i) Time spent assisting in a Coast Guard search and rescue operation; or,

(ii) Time spent assisting the Coast Guard in towing a disabled vessel.

(c) *Fleet Days-at Sea program.* (1) All vessels issued a limited access permit that are longer than 45 feet (13.7 m) and that have not elected to fish under the Individual DAS program as specified in paragraph (a) of this section shall be subject to the following effort-control requirements.

(i) *Days in which vessel may not possess more than 500 pounds (226.8 kg) of regulated species.* (A) During each year beginning with 1994, vessel owners of all such vessels must declare periods of time totaling at least the minimum number of days listed for each such year in the following schedule. Each period of time declared must be at least 20 consecutive days. At least one 20 consecutive day period must be declared between March 1 and May 31 of each year:

| Year | Days out of multispecies fishing |
|---|---|
| 1994 | 80 |
| 1995 | 80 |
| 1996 | 128 |
| 1997 | 165 |
| 1998 | 200 |
| 1999 | 233 |

(B) During each period of time declared, the applicable vessel may not possess more than 500 pounds (226.8 kg) of multispecies;

(C) Adjustments to the schedule of days out of the multispecies fishery, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(D) *Procedure for declaring days.* Fleet DAS participants shall declare their periods of required time under paragraph (c)(1)(i) of this section following the notification procedures specified in § 651.29(b).

(E) If a vessel owner has not declared, or taken, the period of required time between March 1 and May 31 on or before May 12, the vessel is subject to the possession limit specified under § 651.27(a) during the period May 12 through May 31, inclusive.

(F) If a vessel owner has not declared, or taken, any or all of the remaining periods of time required under paragraph (c)(1)(i) of this section, by the last possible date to meet the requirement, the vessel is subject to the possession limit specified under § 651.27(a) from that date through the end of the year.

(ii) *Layover day requirement.* (A) Fleet DAS participants engaged in a fishing trip that is not during the period of time declared pursuant to paragraph (c)(1)(i) of this section and that is longer than 24 hours must tie up at the dock at the end of such trip for a period equal to half the time of the DAS accrued on the trip, based on hourly increments, as recorded through the notification procedures specified in § 651.29(b).

(B) *Accrual of DAS.* DAS under the card or call-in notification systems, described in § 651.29(b) and (d), respectively, shall accrue in hourly increments with all partial hours counted as full hours. A DAS, under either the card or call-in notification system, begins once the card has been read by the reader, or the phone call has been received, and confirmation given by the Regional Director. A DAS ends under either the card or phone notification system, when after returning to port, the card has been read by the reader, or the phone call has been received, and confirmation given by the Regional Director.

(C) Tie-up time begins to accrue when the Regional Director is notified through the monitoring system that the trip is ended.

(D) A vessel that remains tied to the dock beyond the time required will not be credited with the additional time.

(E) A vessel required to be tied up at the dock under this part may not fish or leave the dock under any capacity during the tie-up period unless authorized by the Regional Director.

(d) *Exemptions from effort reduction program.* (1) *Small boat.* (i) Vessels issued a limited access permit under § 651.4(a) that are 45 feet (13.7 m) or less in length over all, except vessels using sink gillnet gear, will be exempt from the effort reduction program if the vessel and vessel owner comply with the following:

(A) Determination of the length will be through the measurement along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the aftermost portion of the stern;

(B) To be eligible for the small boat exemption, vessels for which construction is begun after date of implementation of the final rule must be 45 feet or less in length and must be constructed such that the product of the overall length divided by the beam will not be less than 2.5; and

(C) The measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the boat's construction plans, or by a documentation service. A copy of the verification must accompany an application for a Federal multispecies permit issued under § 651.4.

(ii) Vessels fishing under the small boat exemption must bring all gear back to port at the conclusion of a fishing trip.

(iii) Adjustments to the small boat exemption, including changes to the length requirement, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(2) *Sink gillnet vessels.* Sink gillnet vessels are exempt from the effort reduction program of this part unless effort reduction measures are implemented pursuant to subpart C of this part.

(3) *Hook-gear-only vessels.* Vessels issued a limited access permit under § 651.4(a) and fishing with per trip, or possessing on board the vessel, no more than 4,500 rigged hooks are exempt from the effort reduction program of this part, subject to the requirements specified in § 651.33.

(e) *Scallop dredge vessels.* Scallop dredge vessels issued a limited access permit under § 650.4(a) may not participate in and are not subject to the DAS program and may not possess regulated species in excess of the possession limit specified under § 651.27(a).

**§ 651.23 Minimum fish size.**

(a) The minimum fish sizes (total length) for the following species are as follows:

| Species | Inches |
|---|---|
| Cod | 19 (48.3 cm) |
| Haddock | 19 (48.3 cm) |
| Pollock | 19 (48.3 cm) |
| Witch flounder (gray sole) | 14 (35.6 cm) |
| Yellowtail flounder | 13 (33.0 cm) |
| American plaice (dab) | 14 (35.6 cm) |
| Winter flounder (blackback) | 12 (27.9 cm) |
| Redfish | 9 (22.9 cm) |

(b) The minimum lengths allowed by paragraph (a) of this section shall be measured on a straight line from the tip of the snout to the end of the tail.

(c) The minimum size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in this paragraph, and to whole fish only, after landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed.

(d) *Exception.* (1) Each person on board a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 pounds (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified if the fillets are taken from legal sized fish and are not offered or intended for sale, trade or barter.

(e) *Adjustments of minimum size.* (1) In 1994, or at anytime when information is available, the Council will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) The minimum fish size for yellowtail flounder, witch flounder, and American plaice will be determined from the best available mesh selectivity studies applicable to 5½ inch (13.97 cm) diamond mesh.

(3) The minimum fish size for cod, haddock, pollock, and redfish will be determined from the best available mesh selectivity studies applicable to 6 inch (15.24 cm) diamond mesh.

(4) Upon determination of the appropriate minimum sizes, the Council shall propose the minimum fish sizes to be implemented in 1995, or at anytime thereafter, following the procedures specified in subpart C.

(5) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) and (b) of this section and exemptions as specified in paragraph (c) may be made at any time after implementation of the final rule as specified under subpart C.

**§ 651.24 Experimental fishing.**

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the multispecies finfish resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the multispecies finfish resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity shall be subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

**§ 651.25 Gear marking requirements.**

(a) Bottom-tending fixed gear, including but not limited to gillnets and longlines, designed for, capable of, or fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including but not limited to gillnets or longline gear, must be marked so that the westernmost end (meaning the half compass circle from magnetic south through west to and including north) of the gear displays a standard 12-inch tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 feet above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to and including south) of the gear need display only the standard 12-inch tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gillnets must not exceed 6,600 feet between the end buoys.

(d) In the Gulf of Maine/Georges Bank regulated mesh area specified in § 651.20(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30 degrees from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

**§ 651.26 Flexible area action system.**

(a) The Chair of the Multispecies (Groundfish) Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies finfish, will determine if the situation warrants further investigation and possible action. In making this determination, the Chair will consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he determines it is necessary, the Chair will request the Regional Director to initiate a fact finding investigation to verify the situation.

(b) The Chair will request the Regional Director to publish a notice in the **Federal Register.** The request must include a complete draft of the notice. The Secretary must file the notice within one business day following receipt of the complete request. Day 1 is designated when the notice is filed with the Office of the Federal Register. The notice will inform the public of:

(1) The problem that is occurring and the need for action;

(2) The Regional Director's initiation of fact finding and verification of the problem;

(3) The date (Day 15) the Regional Director's fact finding report, responding to the Chair's request, will be available for public review;

(4) The date (Day 21) by which a Committee meeting/public hearing will be held and on which the comment period will close;

(5) The potential extent of the area to be affected (defined by common name, latitude/longitude coordinates, and/or LORAN coordinates);

(6) The species affected:

(7) The types of gear used;
(8) Other fisheries potentially impacted;
(9) Predominant ports to be impacted;
(10) The expected duration of action;
(11) The types of action that may be taken, limited to the various management measures currently implemented by the FMP;
(12) The Council's initiation of analysis of the impacts; and
(13) The date (Day 15) the Council's impact analysis will be available for public review; and
(14) A request for written comments.
(c) From Day 1 through Day 14 the following activities will take place:
(1) The Regional Director will prepare a fact finding report that will examine available information from the following sources (in order of priority):
(i) Sea sampling from the NMFS Domestic Sea Sampling Program or from State agency sources;
(ii) Port sampling from the NMFS Statistics Investigation; or
(iii) Any other source of information. After examining the facts, the Regional Director will provide a technical analysis to determine the magnitude of discard of juvenile and sublegal multispecies finfish and the presence and amount of spawning outside of any area/season restriction. If possible, he will provide technical analyses describing the nature of the impacts on the stock managed under the FMP. The report will specify what type of activities will be required to monitor the area/fishery in question if subsequent action is taken under this section. The report shall also include a statement of NMFS's capabilities for administering, monitoring, and enforcing any of the proposed options.
(2) The Council will prepare an economic impact analysis of the potential management options under consideration.
(d) By Day 15, copies of the reports prepared by the Regional Director and the Council will be made available for public review from the Council at Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.
(e) By Day 21, provided that it is six days after release of the fact finding report required by paragraphs (c)(1) and (d) of this section, the Committee will hold a meeting/public hearing at which time it will review the Regional Director's fact finding report and the Council's impact analysis. Public comment on the reports, alternatives, and potential impacts will be requested for the Committee's consideration. Upon review of all available sources of information, the Committee will determine what course of action is warranted by the facts and make its recommendation to the Regional Director. The Committee's recommendation will be limited to:
(1) Mesh size restrictions, catch limits, closure of an area to all or certain types of gear or vessels, or other measures less restrictive than the closure but already contained within and implemented by the FMP;
(2) Between three weeks and six months in duration; and
(3) Discrete geographical areas, taking into consideration such factors as manageability of the area, readily identifiable boundaries (natural or otherwise), accessibility of the area, and the area's suitability for monitoring and enforcement activities. If the Committee recommends that action is not warranted, and the Regional Director concurs, notice will be published in the **Federal Register** stating that no action will be taken and specifying the rationale behind the Committee's decision.
(f) By Day 23 the Regional Director will either accept or reject the Committee's recommendation. If the Regional Director accepts the Committee's recommendation, the action will be implemented through notice in the **Federal Register** to be filed by Day 26. If the Regional Director rejects the Committee's recommendation, the Regional Director must write to the Committee and explain that the recommended action has been determined not to be consistent with the record established by the fact finding report, impact analysis, and comments received at the public hearing.
(g) By Day 26, notice will be sent to all vessel owners holding Federal multispecies permits. The Regional Director will also use other appropriate media, including but not limited to mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.
(h) Once implemented, the Regional Director will monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the Council's report, and the public comments, are no longer in existence, he will terminate the action by notice in the **Federal Register** and through other appropriate media.
(i) Actions taken under this section will ordinarily become effective upon the date of filing with the **Federal Register**. The Regional Director may determine that facts warrant a delayed effective date.
(j) If the date specified above for completion of an action falls on a Saturday, Sunday, or Federal holiday, it shall be performed by the first day that is not a Saturday, Sunday, or Federal holiday. Failure to complete any action by the specified date shall not vitiate the authority of the Regional Director to implement an accepted recommendation of the Committee; provided, that no meeting/public hearing under paragraph (e) of this section may be held prior to the sixth day after the day by which all reports required by paragraphs (c)(1) and (d) of this section have been made available for public review.

**§ 651.27 Possession limits.**

(a) *Multispecies possession limit.* (1) Vessels and persons issued a limited access permit under § 651.4(a), that are fishing during the declared period of time out of the DAS program as specified in §§ 651.22 and 651.29, vessels subject to effort control programs specified in § 651.22 that have used up their DAS allocations, and vessels issued a possession-limit-only permit under § 651.4(c) are prohibited from possessing on a vessel, or landing per trip more than 500 pounds (226.8 Kg) of regulated species.
(2) Vessels subject to the multispecies possession limit shall have on board the vessel at least one standard box or one standard tote.
(3) The regulated species stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the regulated species in a standard box or standard tote if requested by an authorized officer.
(4) The possession limit is equal to 500 pounds or its equivalent as measured by the volume of 4 standard boxes or 5 standard totes.

**§ 651.28 Monitoring requirements.**

(a) *Individual DAS limited access vessels.* Vessel owners electing to fish under the Individual DAS program specified in § 651.22(a), and combination vessels, must provide documentation to the Regional Director at the time application for a limited access permit under § 651.4(a), that the vessel has an operational VTS unit on board that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. This VTS must be a certified unit as specified in paragraph (a)(1) of this section.

(1) *Certification.* The Regional Director will annually certify VTS's that meet minimum performance criteria specified in paragraph (a)(2) of this section. Any changes to the performance criteria will be published annually in the **Federal Register** and a list of certified VTS's will be published in the **Federal Register** upon addition or deletion of a VTS from the list. In the event that a system is deleted from the list, vessel owners that purchased that system prior to publication of the revised list will be considered to be in compliance with the requirement to have a certified unit unless otherwise notified by the Regional Director.

(2) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(i) The VTS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection shall be automatic, providing an optimal fix and shall not be capable of being overridden by any person on board a fishing vessel or by the vessel owner;

(ii) VTS equipment shall be fully automatic and operational at all times regardless of weather and environmental conditions;

(iii) VTS equipment shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nautical miles offshore and shall provide position accuracy to within 400 meters (1,300 feet);

(iv) The VTS shall be have the capability of transmitting and storing information, including vessel identification, date, time, and latitude/longitude;

(v) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specifications, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position;

(vi) The VTS must be capable of providing network massage communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time;

(vii) The VTS vendor shall be capable of transmitting position date to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission will be in ASCII text in a file format acceptable to NMFS;

(viii) The VTS must be capable of providing vessel locations relative to international boundaries and fishery management areas;

(ix) The VTS vendor must have the capacity to archive vessel position histories for a minimum of 1 year and to provide transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc).

(3) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(4) *Presumption.* Failure of a VTS unit to transmit an hourly signal of a vessel's position shall be presumed to be DAS, or fraction thereof, for as long as the unit fails to transmit a signal. A preponderance of evidence that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was not participating in the multispecies finfish fishery, as specified in §§ 651.22 and 651.29, or was not at sea will be sufficient to rebut the presumption.

(5) *Replacement.* Should a VTS unit require replacement, a vessel owner must submit documentation to the Regional Director, within 3 days of installation and prior to the vessel's next trip, verifying that the new VTS unit is an operational certified system as described under paragraph (a)(1) of this section.

(6) *Access.* As a condition to obtaining a limited access permit, all vessel owners must allow NOAA/NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessels' DAS and location data obtained from its VTS at the time of or after its transmission to the vendor or receiver, as the case may be.

(7) *Tampering.* Tampering with a VTS, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's ability to operate properly, signal, or the accuracy of the vessel's position fix.

(b) *Fleet DAS and other limited access vessels.*

(1) *Requirements.* Owners of vessels issued a limited access permit under § 651.4(a) who have not elected to fish under the VTS monitoring system specified in § 651.29(a) must obtain from the Regional Director and maintain a card, as specified below, unless notified to use the alternative call-in monitoring system as specified in § 651.29(c), and use the card for notification purposes as specified in § 651.29(b):

(i) After application for and upon determination of eligibility for a limited access permit issued under § 651.4(a), the Regional Director shall issue a card and personal identification number (PIN) to the vessel owner, which is specific to the permitted vessel for which it is issued. The card shall be used for notification to the Regional Director of participation in the Fleet DAS program as specified in § 651.29(b).

(ii) Only cards issued by the Regional Director will be allowed for use in the DAS monitoring system.

(iii) Cards are not transferable between vessels or individuals.

(iv) Replacement cards may be requested from the Regional Director in writing.

(v) The card issued to the vessel shall be on board the vessel while the vessel is fishing in the DAS program.

(vi) The Regional Director shall provide each permit holder a list of locations and times when card readers provided by NMFS will be available.

(vii) Card readers will be connected to NMFS or a NMFS specified system for receipt of the information from the vessel owner or operator.

(viii) Individuals, associations, or other persons who wish to purchase a card reader for their own use or for the use of a group of vessels may do so, provided that the card reader is of the type specified by and is certified for use by the Regional Director.

(ix) Specification of the card reader allowed for use and the phone number which it must dial shall be provided in the **Federal Register.**

(x) To certify the card reader, the Regional Director must determine that the reader is the type specified, that it can dial the NMFS specified card reader system, that the reader can be called back at a specified number, and that the information provided by the reader is compatible with the NMFS specified card reader system.

(xi) If the Regional Director determines that the card system is not operational or that a specific card reader is not functioning, the Regional Director may authorize the use of alternative means of notification as specified in § 651.29(c).

(c) *Sink gillnet DAS and other limited access vessels.* Owners of multispecies vessels with limited access permits that are permitted to use sink gillnet gear under § 651.22(d)(2) are subject to the following requirements:

(1) The vessel owner or owner's representative shall notify the Regional Director at the beginning of each sink gillnet trip that it will be participating in the sink gillnet fishery by providing notice under paragraph 651.29(b),

unless authorized by the Regional Director to use the notification system under paragraph 651.29(c).

(2) At the end of each sink gillnet trip, the vessel owner or authorized representative shall notify the Regional Director by providing notice as specified under paragraph 651.29(b), unless authorized by the Regional Director to use the notification system under paragraph 651.29(c) of this section.

(3) If a sink gillnet vessel decides to leave the sink gillnet fishery and participate in the DAS program, the vessel owner or the owner's authorized representative shall provide notice of the change in fisheries following the procedures of paragraph 651.29(b), unless authorized by the Regional Director to use the notification system under paragraph 651.29(c).

**§ 651.29 DAS notification program.**

(a) *VTS notification.* Owners of multispecies vessels with limited access permits that have elected to or are required to use the VTS system shall be subject to the following presumption and requirement:

(1) Vessels at sea are presumed to be fishing under the DAS allocation program unless they provide a message specifying the vessel, location, date, and time to the Regional Director before leaving port, through the VTS, that the vessel will not be fishing a multispecies DAS.

(2) If the VTS is not available, or not functional, a vessel owner must specify the information required in paragraph (a)(1) of this section to the Regional Director by using the card notification system described under paragraph (b) of this section, or, if authorized by the Regional Director, the alternative system as described under paragraph (c) of this section.

(b) *Card notification.* Owners of multispecies vessels with limited access permits under § 651.4(a), that are participating in the Fleet DAS program that have chosen to provide notification without using a VTS shall be subject to the following requirements:

(1) The vessel owner or owner's representative shall notify the Regional Director that the vessel will be participating in the Fleet DAS program by inserting the card in an authorized card reader as specified under § 651.28(b)(1) and by providing the information requested on each trip prior to leaving port.

(2) The information provided by the vessel owner or authorized representative will include the PIN, whether the vessel is leaving for or returning from a trip, and the type of trip to be taken (Multispecies DAS or possession limit).

(3) A Multispecies DAS begins once the card has been read by the reader and the notification is completed.

(4) Notification of the beginning or ending of a DAS cannot be made before leaving port or returning to port.

(5) Upon returning to port, the vessel owner or authorized representative shall notify the Regional Director that the vessel's trip has ended by inserting the card issued to the vessel in a valid card reader, and providing the information requested.

(6) A DAS ends when the card has been read by the reader.

(7) Any vessel that possesses or lands more than 500 pounds of regulated species shall be deemed in the Fleet DAS program for purposes of counting DAS whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

(c) *Alternative call-in system of notification.* The Regional Director may authorize or require on a temporary or permanent basis the use of an alternative call-in system of notification. If the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notice in the **Federal Register**, or other appropriate means. Vessel owners authorized by the Regional Director to provide notification by a call-in system shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director prior to leaving port that the vessel will be participating in the applicable DAS program calling 508–281–9335 or faxing 508–281–9135, and providing the following information: vessel name and permit number, owner and caller name and address, the type of trip to be taken, and that the vessel is beginning a trip.

(2) A Multispecies DAS begins once the call has been received and confirmation given by the Regional Director.

(3) Upon returning to port, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 508–281–9335 or by faxing 508–281–9135, and providing the following information: vessel name and permit number, owner and caller name and address, and that the trip has ended.

(4) A DAS ends when the call has been received and confirmation given by the Regional Director.

(5) Any vessel that possesses or lands more than 500 pounds of regulated species shall be deemed in the Fleet DAS program for purposes of counting DAS, whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

**§ 651.30 Transfer-at-sea.**

(a) Vessels permitted under § 651.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel.

(b) All vessels are prohibited from transferring or attempting to transfer multispecies finfish from one vessel to another vessel.

**§ 651.31 At-sea observer coverage.**

(a) The Regional Director may require observers for any vessel holding a Federal multispecies permit.

(b) Owners of vessels selected for observer coverage must notify the appropriate Regional or Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of any multispecies finfish. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

**§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.**

(a) *General.* In addition to the measures specified in §§ 651.20 and 651.21, vessels using, or possessing on board the vessel, sink gillnet gear are subject to the following restrictions:

(1) *Gear removal.*

(i) All sink gillnet gear must be removed from the ocean for the number of days per month specified in the schedule below. The Regional Director,

in consultation with the Council, will provide the specific dates per month during which all sink gillnets must be removed from the Regulated Mesh Areas according to the schedule below. The days per month shall be consecutive days on the dates of the month specified by the Regional Director according to paragraph (a)(2) of this section.

| Year | Days/ month | Total days/ per year |
|---|---|---|
| 1994 | 4 | 48 |
| 1995 | 8 | 96 |
| 1996 | 8 | 96 |
| 1997 | 12 | 144 |
| 1998 | 16 | 192 |

(2) Annual notification of the specific dates will be sent to all vessels issued a permit under § 651.4 upon issuance of the permit.

(3) During the time sink gillnet gear is removed from the water, the vessel may use other gear in accordance with the regulations of this part, provided that the vessel provides adequate notification as specified in § 651.28(c).

(c) *Framework adjustment.* (1) By August 1 of each year, the Council's Harbor Porpoise Review Team (HPRT) shall complete an annual review of harbor porpoise bycatch and abundance data in the sink gillnet fishery, evaluate the impacts on other measures that reduce harbor porpoise take, and may make recommendations on other "reduction-of-take" measures.

(2) At the first Council meeting following the HPRT annual meeting, the team shall make recommendations to the Council as to what adjustments or changes, if any, to the "reduction-of-take" measures should be implemented.

(3) The Council may request at any time that the HPRT review and make recommendations on any alternative "reduction-of-take" measures or develop additional "reduction-of-take" proposals.

(4) Upon receiving the recommendations of the HPRT, the Regional Director will publish notice in the Federal Register of any recommended changes or additions to the "reduction-of-take" measures and provide the public with any necessary analysis and opportunity to comment on any recommended changes or additions.

(5) After receiving public comment, the Council shall determine whether to recommend changes or additions to the "reduction-of-take" measures at the second Council meeting following the meeting at which it received the HPRT's recommendations.

(6) If the Council decides to recommend changes or additions to the "reduction-of-take" measures, it shall make to the Regional Director such a recommendation, which must include supporting rationale, and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the factors specified in § 651.40(d).

(7) The Regional Director may accept, reject, or, with Council approval, modify the Council's recommendation, including the Council's recommendation to publish a final rule. If the Regional Director does not approve the Council's specific recommendation, he must provide in writing to the Council the reasons for his action prior to the first Council meeting following publication of his decision.

**§ 651.33 Hook-gear-only vessel requirements.**

Vessels, and persons on such vessels, fishing under the hook-gear-only permit specified in § 651.4(b), whether or not the vessel has also been issued a limited access permit under § 651.4(a), are subject to the following requirements throughout the year in which the permit is issued:

(a) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel while the vessel and persons on the vessel are in possession of or landing more than 500 pounds (226.8 kg) of, or fishing for regulated species at any time during the year for which the hook-gear-only permit is issued.

(b) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks.

(1) A hook is considered to be rigged to be fished if the hook and gangion is secured to the ground line of the trawl, whether or not it is baited.

(2) An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is considered to be a replacement hook and is not counted toward the 4,500 hook limit.

(3) A "snap-on" hook is considered to be a replacement hook if it is not rigged or baited.

(c) Adjustments to the hook exemption, hook size and style, and restrictions on gear used such as crucifiers in the hook fishery may be implemented or considered by the Council under subpart C.

## Subpart C—Framework Adjustments to Management Measures

**§ 651.40 Framework specifications.**

(a) At least annually, the Regional Director will provide the Council with information on the status of the multispecies finfish resource and provide harvest targets for the upcoming year. The annual harvest targets shall be determined by the Stock Assessment Review Committee and shall based on the projected fishing mortality rate reductions required under § 651.22 for the principal multispecies stocks (Gulf of Maine cod, Georges Bank cod, Georges Bank haddock, Georges Bank yellowtail flounder, and Southern New England yellowtail flounder).

(b) Within 60 days of receipt of that information, the Council's Plan Development Team (PDT) shall assess the condition of the multispecies finfish resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 651.22, to achieve the target fishing mortality rate and the annual harvest targets determined from that rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response to meet the goals and objectives outlined in the FMP. The PDT shall report its findings and recommendations to the Council. In its report to the Council, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the Council shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the FMP. After considering the PDT's findings and recommendation, or at any other time, if the Council determines that adjustments or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

(1) DAS changes;
(2) effort monitoring;
(3) data reporting;
(4) possession limits;
(5) gear restrictions;
(6) closed areas;
(7) permitting restrictions;
(8) crew limits;
(9) minimum fish sizes;
(10) on board observers;
(11) minimum hook size and hook style;
(12) the use of crucifiers in the hook fishery;
(13) any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale, and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there have been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d), the action will be published in the **Federal Register** as a final rule; or

(2) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

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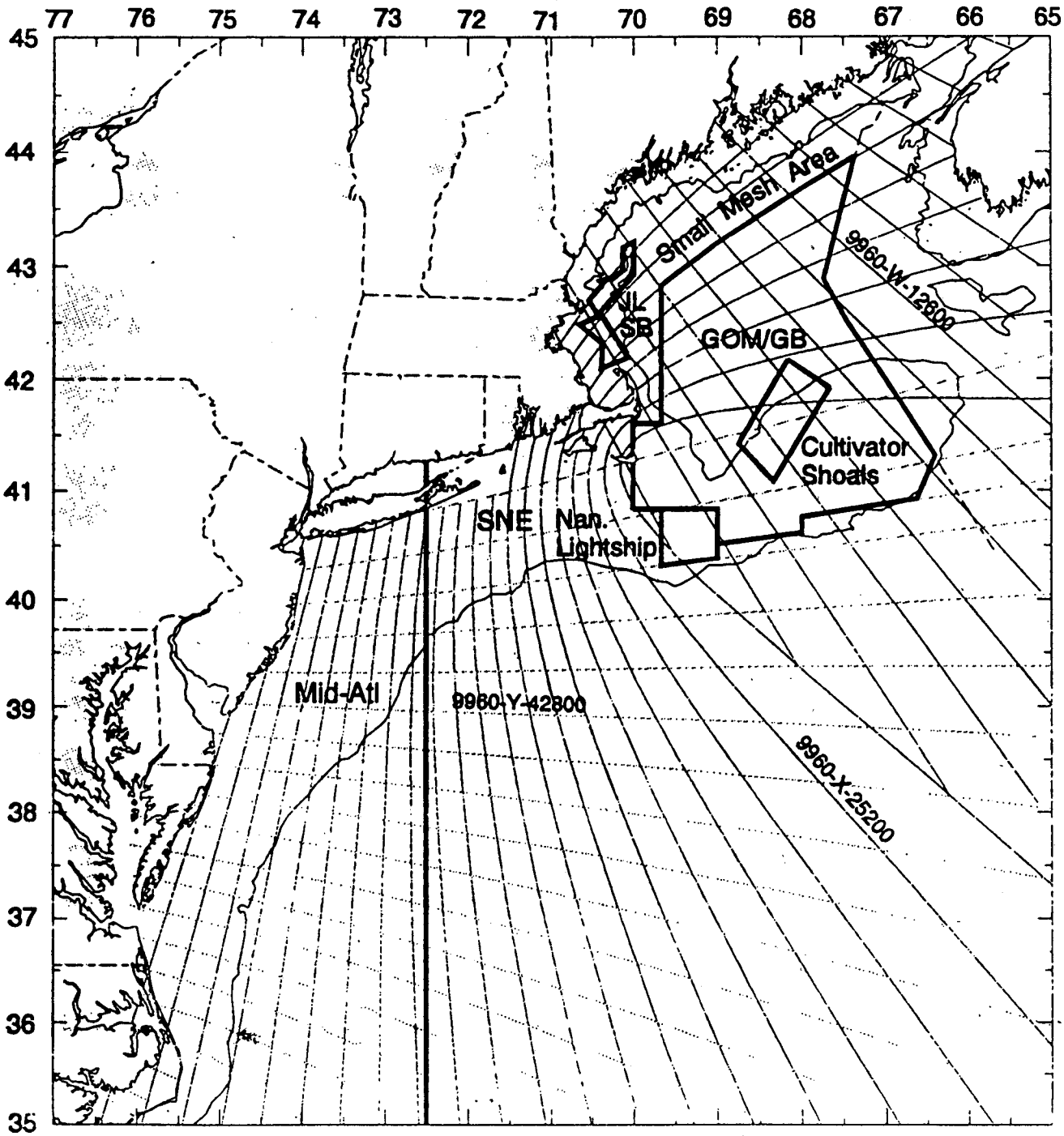


Figure 1: Regulated Mesh Areas

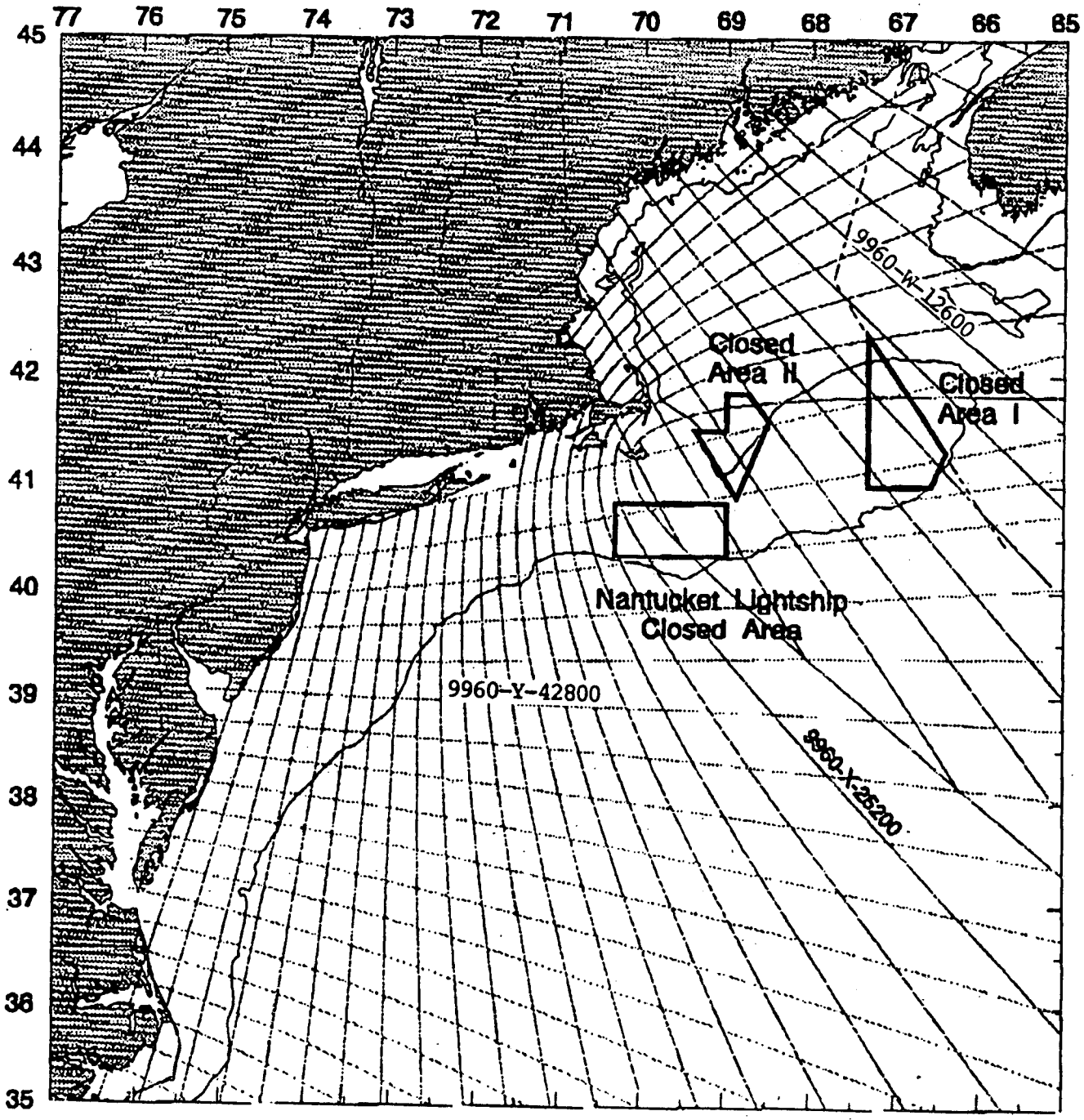


Figure 2: Closed Areas

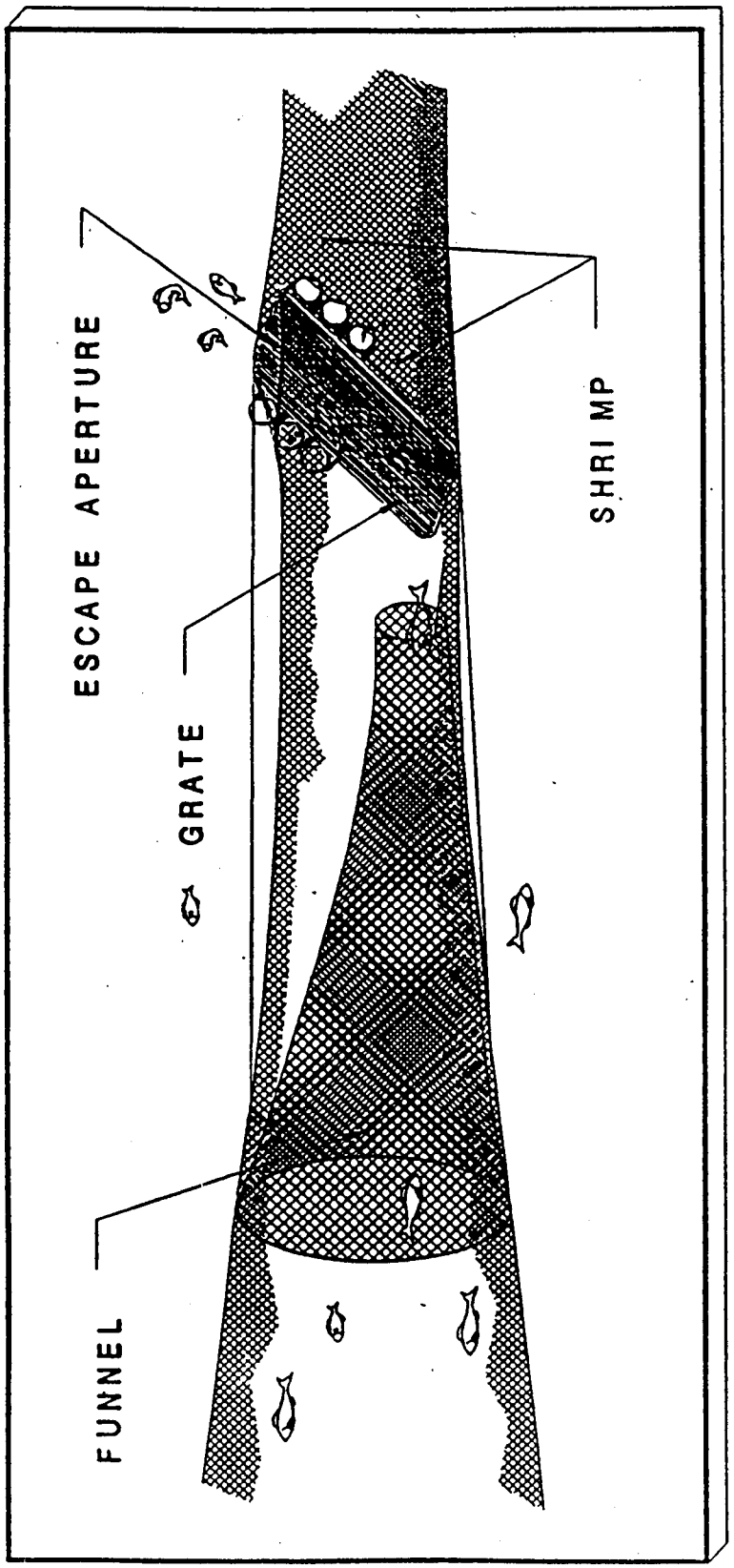


Figure 3. Nordmøre grate.

[FR Doc. 93-26251 Filed 10-21-93; 3:58 pm]
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50 CFR Part 675

[Docket No. 931075-3275; I.D. 100893A]

## Groundfish of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Proposed rule; notice of proposed apportionments of the 1994 Pacific cod total allowable catch among gear types and seasons; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 24 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) that would allocate the Pacific cod total allowable catch (TAC) among vessels using trawl, hook-and-line or pot gear, and jig gear. Proposed regulations also would authorize seasonal apportionments of the portion of Pacific cod TAC allocated to vessels using hook-and-line or jig gear. Pending approval of Amendment 24 by the Secretary of Commerce (Secretary) and consistent with the regulations proposed to implement the amendment, NMFS also proposes seasonal apportionments of the amount of the proposed 1994 Pacific cod TAC allocated to vessels using hook-and-line or pot gear. This action is necessary to allocate Pacific cod among specified gear groups to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council). It is intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMP.

**DATES:** Comments are invited on or before December 6, 1993.

**ADDRESSES:** Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802 (Attn. Lori Gravel). The proposed rule was analyzed as part of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for Amendment 24. Individual copies of Amendment 24 and the EA/RIR/IRFA may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907-271-2809).

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salveson, Fisheries Management Division, at 907-586-7228.

**SUPPLEMENTARY INFORMATION:** Section 304(a)(1)(D) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws.

The domestic groundfish fisheries in the exclusive economic zone of the BSAI are managed by the Secretary in accordance with the FMP. The FMP was prepared by the Council under the Magnuson Act. Regulations authorized under the FMP that pertain to the U.S. groundfish fisheries appear at 50 CFR parts 620 and 675.

With the exception of sablefish, no species of BSAI groundfish is allocated explicitly by gear. At its January 1992 meeting, the Council requested staff to prepare an analysis on alternatives for an FMP amendment that would designate gear allocations of the Pacific cod TAC. The Council's request was, in part, the result of a proposal it received from the North Pacific Fixed Gear Coalition to allocate preferentially certain BSAI groundfish to vessels using fixed gear (hook-and-line, pot, and jig gear).

A preliminary analysis of alternatives allocating the BSAI Pacific cod TAC among gear types was reviewed by the Council and its Advisory Panel (AP) and Scientific and Statistical Committee (SSC) during the Council's September 1992 meeting. The Council recommended that a revised draft analysis be prepared to address deficiencies identified by staff analysts, the AP, and the SSC. Specifically, the Council requested staff to include in the revised draft an analysis of alternatives that would explicitly change the seasonality of the cod fisheries and requested that the revised draft be available in time for the Council to decide at its April 1993 meeting whether to release the analysis for public review.

A Council review draft was prepared by a staff analytical team in response to the direction provided by the Council in September 1992. It provided an evaluation of the efficacy and the potential biological, social, and economic impacts of establishing a designated allocation of the Pacific cod TAC among gear groups and/or explicitly changing the seasonality of the cod fisheries. After reviewing the revised draft during its April 1993 meeting, the Council:

(1) Developed a problem statement for Amendment 24;

(2) Stated that unless the Council were presented with substantial consensus among major industry components, it would be unlikely to take any action on the proposed amendment; and,

(3) Voted to release the revised draft analysis for public review after it was modified specifically to address jig gear and to include 1993 data to the extent possible.

Alternatives to establish explicit allocations by gear and/or directly to change the seasonality of the cod fisheries were considered by the Council because existing management measures may not be adequate to address the following problem statement developed by the Council at its April 1993 meeting: The BSAI Pacific cod fishery, through overcapitalized open access management, exhibits numerous problems that include compressed fishing seasons, periods of high bycatch, waste of resource, gear conflicts, and an overall reduction in benefit from the fishery. The objective of (Amendment 24) is to provide a bridge to comprehensive rationalization. It should provide a measure of stability to the fishery while allowing various components of the industry to optimize its utilization of the resource.

At its June 1993 meeting, the Council considered the testimony and recommendations of its AP, SSC, fishing industry representatives, and the general public on alternatives for the allocation of the Pacific cod TAC contained in the draft analysis prepared for Amendment 24. Although major industry components representing trawl and fixed-gear interests were unable to reach a consensus on a preferred action, the Council recommended the following three management measures be implemented through December 31, 1996, under authority of Amendment 24 to the BSAI FMP:

1. Allocate the BSAI Pacific cod initial TAC (.85 TAC), and subsequent allocations of Pacific cod from the operational reserve, among gear types as follows: 2 percent to vessels using jig gear; 44.1 percent to vessels using hook-and-line or pot gear; and 53.9 percent to vessels using trawl gear. In monitoring the use of these gear allocations, all cod catch and cod bycatch by each of the three gear groups would be counted against its allocation. For accounting purposes, NMFS proposes to simplify the Council's recommended apportionment scheme by rounding the

percent allocation to the closest whole number so that 44 percent of the cod TAC would be allocated to vessels using hook-and-line or pot gear and 54 percent to vessels using trawl gear. Explicitly authorize the Regional Director to establish separate directed fishing allowances and prohibitions under § 675.20 (a)(8) and (a)(9) for vessels harvesting Pacific cod using jig gear, hook-and-line or pot gear, or trawl gear;

2. Provide the Secretary, after consultation with the Council, authority to apportion seasonally the amount of the Pacific cod TAC allocated to vessels using hook-and-line or pot gear. Seasonal apportionments would be divided among three seasons for 4 months each and established through the annual September-December specifications process (§ 675.20(a)); and

3. Provide the Director, Alaska Region, NMFS (Regional Director), authority to reallocate Pacific cod from vessels using trawl gear to vessels using hook-and-line or pot gear, and vice versa, anytime during the year the Regional Director determines that one gear group or the other will not be able to harvest its allocation of Pacific cod. That portion of the jig-gear allocation that is expected to go unharvested may be transferred to vessels using trawl and hook-and-line or pot gear at the beginning of the third 4-month season.

To support the Council's preferred alternative NMFS further proposes that any seasonal apportionments of the amount of Pacific cod TAC allocated to vessels using hook-and-line or pot gear be based on the following information:

(A) Seasonal distribution of Pacific cod relative to prohibited species distribution;

(B) Expected variations in prohibited species bycatch rates in the Pacific cod fishery throughout the fishing year; and

(C) Economic effects of any seasonal apportionment of Pacific cod on the hook-and-line and pot gear fisheries.

The Council's recommended action is intended to provide stability in the trawl and fixed-gear fisheries by establishing designated allocations of the Pacific cod TAC among vessels using these different gear types. The Council's recommended allocation between trawl and fixed gear is approximately equal to the average percent of Pacific cod taken with these gear types during the past 3 years (1991–1993). Without explicit gear allocations of Pacific cod, harvest amounts by vessels using trawl, jig, hook-and-line, or pot gear are determined by: (1) The Pacific cod TAC; (2) the amount of cod harvested by other gear types before halibut-bycatch restrictions close further directed fishing for cod by vessels using those gear types; (3) the amount of cod that is expected to be taken as bycatch in other groundfish fisheries (principally the non-cod trawl fisheries); (4) gear specific halibut bycatch allowances; and (5) the pace at which cod is harvested by vessels fishing with different gear types. The Council believes that stability provided to the trawl and fixed-gear fisheries through the allocation of Pacific cod among gear types and the authority to apportion seasonally the amount of Pacific cod allocated to vessels using hook-and-line or pot gear would provide the potential for each gear group to increase the average benefits received from the harvest of Pacific cod.

Although the Council's recommended allocation of Pacific cod among gear types approximates recent proportions of total cod harvest taken by the trawl and fixed-gear fisheries, it allows a substantial increase in the share of the fixed-gear catch taken with jig gear. To the extent that the jig-gear allocation is used, the Council's recommended action would tend to increase the participation of small, shore-based vessels in the Pacific cod fishery. To address the question whether the 2 percent allocation to jig gear would be fully harvested by vessels using this gear type, the Council recommended that 45 percent of the amount of Pacific cod remaining unharvested in the jig-gear allocation be reallocated to the other fixed-gear fisheries and 55 percent be reallocated to trawl-gear fisheries at the beginning of the third season.

Authority for seasonal apportionment of the amount of Pacific cod TAC allocated to vessels using trawl gear was determined by the Council to be unnecessary. This determination was based on testimony by representatives for the trawl industry that relatively low Pacific halibut-bycatch rates, high catch-per-unit-of-effort, and stable market conditions early in the year continue to support the prosecution of the fast-paced Pacific cod trawl fishery during this period.

Alternatively, representatives for the hook-and-line gear fishery argued for a seasonal apportionment of the hook-and-line and pot-gear allocation of Pacific cod to allow for a first and third season fishery when halibut bycatch rates, product quality, and markets are not advantageous. The second season (May 1–August 31) is the least desirable period to harvest Pacific cod with hook-and-line gear based on these same criteria.

Vessels using pot gear have participated in the directed fishery for Pacific cod when the seasonal BSAI crab fisheries are closed during the end of the first season, the second season, and the beginning of the third season. Although no significant fishing effort for Pacific cod by vessels using pot gear has occurred to date, the potential differences in the optimal seasonal apportionments of the cod allocated to vessels using hook-and-line or pot gear may create future difficulties establishing seasonal apportionments that are acceptable to both hook-and-line and pot-gear fishermen. In the event that this occurs, the Council may elect to propose an FMP amendment that would authorize separate gear allocation of Pacific cod among the hook-and-line and pot-gear fisheries.

**Proposed 1994 Specifications of the Pacific Cod TAC**

To implement the Pacific cod allocation measures proposed under Amendment 24, proposed gear allocations and seasonal apportionments of Pacific cod must be published in the **Federal Register** for public review and comment. Normally, annual groundfish specifications are established through the annual TAC specification process undertaken by NMFS and the Council during the September and December Council meetings each year (§§ 675.20(a)(2) and 675.21(b)(3)). If Amendment 24 is approved by the Secretary, implementing regulations likely would not be effective until early in 1994. Therefore, the gear allocations of the Proposed Pacific cod TAC and proposed seasonal apportionments of the amount of Pacific cod allocated to vessels using hook-and-line or pot gear are included with the proposed rule. These specifications were recommended by the Council during its September 21–26, 1993, meeting, and are set forth in Tables 1 and 2. Public comment and testimony on the proposed TAC and seasonal apportionments of the hook-and-line and pot-gear allocation of Pacific cod will be reviewed by the Council during its December 1993 meeting. The Council is scheduled to recommend final seasonal apportionments during the December meeting that, pending approval by the Secretary, would be published with the final rule implementing Amendment 24.

TABLE 1.—1994 GEAR SHARES OF THE PROPOSED BSAI PACIFIC COD INITIAL TAC

| Gear | Percent of initial TAC | Share of initial TAC (mt) |
|---|---|---|
| Jig | 2.0 | 3,111 |
| Hook-and-line or pot gear | 44.0 | 68,442 |
| Trawl gear | 54.0 | 83,997 |
| Total | 100.0 | 155,550 |

TABLE 2.—PROPOSED 1994 SEASONAL APPORTIONMENT OF THE AMOUNT OF PACIFIC COD ALLOCATED TO VESSELS USING HOOK-AND-LINE OR POT GEAR

| Season | Percentage of Pacific cod | Amount of Pacific cod (mt) |
|---|---|---|
| Jan. 1–Apr. 30 | 90 | 61,598 |
| May 1–Aug. 31 | 10 | 6,844 |
| Sept. 1–Dec. 31 | Remainder. | Remainder |

The proposed seasonal apportionment of the hook-and-line and pot-gear share of the Pacific cod TAC is intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and Pacific halibut bycatch rates are low. During 1992, the most recent year when summer hook-and-line operations for Pacific cod occurred, bycatch rates of halibut in the summer hook-and-line fishery for Pacific cod were up to ten times higher than in winter months. To avoid these unacceptably high halibut-bycatch rates, the Council proposed to apportion 90 percent of the amount of Pacific cod allocated to vessels using hook-and-line or pot gear to the first season. Any portion of the first season apportionment that is not harvested by the end of the first season would become available on September 1, the beginning of the third season.

In recent years, small amounts of Pacific cod have been harvested during summer months by vessels using pot gear. This fishery experiences low halibut-bycatch mortality rates relative to the hook-and-line gear fisheries. The Council's proposed seasonal apportionment of Pacific cod would allow a limited fishery for Pacific cod with pot gear during summer months. However, vessels using hook-and-line gear also could participate in a directed fishery for Pacific cod during summer months if the seasonal halibut-bycatch mortality allowance specified for this fishery during summer months under § 675.21(b)(4) has not been reached.

During 1993, vessels did not participate in a summer pot-gear fishery for Pacific cod because directed fishing for Pacific cod was closed in early May due to attainment of the Pacific cod TAC. Therefore, the Council's proposed seasonal apportionment of Pacific cod would likely represent status quo fishing patterns for Pacific cod relative to 1992, when relatively small amounts of Pacific cod (about 12,900 metric tons) were harvested in summer pot-gear operations.

The Council believes this action would provide interim stability to the trawl and fixed-gear fisheries during the period the Council is developing an alternative approach to address management problems rising from the open-access nature of the Alaska groundfish fisheries. NMFS further notes that the seasonal apportionments of the amount of Pacific cod proposed to be allocated to vessels using hook-and-line or pot gear is subject to (1) approval by the Secretary of Amendment 24, and (2) the possibility of change depending upon final Council recommendations during its December 1993 meeting.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA), has initially determined that this proposed rule is necessary for the conservation and management of the groundfish fishery off Alaska and that, pending Secretarial approval of Amendment 24, it would be consistent with the Magnuson Act and other applicable laws.

NMFS prepared an EA for Amendment 24 that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council (see **ADDRESSES**).

The EA/RIR/IRFA prepared for this proposed rule analyzes the cost and benefits and potential economic and environmental impacts of the proposed action on the affected industry and State and local governments. A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

NMFS prepared an IRFA as part of the RIR, which concludes that this proposed rule, if adopted, could have significant effects on small entities. A copy of this analysis is available from the Council (see **ADDRESSES**). Fewer than 300 vessels are expected to participate in the BSAI cod fisheries in 1994 and beyond. Many of these vessels experience annual receipts less than $2 million and are considered "small entities" for purposes of the Regulatory Flexibility Act. The operators of all of these vessels could experience a significant economic impact as a result of the proposed action. Explicit allocations of Pacific cod among vessels participating in the trawl and fixed gear fisheries for Pacific cod would stabilize these fisheries in terms of distributing catch between these gear groups in a manner that allows each gear group to predict reliably the amount of Pacific cod available for its harvest each year. Although the RIR/IRFA analysis does not indicate that a change in the allocation of the Pacific cod TAC among gear groups would result in a net benefit to the Nation, the ensuing stability of the Pacific cod fisheries, together with the authority to apportion seasonally the amount of cod allocated to vessels using hook-and-line or pot gear, provides the potential for each gear group to increase the average benefits received from its Pacific cod catch.

The Regional Director has determined that fishing activities conducted under this proposed rule would not affect any endangered or threatened species listed under the Endangered Species Act in any manner not already considered in (1) the formal consultations conducted on the BSAI and Gulf of Alaska (GOA) groundfish fisheries (both dated April 19, 1991), the 1992 BSAI total allowable catch specifications (January 21, 1992), and Amendment 18 to the BSAI FMP (March 4, 1992); and (2) the informal consultations conducted regarding the impacts of the 1993 BSAI and GOA total allowable catch specifications on Steller sea lions (January 20, 1993, and January 22, 1993, respectively), the 1993 BSAI and GOA groundfish fisheries on listed species of salmon (April 21, 1993) and listed species of seabirds (U.S. Fish and Wildlife Service, February 1, 1993). Therefore, no further consultation pursuant to section 7 of the Endangered Species Act is required for implementation of the proposed action.

This rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule does not affect the coastal zone of any state with an approved coastal management program. This determination had been submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 12612.

**List of Subjects in 50 CFR Part 675**

Fisheries, Reporting and recordkeeping.

Dated: October 21, 1993.

**Samuel W. McKeen**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

## PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for 50 CFR part 675 continues to read as follows:

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

2. In section 675.20, paragraphs (a)(2)(iv), (a)(2)(v), and (a)(3)(iv) are added to read as follows:

**§ 675.20 General limitations.**

* * * * *

(a) * * *

(2) * * *

(iv) *Applicable through December 31, 1996.* (A) The TAC of Pacific cod, after subtraction of reserves, will be allocated 2 percent to vessels using jig gear, 44 percent to vessels using hook-and-line or pot gear, and 54 percent to vessels using trawl gear. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraphs (a)(8) and (a)(9) of this section for vessels harvesting Pacific cod using jig gear, hook-and-line or pot gear, or trawl gear.

(B) If during a fishing year the Regional Director determines that vessels using trawl gear or hook-and-line or pot gear will not be able to harvest the entire amount of Pacific cod allocated to those vessels under paragraph (a)(2)(iv) of this section, then NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through publication in the **Federal Register.**

(C) On or about September 1 of each year, the Regional Director will reallocate 45 percent of any unused amount of Pacific cod allocated to vessels using jig gear to vessels using hook-and-line or pot gear and 55 percent of any unused amount of Pacific cod allocated to vessels using jig gear to vessels using trawl gear through publication in the **Federal Register.**

(v) *Applicable through December 31, 1996.* In the publications of proposed and final harvest limit specifications required under § 675.20(a) of this part, the Secretary, after consultation with the Council, may seasonally apportion the amount of Pacific cod TAC allocated to vessels using hook-and-line or pot gear under paragraph 675.20(a)(2)(iv) of this section among the following three periods: January 1 through April 30; May 1 through August 31; and September 1 through December 31. The Secretary will base any seasonal apportionment of the Pacific cod allocation to vessels using hook-and-line or pot gear on the following information:

(A) Seasonal distribution of Pacific cod relative to prohibited species distribution;

(B) Expected variations in prohibited species by catch rates experienced in the Pacific cod fisheries throughout the fishing year; and

(C) Economic effects of any seasonal apportionment of Pacific cod on the hook-and-line and pot-gear fisheries.

(3) * * *

(iv) *Applicable through December 31, 1996.* Any amounts of the nonspecific reserve that are apportioned to Pacific cod as provided by paragraph (b) of this section must be apportioned between vessels using jig, hook-and-line or pot, and trawl gear in the same proportion specified in paragraph (a)(2)(iv)(A) of this section, unless the Regional Director determines under paragraphs (a)(2)(iv)(B) or (a)(2)(iv)(C) of this section that vessels using a gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).

[FR Doc. 93–26362 Filed 10–21–93; 4:54 pm]

BILLING CODE 3510–22–M

# Notices

Federal Register
Vol. 58, No. 206
Wednesday, October 27, 1993

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Emergency Food Assistance Program and Soup Kitchens; Availability of Commodities for Fiscal Year 1994

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces: (1) The surplus and purchased commodities that will be available for donation to households under the Emergency Food Assistance Program (TEFAP); and (2) the purchased commodities that will be available to soup kitchens and food banks. The commodities made available under this notice shall be directed to needy persons, including unemployed and homeless persons.

**EFFECTIVE DATE:** October 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

**SUPPLEMENTARY INFORMATION:**

**Background and Need for Action**

*Surplus Commodities*

Donations of commodities to needy households were initiated in 1981 as part of efforts to reduce stockpiles of government-owned commodities. These donations responded to concern over the costs to taxpayers of storing vast quantities of foods, while at the same time there were persons in need of food assistance. The Emergency Food Assistance Program was codified in title II of Public Law 98–8, the Emergency Food Assistance Act (EFAA) of 1983 (7 U.S.C. 612c note). Surplus foods made available for distribution under the EFAA are limited to amounts determined by the Secretary to be in excess of the quantities needed to carry out other programs, including Commodity Credit Corporation (CCC) sales obligations and domestic food assistance programs. The Secretary of Agriculture anticipates that the following surplus commodities acquired by the CCC under its price-support activities will be made available in the noted amounts for distribution through TEFAP during Fiscal Year 1994: Butter, 72 million pounds; and cornmeal, 48 million pounds. The actual types and quantities of commodities made available by the Department may differ from the above estimates because of agricultural production, market conditions and the distribution of these donated foods to other domestic outlets.

*Purchased Commodities*

In recent years, the supply of available surplus commodities has been drastically reduced. These reductions are the result of changes in the agricultural price-support programs which have brought supply and demand into better balance, and accelerated donations and sales. Congress responded to the reduced availability of surplus commodities with section 104 of the Hunger Prevention Act of 1988, Public Law 100–435, which added sections 213 and 214 to the EFAA. Those sections require the Secretary to annually purchase, process and distribute commodities for household consumption in addition to those surplus commodities otherwise provided under TEFAP. In section 110 of the Hunger Prevention Act, Congress also requires the Secretary to purchase, process and distribute commodities for soup kitchens and food banks. USDA purchases commodities for these programs based in part on annual reports completed by distributing agencies.

For Fiscal Year 1994, $80 million has been appropriated for purchasing, processing and distributing additional commodities for household use. The Department anticipates purchasing for distribution to households through TEFAP during Fiscal Year 1994 peanut butter, raisins, rice, egg mix, dry bagged beans and the following canned foods: Apple juice, applesauce, beans, fruit cocktail, grape juice, green beans, orange juice, peaches, pears, pork and sweet potatoes. The amounts of each item purchased will depend on the prices USDA must pay, as well as the quantity of each item requested by the States.

For Fiscal Year 1994, $40 million has been appropriated to purchase, process and distribute commodities for distribution to soup kitchens and food banks. For such outlets, the Department anticipates the purchase of nonfat dry milk, dehydrated potatoes, and the following canned foods: Orange juice, corn, peaches, green beans, fruit cocktail, pineapple, tomatoes, tuna, and pork and/or beef. The amounts of each item purchased will depend on the prices USDA must pay.

Dated: October 19, 1993.

**Christopher J. Martin,**

*Acting Administrator.*

[FR Doc. 93–26457 Filed 10–26–93; 8:45 am]
BILLING CODE 3410–30–U

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Thursday, November 18, 1993, at the Holiday Inn at 1325 Hurstbourne Lane, Terrace Three, in Louisville Kentucky 40222. The meeting will include: (1) A discussion of the status of the Commission, SACs, personnel changes, etc.; (2) a discussion of civil rights problems/progress in the State; and (3) a session to review and discuss plans for the report on *Bigotry Related Violence in Kentucky.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Thelma Clemons, 502–893–1055 or Robert L. Knight, Civil Rights Analyst, Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 18, 1993.

**Carol Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 93-26373 Filed 10-26-93; 8:45 am]

BILLING CODE 6335-01-P

## Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Nebraska Advisory Committee to the U.S. Commission on Civil Rights will meet on Thursday, November 18, 1993, from 6 p.m. until 8 p.m. at the Homewood Suites, 7010 Hascall, Omaha, Nebraska, 68106. The purpose of the meeting is orientation of new members and to plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816-426-5253 (TTY 816-426-5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 18, 1993.

**Carol Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 93-26374 Filed 10-26-93; 8:45 am]

BILLING CODE 6335-01-P

# DEPARTMENT OF COMMERCE

## Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: International Trade Administration

*Title:* Participation Agreement

*Form numbers:* Agency—ITA-4008P and ITA 4008P(a) OMB—0625-0147

*Type of request:* Extension of the expiration date of a currently approved collection

*Burden:* 6400 respondents; 2133 reporting hours

*Average hours per response:* 20 minutes

*Needs and uses:* The International Trade Administration (ITA) sponsors up to 400 overseas trade promotion events each fiscal year. These events include trade fairs, trade and seminar missions, and catalogue or videocatalogue shows in which U.S. companies display, demonstrate, and promote their goods and services in foreign markets. The Participation Agreement is the vehicle by which individual firms agree to participate in ITA's trade promotion program, identify the products or services they intend to sell or promote, and record their required financial contribution to the Department of Commerce. It is a contract between an individual firm and Commerce. ITA collects the information for four primary purposes: (1) To identify firms which have agreed to participate in specific overseas trade promotion events; (2) to establish the financial contribution which the individual firms will make and keep track of their payments; (3) in connection with facilitating the shipment of exhibition goods using private sector freight forwarding companies; and (4) to collect participant profile information such as export experience and company size for evaluative purposes.

*Affected public:* Business or other for profit; small businesses or organizations

*Frequency:* On occasion

*Respondent's obligation:* Required to obtain or retain a benefit

*OMB desk officer:* Gary Waxman (202) 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482-3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 22, 1993.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 93-26477 Filed 10-26-93; 8:45 am]

BILLING CODE 3510-CW-M

# National Oceanic and Atmospheric Administration

## Weakfish Under U.S. Jurisdiction

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

**ACTION:** Notice of intent to prepare an environment impact statement (EIS) and request for scoping comments.

**SUMMARY:** NOAA announces its intention to prepare, in cooperation with the Mid-Atlantic Fishery Management Council, a fishery management plan (FMP) for weakfish (*Cynoscion regalis*), pursuant to the Magnuson Fishery Conservation and Management Act of 1976, as amended (MFCMA). Weakfish are found in shallow coastal waters of the Northwest Atlantic from Nova Scotia to the east coast of Florida. If such an FMP is approved by the Secretary of Commerce (Secretary), implementation of the FMP is expected no sooner than 1994. In addition, the Council announces a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to the management of weakfish. The intended effect of this notice is to alert the interested public of the commencement of a scoping process and to provide for public participation. This action is necessary to comply with Federal environmental requirements.

**DATES:** Scoping comments will be accepted by the Council until November 5, 1993. Public comment may be presented at scoping meetings, which are scheduled as follows:

Oct. 26—Holiday Inn, 290 Hwy. 37 East, Toms River, NJ (908-244-4000).

Oct. 27—Holiday Inn, 916 Carolina Ave., Washington, NC (919-946-6141).

Oct. 28—Quality Inn Lake Wright, 6280 Northampton Blvd., Norfolk, VA (804-461-6251)

Oct. 29—Carousel, 118th Street, Ocean City, MD (410-524-1000).

Nov. 3—Danfords Inn, 25 East Broadway, Port Jefferson, NY (516-928-5200)

Nov. 3—Dutch Inn, Great Island Road, Galilee, RI (401-789-9341).

Nov. 5—Cape May Extension Office, Dennisville Road, Route 657, Cape May Courthouse, Cape May, NJ (609-465-5115).

All meetings begin at 7 p.m. except the New York Meeting, which begins at 7:30 p.m.

**ADDRESSES:** Written scoping comments should be sent to Mr. David R. Keifer, room 2115 Federal Building, 300 South New Street, Dover, Delaware 19901-6790 (Phone 302-674-2331) (FAX 302-674-5399).

**FOR FURTHER INFORMATION CONTACT:** Mr. David R. Keifer (See **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

**Background**

Weakfish have supported fisheries along the Atlantic coast of the United States since colonial times. The migratory nature and importance of the species led to the development of a coastwide management plan for inshore weakfish by the Atlantic States Marine Fisheries Commission (ASMFC) in 1985. Following a precipitous decline in landings of weakfish along the Atlantic Coast during the late 1980s, Amendment No. 1 to the 1985 plan was developed. The purpose of this scoping process is to review options for the development of a fishery management plan for the Atlantic coast weakfish resource in the exclusive economic zone (EEZ) by the Mid-Atlantic Fishery Management Council (Council) under the authority of the MFCMA.

**Description of the Stock and Management Unit**

Weakfish are a shallow water coastal species of the Northwest Atlantic that range from Nova Scotia to the east coast of Florida. The species is common from Long Island, New York, to Cape Hatteras, North Carolina. The management unit for this FMP will be defined as the entire weakfish population along the Atlantic coast of the United States (Maine to Florida).

**Problems To Be Addressed by the Plan**

*1. Weakfish Are Overexploited*

Results of analyses conducted by the ASMFC Weakfish Stock Assessment Committee indicate that the Atlantic weakfish stock experienced fishing mortality rates in 1990–91 of 0.9 or greater (an increase from an average F of 0.7 during the mid-1980s). This level of fishing mortality (F=0.9) results in an annual exploitation rate of 52 percent (this is the percentage of fish that die annually due to fishing). These high levels of exploitation resulted in the erosion of spawning stock biomass and compression in size/age composition of weakfish taken in both the recreational and commercial fisheries since the mid-1980s. More recent provisional estimates indicate that fishing mortality has increased to 1.2 (ASMFC, 1993).

*2. Multiple Species/Multiple Gear Fisheries*

Most of the commercial landings occur during the fall and winter months as weakfish migrate from mid-Atlantic estuaries to their overwintering grounds in the South Atlantic region. During the winter, sink gill nets and otter trawls catch about equal months of weakfish while otter trawls predominate in the fall fishery. Gill nets, pound nets, seines, and hook and line are the principal gears used during the summer when weakfish reside in shallow coastal and estuarine waters.

The numerous gears used to harvest weakfish in the commercial fisheries complicate management of the species. No single management strategy is appropriate for all gears. For instance, management measures such as short seasonal closures (lift days) that might be effective for mobile gears (otter trawls and some types of gill nets) are not practical for fixed gears such as pound nets (because they cannot be readily removed from the water). The ASMFC recognized these problems in the development of Amendment 1 to the Weakfish plan and recommended that states be given flexibility in achieving reductions in exploitation. The reductions would be effected by using a combination of minimum size limits (with appropriate mesh restrictions by gear), season and area closures for the commercial fisheries, size/bag limits for the recreational fisheries, and bycatch mortality reduction in non-directed fisheries.

Management of weakfish is further complicated by the multispecies nature of the fisheries. Sink gill net catches off the North Carolina coast are reported to be comprised of roughly equal proportions of weakfish and bluefish, with an additional 28 species listed as taken incidentally. The North Carolina winter trawl fishery is also a multispecies fishery with significant contributions from species other than weakfish, including Atlantic croaker, spot, bluefish, Northern and Southern kingfish, butterfish, scup, and black sea bass. THe species list and associated problems with multispecies management are similar for pound nets and haul seines.

*3. Bycatch Mortality in Non-directed Fisheries*

Weakfish are caught in large quantities as bycatch in the South Atlantic shrimp trawl fishery. One study reported that 81 percent of the weakfish taken as bycatch in the North Carolina shrimp trawl fishery were age-0. The ASMFC estimated the magnitude of the losses to the weakfish stock due to commercial shrimp trawling in the South Atlantic (NC–GA) and incorporated these estimates into their stock assessment.

Virtual population analysis (VPA) using catch statistics based solely on recreational and commercial landings of weakfish (i.e., not accounting for bycatch mortality in non-directed fisheries) suggested low fishing mortality on age 0 and 1 weakfish, with little improvement in yield per recruit and spawning stock potential when age at entry to the fishery was raised from age 0 to 1. However, when estimates of mortality from the shrimp fishery were included in the VPA, large gains in yield per recruit and spawning potential are available if age 0 and 1 weakfish (i.e., fish 10 inches or less) are protected to a significant extent (e.g., by using bycatch reduction devices in the South Atlantic shrimp fishery). The ASMFC recommended that the bycatch of weakfish in the South Atlantic shrimp trawl fisheries be reduced by 50 percent by June 1, 1994. Additional sources of mortality of the weakfish stock exist from culling and bycatch in other gears along the coast. The magnitude of this problem is unknown.

*4. Lack of Uniform Management*

The highly migratory nature of weakfish complicates the formation of management strategies for this species. Weakfish are taken in directed and nondirected fisheries in the waters of 12 states along the Atlantic coast and in the EEZ. The lack of uniformity of the management institutions and regulations pertaining to weakfish among the various states has contributed to the failure of previous attempts to manage this resource. For example, the Atlantic coastal states have different minimum size limits pertaining to the harvest of weakfish (ranging from none to 16 inches). Lack of implementation of recommendations of the 1985 ASMFC plan and Amendment No. 1 also remains a problem.

*5. Inconsistent and Inadequate Enforcement*

There is a lack of uniform enforcement of management regulations affecting the weakfish fisheries that is partly due to the inconsistent regulations among states. Funding at the state level for enforcement personnel, training, and equipment is inadequate. In addition, penalties resulting from non-compliance with regulations are insufficient to encourage conformity to state laws. Effective enforcement requires that fishery participants perceive both the likelihood of enforcement contact and the application of standards to be uniform throughout the management unit. The perception of fairness is essential in the promotion of voluntary compliance.

*6. Lack of Education*

In general, the lack of information and education programs on the status and management of marine fishery resources has contributed, in part, to their overexploitation and waste. The promotion of conservation education pursuant to the implementation of this FMP will enable resource users to understand better the severity of the problem and the long-term benefits of conservation and management programs. A proper conservation ethic will help to assure wise and efficient use of these resources and avoid the excessive costs associated with their overharvest.

*Management Objectives*

Proposed objectives are:

1. Maintain a spawning stock sufficient to minimize the chance of recruitment failure by maintaining maximum spawning potential at or above 20 percent.
2. Increase yield per recruit.
3. Promote the harmonious use of the resource among various components of the fishery through the coordination of management efforts among the various political entities having jurisdiction over the weakfish resource.
4. Encourage the cooperative collection of catch and standardized effort statistics and other economic, social, and biological data required to monitor and assess management efforts.
5. Promote the determination and adoption of the highest possible standards of environmental quality and the determination of the effects of the environment on year-class strength.

Possible commercial fishery management measures are:

1. Permit system/moratorium on entry
2. Dealer, vessel, and/or operator permits
3. Quotas (state-specific allocations)
4. Season/area closures
5. Age at entry/mesh restrictions
6. Gear restrictions
7. Trip limits
8. Other effort restrictions (e.g., days at sea).

Possible recreational fishery management measures are:

1. Bag/size limits
2. Seasonal closures.

Dated: October 21, 1993.

**David S. Crestin,**

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

[FR Doc. 93–26375 Filed 10–26 -93; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 102093D]

## Caribbean Fishery Management Council; Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Caribbean Fishery Management Council (Council) and its Administrative Committee (Committee) will hold separate meetings on November 29 thru December 1, 1993. The meetings will be held in the Conference Room, Villa Parguera Hotel, La Parguera, Lajas, Puerto Rico.

The Council will hold its 80th regular public meeting to discuss the third draft of the Coral Fishery Management Plan, among other topics.

The Council will meet on November 30, 1993, from 9 a.m. until 5, and will reconvene on December 1, 1993, from 9 a.m. until approximately 12 noon.

The Administrative Committee will meet on November 29, 1993, from 2 p.m. until 5 p.m., to discuss administrative matters regarding Council operations.

The meetings will be conducted in the English language. However, simultaneous interpretation services (English/Spanish) will be available during the Council meeting (November 30 - December 1).

Fishermen and other interested persons are invited to attend and participate with oral or written statements regarding agenda items.

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, on (809) 766–5926, at least five (5) days prior to the meeting date.

**FOR FURTHER INFORMATION CONTACT:** Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Dated: October 21, 1993.

**David S. Crestin,**

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

[FR Doc. 93–26439 Filed 10–26–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 102093B]

## Mid-Atlantic Fishery Management Council; Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) Large Pelagics/Shark Committee, will meet on November 2, 1993, beginning at 10 a.m. On the same day, the Council's Tilefish Industry Advisory Subcommittee will meet jointly with the Large Pelagics/Shark Committee for a portion of the meeting; the Council's Executive Committee will meet in the afternoon. All meetings will be held at Danfords Inn, 25 E. Broadway, Port Jefferson, NY; telephone: (576) 928–5200.

On November 3, the Council will begin its regular session at 8:00 a.m. and adjourn at approximately 3 p.m., at which time there will be a Demersal Species Committee meeting, followed at approximately 3:30 p.m. with a Comprehensive Management Committee meeting.

On November 4, the Council will meet at 8 a.m. and is scheduled to adjourn at approximately 12 noon. In addition to hearing committee reports, the Council will have a discussion on conflict of interest issues with a representative of the Office of NOAA General Counsel. The Council meeting may be lengthened or shortened based on the progress of the agenda. The Council may also go into closed session (not open to the public) to discuss personnel or national security matters.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Joanna Dougherty at least five (5) days prior to the meeting dates, telephone (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** David R. Keifer, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: October 21, 1993.

**David S. Crestin,**

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

[FR Doc. 93–26441 Filed 10–26–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 102093C]

## New England Fishery Management Council; Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a one-day public meeting on October 28, 1993, at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA; telephone: (508) 774–6800. The meeting will begin at 9:30 a.m.

The meeting will begin with a Groundfish Oversight Committee report. Items to be discussed will include background information on the developing juvenile whiting fishery and the National Marine Fisheries Service disapproval of two measures contained in Amendment #5 to the Northeast Multispecies Fishery Management Plan: A 5,000 pound haddock trip limit and a mesh exemption for winter flounder in state waters. The Council also will review the proposed regulations for Amendment #5.

During the early afternoon session the Marine Mammal Committee will report on the use of time/area closures to reduce the bycatch of harbor porpoise in the Gulf of Maine. The Monkfish Oversight Committee will update the Council on progress to resolve gear conflicts in Southern New England. This Committee also intends to review management measures to be included in a draft monkfish plan or amendment.

The Large Pelagics Committee will report on the International Convention for the Conservation of Atlantic Tunas Advisory Committee meeting of October 14 and 15 and address other highly migratory species issues.

Before the close of the meeting there will be reports from: The Council Chairman, the Executive Director, the National Marine Fisheries Service Regional Director, the Northeast Fisheries Science Center liaison, and representatives from the Department of State, the Coast Guard, the Fish and Wildlife Service, and the Atlantic States Marine Fisheries Commission.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: October 21, 1993.

**David S. Crestin,**

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

[FR Doc. 93–26440 Filed 10–26–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 102093E]

## Pacific Fishery Management Council; Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Council) has commenced a review of stocks as required by Amendment #10 to the Salmon Fishery Management Plan. The review pertains to stocks that have not met their spawning escapement objectives for three consecutive years. The Klamath River Fall Chinook Review Team (Team) will meet on November 9–10, 1993, in room 200 of the Stewart School Building at 1125 16th Street, Arcata, California. The meeting will begin at 1 p.m. on November 9 and continue from 8 a.m. until early afternoon on November 10.

The Team will examine the causes which have led to a failure in meeting spawning escapement objectives for naturally produced Klamath River fall chinook. This stock has been below its spawning escapement level (35,000) for the past three years.

**FOR FURTHER INFORMATION PLEASE CONTACT:** John Coon, Staff Officer, (Salmon), Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: October 21, 1993.

**David S. Crestin,**

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

[FR Doc. 93–26438 Filed 10–26–93; 8:45 am]

BILLING CODE 3510–22–P

## Marine Mammals

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

**ACTION:** Modification to Permit No. 625 (P407).

**SUMMARY:** Notice is hereby given that Permit No. 625, issued to the Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii, has been modified.

**ADDRESSES:** Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), public display permit No. 625, issued to the Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii, is modified by deleting the first paragraph and substituting the following:

Subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and the conditions hereinafter set out, the Hyatt Regency Waikoloa Resort, Waikoloa, HI 96743, and Dolphin Quest, Inc., 20 West 1st Street, #208, Mesa, AZ 85201, are hereby authorized to maintain the indefinite care and custody for public display purposes of the marine mammals currently held in the facility operated by Dolphin Quest at the Hyatt Regency Waikoloa Resort.

All general and special conditions currently contained in the permit remain in effect. This modification becomes effective upon publication in the **Federal Register.**

Dated: October 15, 1993.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–26366 Filed 10–26–93; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

October 22, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

**EFFECTIVE DATE:** January 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Memorandum of Understanding (MOU) dated March 24, 1993 between the Governments of the United States and the Lao People's Democratic Republic establishes a limit for Categories 340/640 for the period beginning on January 1, 1994 and extending through December 31, 1994. The limit has been reduced for carryforward used during the previous agreement year.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Information regarding the 1994 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 22, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated March 24, 1993 between the Governments of the United States and the Lao People's Democratic Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of 123,750 dozen.

Imports charged to the limit for Categories 340/640 for the period January 1, 1993 through December 31, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The level set forth above is subject to adjustment in the future according to the provisions of the MOU dated March 24, 1993 between the Governments of the United States and the Lao People's Democratic Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–26473 Filed 10–26–93; 8:45 am]
BILLING CODE 3510–DR–F

## Amendment of Import Restraint Limits and a Restraint Period for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

October 22, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending limits and a restraint period.

**EFFECTIVE DATE:** October 28, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of notes dated September 23 and 27, 1993, the Governments of the United States and Mauritius agreed to amend their current bilateral textile agreement for the period beginning on October 1, 1992 and extending through October 31, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period to extend through October 31, 1993 at increased levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 38298, published on August 24, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 22, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 18, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on October 1, 1992 and extends through September 31, 1993.

Effective on October 28, 1993, you are directed to amend the August 18, 1992 directive to extend the restraint period through October 31, 1993 and to increase the limits for the following categories:

| Category | Thirteen-month restraint limit [1] |
|---|---|
| Knit group 345, 438, 445, 446, 645 and 646, as a group. | 134,906 dozen. |
| Levels not in a group | |
| 237 | 173,969 dozen. |
| 331 | 461,018 dozen pairs. |
| 335/835 | 69,154 dozen. |
| 336 | 81,377 dozen. |
| 338/339 | 325,787 dozen. |

| Category | Thirteen-month restraint limit[1] |
|---|---|
| 340/640 | 522,057 dozen of which not more than 322,742 dozen shall be in Categories 340–Y/640–Y[2]. |
| 341/641 | 367,277 dozen. |
| 342/642/842 | 239,209 dozen. |
| 347/348 | 653,110 dozen. |
| 351/651 | 161,283 dozen. |
| 352/652 | 1,367,683 dozen of which not more than 1,162,532 dozen shall be in Category 352. |
| 442 | 12,169 dozen. |
| 604–A[3] | 337,775 kilograms. |
| 638/639 | 374,656 dozen. |
| 647/648/847 | 537,856 dozen. |

[1] The limits have not been adjusted to account for any imports exported after September 30, 1992.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–26474 Filed 10–27–93; 8:45 am]

BILLING CODE 3510–DR–F

## Amendment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Mexico

October 22, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** October 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government has agreed to increase the 1993 designated consultation level for Category 435 (Normal Regime).

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 88, published on January 4, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 22, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 25, 1993, you are directed to amend further the directive dated December 28, 1992 to increase the Normal Regime limit for Category 435 to 14,000 dozen[1]. The Special Regime limit for Category 435 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–26475 Filed 10–26–93; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

## Extension of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

October 22, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs extending limits.

**EFFECTIVE DATE:** October 28, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limits on Categories 326, 335/635 and 369–S for an additional twelve-month period, beginning on October 28, 1993 and extending through October 27, 1994.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54061, published on November 16, 1992.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 22, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive

Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 28, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on October 28, 1993 and extending through October 27, 1994, in excess of the following restraint limits:

| Category | Twelve-month limit |
|---|---|
| 326 | 1,038,999 square meters. |
| 335/635 | 87,710 dozen. |
| 369–S [1] | 139,202 kilograms. |

[1] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period October 28, 1992 through October 27, 1993 shall be charged against the levels of restraint to the extent of any unfilled balances. Goods in excess of those limits shall be subject to the limits established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–26476 Filed 10–26–93; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Cost, Safety, and Environmental Effects of Heating Oil, Etc.

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Notice of Request for Comments.

**SUMMARY:** The Energy Information Administration (EIA) of the Department of Energy (DOE) is soliciting public comments to facilitate an analysis of the cost, safety, and environmental effects of heating oil, natural gas, and electricity used for residential heating and cooling. Comments will provide background material for the preparation of a report to Congress containing this analysis.

All written comments to this notice will be available for public inspection at the Department of Energy's (DOE) Freedom of Information Office, room 1E–190. Pursuant to the provisions of 10 CFR 1004.11 (1983), any person submitting information believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and, if possible, 10 additional copies in which the information believed to be confidential has been deleted. Confidential information will be treated accordingly.

**DATES:** Comments concerning this notice should be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the time period allowed by this notice, please advise the contact listed below of your intentions.

**ADDRESSES:** Comments should be submitted in writing to: Dr. John D. Pearson, EI–60, Energy Information Administration, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. FAX 202–586–9753.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Dr. Pearson at the above address or by telephone on 202–586–6162, or FAX 202–586–9753.

**SUPPLEMENTARY INFORMATION:**



#### I. Background

The Congress has requested that EIA undertake an analysis of various fuels used in residential heating and cooling. The request is based in part on recent headlines of disputed claims for different heating fuels that highlight the need for an impartial analysis of these competing claims. Each fuel's proponent proclaims that it is the cheapest, safest, and the most environmentally clean.

EIA serves as the Government's primary source of energy statistics and provides information to the Executive Branch, Congress, State and local governments, industry, and the general public. EIA's mission is to ensure that accurate, timely, and objective statistics on the Nation's energy position are available for use in public and private analysis and decision-making.

EIA collects data on the consumption and expenditure by households in the Residential Energy Consumption Survey as well as data on the price of heating oil, natural gas and electricity sold to consumers. EIA collects and maintains technical data on the efficiency and cost of various heating and cooling technologies as part of its National Energy Modeling System. EIA receives copies of a wide variety of studies of the relative merits of heating and cooling systems performed by other components of the Department of Energy, other Federal agencies, research organizations and industry trade groups.

#### II. The Request

The House Committee on Energy and Commerce requested EIA to undertake a neutral, unbiased analysis of the cost, safety, and environmental effects of residential heating and cooling. The study should also examine the role of conservation in the need for and the choice of heating and cooling fuel. The request recognizes that there can be regional and housing differences that favor one or another fuel; however, conflicting claims are often made for the same region and even for the same house.

#### III. Current Actions

So far as possible, EIA will thoroughly analyze the factors that a typical homeowner may consider when deciding to replace an aging heating and cooling system in his home. EIA will use the information available to produce a balanced analysis of the costs of heating and cooling a typical house with heating and cooling requirements appropriate to various regions of the country. For each primary heating fuel a full range of currently marketed technologies will be considered for heating, in conjunction where appropriate, with electric cooling. Cost, safety, and environmental questions will be compared for typical systems currently sold in this country and compared to the benefit of effecting additional conservation measures in the home.

#### IV. Request for Comments

EIA could benefit from suggestions and data on practical situations to be considered, currently marketed technologies, current marketing incentives, and examples of consumer advice that already exist. These inputs will serve as examples and provide background and reference material for the analysis. In addition to general comments or suggestions, we are asking for inputs on the following points from various regions of the country:

(1) Provide examples of the advice to homeowners on the choice of replacement heating and cooling systems in your region. These could include pamphlets, booklets and similar examples describing how a homeowner

should consider the costs, safety, and environmental effects of various choices.

(2) Provide cost data and sales literature for typical heating and/or cooling systems available to homeowners in your region. These could include examples of the purchase costs, installation costs and other related costs such as utility hookups for various kinds of heating and cooling systems.

(3) Provide cost data and sales literature for typical heating and cooling system maintenance programs available to homeowners in your region. These could include system maintenance and tuneups up to and including guarantees that cover system failure.

(4) Provide examples of the energy conservation advice provided to homeowners in your region. These could include examples of various weatherization programs appropriate to the region and advice on how to evaluate the benefits and costs of these programs.

(5) Provide cost data and sales literature for typical demand-side management programs available to a homeowner in your region. These could cover rebates, low interest loans, or other incentives designed to encourage the purchase of more efficient heating and cooling systems, or weatherization programs.

**V. Future Actions**

The analysis will be performed and the report submitted to the House Committee on Energy and Commerce by March 30, 1994.

Comments (excluding those comments determined to be confidential) submitted in response to this notice may be included in the subject report sent to the Congress and will become a matter of public record.

**Statutory Authorities:** Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended chapter 35 of title 44, United States Code (44 U.S.C. 3506(a)).

**Jay E. Hakes,**

*Administrator, Energy Information Administration.*

[FR Doc. 93–26455 Filed 10–26–93; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket Nos. ER94–33–000, et al.]**

## Florida Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 21, 1993.

Take notice that the following filings have been made with the Commission:

**1. Florida Power Corporation**

[Docket No. ER94–33–000]

Take notice that on October 15, 1993, Florida Power Corporation filed a letter agreement dated October 12, 1993, under which Florida Power has agreed to amend its October 13, 1993, agreement for supplemental, load following and transmission distribution service with Seminole Electric Cooperative, Inc. The amendment will allow Seminole to displace energy which it would otherwise purchase from Florida Power as supplemental energy with purchases from other energy sources, subject principles and operating guidelines set forth in the letter agreement. Seminole has requested that the letter agreement to become effective on October 13, 1993. Accordingly Florida Power requests waiver of the notice requirement to permit the letter Agreement to become effective on that date.

*Comment date:* November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**2. Northern States Power Company (Minnesota Company)**

[Docket No. ER93–807–000]

Take notice that on October 18, 1993, Northern States Power Company (Minnesota) [NSP] tendered for filing an amendment to its filed Interconnection and Interchange Agreement with the City of Blue Earth, Minnesota.

The Interconnection and Interchange Agreement provides for interconnected electrical operation between the parties' systems as well as for the interchange of electrical power and energy between the parties. NSP filed the Interconnection and Interchange Agreement with the Federal Energy Regulatory Commission on July 21, 1993.

NSP is filing to amend that filed Interconnection and Interchange Agreement in response to the Commission's deficiency letter issued on September 17, 1993. NSP is requesting that the filed Interconnection and Interchange Agreement, as amended by this filing, be accepted for filing effective August 23, 1993. NSP requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. The parties have established and energized a direct transmission interconnection between their respective systems to enable the City of Blue Earth to realize a reduction in transmission service costs.

*Comment date:* November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**3. Central Vermont Public Service Corporation and Green Mountain Power Corporation**

[Docket No. ER94–35–000]

Take notice that on October 18, 1993, Central Vermont Public Service Corporation (Central Vermont) and Green Mountain Power Corporation (Green Mountain) jointly tendered for filing and contract under which Central Vermont and Green Mountain have agreed to provide each other transmission and interconnection service at various interconnections points.

Both Central Vermont and Green Mountain request the Commission to waive its notice of filing requirements to permit the rate schedule to become effective according to its terms.

*Comment date:* November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**4. Consolidated Edison Company of New York, Inc.**

[Docket No. ER94–36–000]

Take notice that on October 18, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 112 for transmission service for New York State Electric & Gas Corporation (NYSEG). The Supplement provides for an increase in annual revenues of $195,411.04. The supplement also increases the charges for transmission service from $.3063/kW-mo to $.3879.kW-mo. Con Edison has requested waiver of notice requirements so that the Supplement can be made effective as of April 1, 1993.

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

*Comment date:* November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**5. Maine Public Service Company**

[Docket No. ER92–774–005]

Take notice that on October 12, 1993, Maine Public Service Company tendered for filing its refund report in the above-referenced docket.

*Comment date*: November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**6. Consumers Power Company**

[Docket No. ER93-911-000]

Take notice that on October 19, 1993, Consumers Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date*: November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**7. San Diego Gas & Electric Company**

[Docket No. ER94-21-000]

Take notice that on October 12, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing its acceptance to an Interchange Agreement between SDG&E and Utah Associated Municipal Power Systems (UAMPS).

SDG&E requests that the Commission allow the Agreement to become effective on December 1, 1993, or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and UAMPS.

*Comment date:* November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**8. Central Louisiana Electric Company, Inc.**

[Docket No. ER94-37-000]

Take notice that on October 19, 1993, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing two Service Schedules for the sale of Regulation Services and Operating Reserves between Central Louisiana Electric Company, Inc. and The City of Alexandria, Louisiana effective upon Commission approval.

CLECO has served copies of the filing on the affected customer and on the Louisiana Public Service Commission.

*Comment date:* November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**9. Cambridge Electric Light Company**

[Docket No. ER94-31-000]

Take notice that on October 15, 1993, Cambridge Electric Light Company (Cambridge) tendered for filing a Service Agreement (Agreement) between Cambridge and a new transmission customer, the Massachusetts Bay Transportation Authority (MBTA). The Agreement would provide transmission services to the MBTA under Cambridge's FERC Electric Tariff for Firm Transmission Service as approved by the Commission in Docket No. ER86-262 (et al). As requested by the customer, Cambridge requests waiver of the Commission's regulations, and any such authorizations as may be necessary to permit the Agreement to become effective on September 17, 1993.

*Comment date:* November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-26413 Filed 10-26-93; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. EC94-1-000, et al.]**

## Florida Power Corp., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 20, 1993.

Take notice that the following filings have been made with the Commission:

**1. Florida Power Corporation**

[Docket Nos. EC94-1-000 and ER94-17-000]

Take notice that on October 12, 1993, Florida Power Corporation (FPC) tendered for filing an application pursuant to section 203 and 205 of the Federal Power Act for an order authorizing the sale of certain facilities to the town of Havana, Florida, (Havana) approving an amendment to FPC's full requirements rate schedule with Havana, to extend its term 2008, and approving operating and maintenance (O&M) rates for maintenance of Havana's Sutter Creek substation, all pursuant to the Amendment To Construction And Maintenance Agreement between FPC and Havana.

Copies of the application have been served on The City of Havana and the Florida Public Service Commission.

*Comment date:* November 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

**2. United Illuminating Company**

[Docket Nos. ER92-2-002, ER92-3-002, ER92-4-002 ER92-7-002, ER92-14-002 ER92-27-002, and ER92-443-002]

Take notice that on September 17, 1993, United Illuminating Company (UI) tendered for filing its compliance filing in the above-referenced dockets.

*Comment date:* November 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

**3. Consumers Power Company**

[Docket No. ER94-30-000]

Take notice that on October 15, 1993, Consumers Power Company (Consumers) tendered for filing a supplemental agreement which modifies the definitions of on-peak hours and off-peak hours under an agreement (Consumers Rate Schedule No. 66) whereby Consumers provides firm wholesale service to the City of Holland (Holland).

Copies of the filing were served upon the Michigan Public Service Commission and Holland.

*Comment date:* November 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

**4. Northern States Power Company**

[Docket No. ER93-412-000]

Take notice that on October 1, 1993, Northern States Power Company (Northern States) tendered for filing an amendment in the above-referenced docket.

*Comment date:* November 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**5. Public Service Company of Oklahoma**

[Docket No. ER94-19-000]

Take notice that on October 12, 1993, Public Service Company of Oklahoma (PSO) tendered for filing a restated Transmission Service Agreement between PSO and Western Framers Electric Cooperative.

PSO seeks an effective date of November 1, 1993, and accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on Western Farmers Electric Cooperative and the Oklahoma Corporation Commission.

*Comment date:* November 3, 1993, in accordance with Standard Paragraph E end of this notice.

**6. Niagara Mohawk Power Corporation**

[Docket No. ER93-944-000]

Take notice that on October 12, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to Niagara Mohawk's September 10, 1993, filing of an agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. (Con Edison) dated August 31, 1993, providing for certain transmission services to each other.

An effective date of November 13, 1993, is proposed.

Copies of this filing were served upon Con Edison and the New York State Public Service Commission.

*Comment date:* November 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

**7. Atlantic City Electric Company**

[Docket No. ER93-954-000]

Take notice that on October 12, 1993, Atlantic City Electric Company (ACE) tendered for filing amendment agreements between ACE and Baltimore Gas and Electric Company (BG&E) providing for the sale and exchange of Pennsylvania-New Jersey-Maryland Interconnection Installed Capacity Credits. The amendments amend the agreements filed in Docket No. ER93-954-000 on September 16, 1993. This filing also requests withdrawal of three letter agreements previously tendered in this docket.

Copies of the filing have been served on BG&E, the New Jersey Board of Regulatory Commissioners, the Maryland Public Service Commission and all parties who have intervened in Docket No. ER93-954-000.

*Comment date:* November 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

**8. New Charleston Power I, L.P.**

[Docket Nos. EL94-3-000; QF 84-433-004]

On October 14, 1993, New Charleston Power I, L.P. (New Charleston) filed a request for a temporary waiver of the Commission's 25 percent fossil fuel use limitation established for qualifying small power production facilities by § 292.204(b)(2) of the Commission's regulations. 18 CFR 292.204(b)(2) (1993). New Charleston seeks the waiver for the Mesquite Lake Resource Recovery Plant (the Facility), a 15 MW biomass-fired (the biomass is in the form of cattle and calf manure) located in El Centro, California.

New Charleston states that since the original plant start-up in 1988, the Facility has experienced numerous technical problems due to the novel technology employed by the Facility. In spite of significant plant investment for improvements, the Facility requires further improvements. Until the improvements are complete, which will take about nine months, the Facility will be unable to burn manure without risk of major boiler failure and risk of serious injury. New Charleston seeks waiver of the 25 percent fossil fuel limitation for the calendar years 1993 and 1994 to enable the Facility to produce electrical energy while plant improvements are being made.

*Comment date:* November 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

*Standard Paragraphs*

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-26376 Filed 10-26-93; 8:45 am]

BILLING CODE 6717-01-M

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**[Project No. 6221-028 Washington]**

## Black Creek Hydro, Inc.; Availability of Environmental Assessment

October 21, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license to change the route of the transmission line for the Black Creek Project. This project is located on Black Creek, a tributary of the North Fork Snoqualmie River, in King County, Washington. The staff of OHL's Division of Project Compliance and Administration prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the transmission line's revised route 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 Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-26377 Filed 10-26-93; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP94-23-000, et al.]**

## Ozark Gas Transmission System, et al.; Natural Gas Certificate Filings

October 21, 1993.

Take notice that the following filings have been made with the Commission:

**1. Ozark Gas Transmission System**

[Docket No. CP94-23-000]

Take notice that on October 13, 1993, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Suite 200, Dallas, Texas 75201, filed in Docket No. CP94-23-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon three lateral compressors and appurtenant facilities, which were authorized in Docket No. CP78-532, all as more fully set forth in the application on file with the Commission and open to public inspection.

Ozark proposes to abandon the three 1,000 horsepower compressor units, which comprise the Knuckles Compressor Station and serve Ozark's Knuckles Lateral Line, located in Johnson County, Arkansas. It is stated that the compressors are no longer needed because the gas supply produced from the wells located behind the compressors may be delivered without these units. It is asserted that the proposed abandonment would not cause any interruption in service. It is explained that Ozark has obtained written consent to abandon the compressors from shippers and producers who used them.

*Comment date:* November 12, 1993, in accordance with Standard Paragraph F at the end of this notice.

**2. ANR Pipeline Company**

[Docket No. CP93-637-001]

Take notice that on October 15, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93-637-001 a request pursuant to section 7 of the Natural Gas Act (NGA), for authorization to operate certain tap

facilities in Lenawee County, Michigan, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In the original application, ANR, pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211), filed an application for authorization to construct and operate, under ANR's blanket certificate issued in Docket No. CP82–480–000, an interconnection with Westside Pipeline Company (Westside) for ultimate delivery of gas to Citizens Gas Fuel Company.

ANR's proposal herein is a request for authorization to only operate these same facilities pursuant to section 7 of the Natural Gas Act, as ANR intends to construct such facilities under section 311 of the Natural Gas Act Regulations.

*Comment date*: November 12, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

### 3. Columbia Gas Transmission Corporation

[Docket No. CP94–21–000]

Take notice that on October 12, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP94–21–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate certain natural gas facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the following:

Approximately 8.6 miles of 24-inch pipeline as a replacement for approximately 8.0 miles of bare, coupled 20-inch pipeline; and

Approximately 3.7 miles of 24-inch pipeline as a replacement for 3.1 miles of 20-inch pipeline on Line KA in Wyoming County, WVA.

No new or additional service is requested in this proposal.

Columbia states that the segments of pipeline to be replaced have become physically deteriorated to the extent that replacement is deemed advisable.

Cost of the proposed construction is estimated to be $7,759,598.

*Comment date:* November 12, 1993, in accordance with Standard Paragraph F at the end of this notice.

### 4. Algonquin Gas Transmission Company

[Docket No. CP94–1–000]

Take notice that on October 1, 1993, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP94–1–000 an application pursuant to section 7(b) and (c) of the Natural Gas Act for permission and approval to abandon approximately 10.5 miles of various size pipeline and for a certificate of public convenience and necessity authorizing the construction and operation of approximately 12.1 miles of various size replacement and looping pipeline and to charge a separately stated incremental rate under Rate Schedule AFT–1 in order to provide a transportation service on behalf of Boston Edison Company (BECO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin proposes to construct the following facilities in order to provide a firm transportation service, by November 1995, for BECO of up to 45,000 MMBtu of natural gas per day from an interconnection with Texas Eastern Transmission Corporation (Texas Eastern) at Lambertville, New Jersey to the Ponkapoag Meter Station in Milton, Massachusetts for use in BECO's New Boston Station, an electric generating facility in South Boston, Massachusetts.

(1) Approximately 8.3 miles of 36-inch pipeline replacing Algonquin's existing 26-inch pipeline from Valve Site 12 in Mahwah, New Jersey, to Valve Site 13 in Ramapo, New York;

(2) Approximately 1.6 miles of 12-inch pipeline loop of the existing E–1 system pipeline from the Salem Turnpike Meter Station to the Montville, Connecticut Meter Station;

(3) Uprate, to 900 psi, approximately 15.3 miles of the existing 30-inch pipeline from Valve Site 36A–1 at Burrillville, Rhode Island to the G–1 system tap at Mendon, Massachusetts, including constructing approximately 2.2 miles of replacement pipe, pipe retesting and changing out pressure regulators;

(4) Rebuild the Ponkapoag Meter Station in Milton, Massachusetts;

(5) Modify meter stations at various locations on Algonquin's system.

Algonquin estimates the cost of these facilities to be $40,000,000. Algonquin proposes to construct the facilities in the spring and summer of 1995. Algonquin states that initial financing would be through revolving credit arrangements, short-term loans and from funds on hand.

Algonquin proposes separately stated, incremental rates under its Rate Schedule AFT–1 which would be initial rates and not subject to refund. Algonquin proposes a demand rate of $19.1592 per MMBtu as the initial rate for BECO. Algonquin states that the rates charged BECO under Rate Schedule AFT–1 would include the charges paid by Algonquin, as BECO's agent, to Texas Eastern under Texas Eastern's Rate Schedule FT–1 and would track any changes in Texas Eastern's FT–1 rates. Algonquin states that because the proposed service is to be rendered to BECO pursuant to an incremental rate, all costs associated with the service would be recovered from BECO and would have no effect on the rates of Algonquin's other customers.

*Comment date:* November 12, 1993, in accordance with Standard Paragraph F at the end of this notice.

### 5. Texas Eastern Transmission Corporation

[Docket No. CP94–5–000]

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310 filed an application pursuant to section 7(b) and (c) of the Natural Gas Act for: (a) Permission and approval to abandon approximately 26 miles of 36-inch pipeline; (b) a certificate of public convenience and necessity authorizing the construction and operation of approximately 49.43 miles of various size replacement and looping pipeline; and (c) incremental initial rates pursuant to its Rate Schedule FT–1 to transport natural gas on a firm basis for the Integrated Transportation Project shippers (ITP shippers),[1] all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct the following facilities in order to provide firm transportation service for the ITP shippers.

(1) Approximately 11 miles of 30-inch pipeline loop between Five Points, Ohio and Somerset, Ohio;

(2) Approximately 4.25 miles of 36-inch pipeline replacement between Somerset, Ohio and Summerfield, Ohio;

(3) Approximately 1.43 miles of 36-inch pipeline loop between Berne, Ohio and Holbrook, Pennsylvania;

(4) Approximately 11 miles of 36-inch pipeline loop between Holbrook, Pennsylvania and Uniontown, Pennsylvania;

(5) Approximately 6.5 miles of 36-inch pipeline replacement between Uniontown, Pennsylvania and Bedford, Pennsylvania;

[1] The ITP shippers are UGI Corporation (UGI), Delmarva Power & Light Company (Delmarva) and Algonquin Gas Transmission Corporation (Algonquin).

(6) Approximately 5.25 miles of 36-inch pipeline replacement between Bedford, Pennsylvania and Chambersburg, Pennsylvania;

(7) Approximately 10 miles of 36-inch pipeline replacement between Eagle, Pennsylvania and Lambertville, New Jersey; and

(8) Expansion of Meter and Regulating Station No. 087 at Lambertville, New Jersey.

Texas Eastern estimates the cost of these facilities to be $81,415,000.

Texas Eastern proposes to construct the facilities to provide the transportation services for the ITP Phase II service scheduled to commence November 1, 1995, for the ITP shippers from Lebanon, Ohio to Lambertville, New Jersey. Texas Eastern would transport up to 10,000 dth of natural gas per day each for UGI and Delmarva; and up to 45,997 dth of natural gas per day for Algonguin under its Part 284, open-access Rate Schedule FT-1.

Texas Eastern proposes separately stated, incremental rates under its Rate Schedule FT-1 which be initial rates and not be subject to refund. Texas Eastern proposes a demand rate of $19.901 per dth, to be effective on the proposed in-service data of November 1, 1995, as the initial rates for the ITP Phase II service. Texas Eastern states that since the rates proposed for the ITP Phase II service are on an incremental basis, all the costs associated with the service would be borne by the ITP shippers receiving the service and thus would have no effect on the rates and services of Texas Eastern's other customers.

Texas Eastern states that upstream transportation of ITP Phase II volumes would be provided by Trunkline Gas Company and Panhandle Eastern Pipeline Company (Panhandle) under their respective open-access blanket transportation certificates. Texas Eastern indicates that it would transport the ITP phase II volumes from Panhandle's interconnection with Texas Eastern at Texas Eastern's Lebanon lateral at the Gas City compressor station to Lebanon, Ohio under its existing Rate Schedule LLFT.

Texas Eastern states that downstream transportation of ITP Phase II volumes would be required for the volumes transported by Texas Eastern for Algonquin. Texas Eastern indicates that Algonguin has entered into a precedent agreement with Texas Eastern and would act as a transporter for its customer, Boston Edison Company for the same volumes, less Algonquin fuel, transported by Texas Eastern for Algonquin.

Texas Eastern requests that a certificate be issued by November 1, 1994, in order for Texas Eastern to complete construction of the facilities in time to meet the in-service date of November 1, 1995. Texas Eastern states that the project would be financed initially with short term loans and funds on hand, with permanent financing to be arranged later.

*Comment date:* November 12, 1993, in accordance with Standard Paragraph F at the end of the notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date 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 the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-26414 Filed 10-26-93; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. JD94-00365T New Mexico-57]**

## Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 21, 1993.

Take notice that on October 18, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Pictured Cliffs Formation underlying certain lands in the Carracas Canyon Unit in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 30,174.74 acres, 97.7% of which are administered by the Bureau of Land Management and 2.3% by the State of New Mexico. The recommended area is described as follows:

*Township 31 North, Range 5 West, NMPM*

Sections 1 and 2: All.

*Township 32 North, Range 4 West, NMPM*

Sections 7-36: All.

*Township 32 North, Range 5 West, NMPM*

Sections 7-17: All.
Section 21: E/2.
Sections 22 and 23: All.
Section 24: Lots 1,2,3,4, and W/2 E/2, W/2.
Sections 25-27: All.
Section 28: E/2.
Sections 34-36: All.

The notice of determination contains BLM's finding that the referenced portion of the Pictured Cliffs Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-26380 Filed 10-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP93-8-000]

## North Dakota Industrial Commission, Tight Formation Determination, North Dakota-3, FERC No. JD93-057165; Preliminary Finding

October 21, 1993.

The North Dakota Industrial Commission (North Dakota) determined that the Red River Formation (Red River) underlying approximately 5,800 acres in part of McKenzie County, North Dakota, qualifies as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA).

For the reasons discussed below, the Commission issues this Notice of Preliminary Finding that the determination is not supported by substantial evidence.

### North Dakota's Determination

On March 18, 1993, the Commission received North Dakota's determination that the Red River, in the Antelope Field Area in McKenzie County, North Dakota [1] qualifies as a tight formation under section 107(c)(5) of the NGPA. The record shows that only one well, the McKeen #30-23 well (McKeen well), has been completed for production in the Red River within the recommended area, and that its permeability falls between a pressure build-up test value of 0.32 millidarcy (md) and 0.198 md, computed from a drillstem test. Both results exceed the Commission's 0.1 md permeability guideline.

However, the record indicates that North Dakota determined the average Red River permeability to be 0.065 md by first averaging the 0.32 and 0.198 values for the McKeen well to get 0.259 md, and then dividing that average by four, thus averaging in 0.00 md values for three dry holes that also penetrated the Red River Formation at different locations within the recommended area.

### Staff's First Tolling Letter

By letter dated April 23, 1993, staff tolled the Commisaion's 45-day review period for the subject determination because the notice showed that North Dakota used dry hole data in its determination of average permeability. Staff's letter explained that the Commission previously determined that data from dry holes is generally not useful, because such wells typically lack a natural gas pay section.[2] Accordingly, staff requested North Dakota to explain why it believed that the Red River Formation meets the Commission's tight formation permeability guideline when the one producing well exceeds 0.1 md.

### North Dakota's First Reply

On May 24, 1993, the Commission received North Dakota's response, referencing a May 17, 1993 letter (plus attachments) from Amerada Hess Corporation (Amerada), the applicant before North Dakota. Amerada argued that, based on porosity logs, a Red River Formation gas pay section of from 10 to 46 feet is penetrated by the dry holes.[3]

Amerada further argued that the dry holes should be viewed as non-commercial penetrations of the Red River Formation that have a pay section, since: (1) Fluids may be pumped into the formation, (2) drilling mud was recovered on drill stem tests, and (3) load fluids were recovered during production tests. It asserts that this is evidence that a pay section is present, but that it has an in situ permeability that is too small to measure.

### Staff's Second Tolling Letter

By letter dated July 8, 1993, staff again tolled the 45-day review period, because the information submitted by Amerada was not sufficient to establish that a gas pay section exists in each of the three dry holes. Staff's letter pointed out that a formation exhibiting an ability to accept and produce fluids may still not have a pay section if an adequate accumulation of gas is not present. Staff's letter also pointed out that, when drilling results in a dry hole penetration of a formation, it is because the dry hole typically lacks the necessary combination of characteristics in common with the producing wells to demonstrate that a gas pay section actually exists in the dry hole.

Staff further noted that dry holes typically exhibit characteristics that differ from productive wells, including differences in lithological characteristics and well log responses (such as lower net pay thickness, lower porosity, and/or higher water saturation than the productive wells). Staff pointed out that the combination of these differences typically indicate that a potentially commercial accumulation of gas simply does not exist in the formation at the dry hole location, such that the dry holes would not be comparable to the producing wells.

### North Dakota's Second Reply

On September 7, 1993, North Dakota submitted additional information including a log analysis for all four wells that it had received from Amerada. Based upon this information, Amerada again argues that a natural gas pay section is present in all of the dry holes used in averaging permeability, and that the term non-commercial better suites the Red River Formation dry holes, because pay zones do exist in those wells but they have in situ permeabilities that are too small to measure.

### Discussion

Under § 271.703(c)(2)(i)(A) of the Commission's regulations,[4] the jurisdictional agency must determine that the expected average in situ permeability to gas throughout the pay section of a formation is not expected to exceed 0.1 md for the formation to qualify as tight. North Dakota asserts that the average Red River Formation permeability is 0.065 md. However, the 0.065 md value is not an arithmetic mean derived from actual producing well data, but an average of actual data from a producing well (from the McKeen well) and assigned values from non-producing wells (from the three dry holes). As discussed below, there is no basis for the inclusion of the asserted 0.00 md dry hole permeability values in the computation of averages in situ permeability of the Red River Formation.

Staff's second tolling letter indicated that the Commission previously has refused to accept dry hole permeability data if the dry hole data fails to show that a potentially commercial accumulation of gas exists in the formation at the dry hole location. Thus, in rejecting dry hole data in determining the permeability of a formation, the Commission in *Wyoming-23* stated that:

> The regulations require the *in situ* permeability to be estimated throughout the pay section because they are focused on the actual portions of a formation that will produce gas.[5]

In other words, even though a portion of the formation penetrated at a given location by a well might produce minute quantities of gas, if the accumulation of gas in place at that location is not sufficient to produce commercial quantities that portion of the formation is not a pay section and the permeability of that portion of the formation is irrelevant to the tight formation determination. Here,

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[1] The recommended area consists of all of Sections 24 and 25 of T153N, R95W, 5th P.M., all of Sections 30-33 of T153N, R94W, 5th P.M., all of Sections 1 and 2 of T152N, R95W, 5th P.M., and all of Section 6 of T152N, R94W, 5th P.M.

[2] See Notice of Preliminary Finding, Wyoming-23, FERC No. JD92-00603T, 58 FERC ¶ 61,165 (1992) (*Wyoming-23*), and Final Order Reversing Tight Formation Determination, 59 FERC ¶ 61,308 (1992).

[3] Amerada defined the boundaries of the alleged pay sections as those portions of the formation with a porosity of 6 percent or more.

[4] 18 CFR 771.703(c)(2)(c)(A) (1993).

[5] 58 FERC at 61, 495.

Amerada's own description of the dry holes is that they are non-commercial and will not be completed for production. Hence, the portions of the Red River Formation that they penetrate are not pay sections that can be considered in the determination of whether the Red River Formation as a whole qualifies as a tight formation.

The only reliable indicator of the Red River's Formation's permeability characteristics for purposes of production is from where it has been found to be productive and, thus, is the permeability data from the McKeen well, the only well completed for production in the Red River Formation within the recommended area.

Furthermore, we reject Amerada's claim that, based on well log data and recovery of load fluids during production tests from the dry holes, it has shown that a pay zone does exist in each of the three dry holes. Amerada asserts that (1) well log data showing the porosities, water saturations and alleged pay thickness values for the dry holes are similar to well log values for the McKeen Well, (2) that this alleged similarity shows that the portion of the Red River Formation penetrated by the dry holes have characteristics similar to the portion penetrated by the McKeen Well, and (3) therefore, under its theory, the dry holes penetrate pay sections. Further, it asserts that recovery of load fluids during production tests from the dry holes shows that they penetrate pay sections, although it asserts that the actual permeability of the alleged pay sections is too low to measure. Finally, Amerada asserts that the portions of the Red River Formation penetrated by the dry holes must have characteristics similar to the portion thereof penetrated by the McKeen Well because they all penetrate a dolomitic limestone.

First, our review of the relevant well logs shows that the portions of the Red River Formation penetrated by the dry holes exhibits markedly different log responses than those of the logs from the McKeen well. Second, well logs alone are insufficient to conclusively establish production characteristics of a formation and, in particular, permeability at that location. Pressure build-up or other tests must be conducted and none were submitted. Third, contrary to Amerada, the recovery of load fluids during production tests on the dry holes does not show that they are capable of commercial gas production.[6] Finally, the fact that the dry holes penetrate the dolomitic limestone of the Red River Formation proves nothing. The deposition, lithology and post-depositional characteristics of a dolomitic limestone formation can vary throughout the formation.

In view of the foregoing, the Commission does not believe the record demonstrates that the dry holes penetrate pay sections of the Red River Formation that can be relevant to the tight formation determination for that formation. Accordingly, the Commission finds that it was inappropriate to average the alleged 0.00 md factors from the dry holes into the permeability calculation, and that only the permeability data from the McKeen Well should have been used which shows that the Red River Formation exceeds the Commission's permeability standard. On this basis, the Commission finds that North Dakota's determination is not supported by substantial evidence in the record upon which it was made.

Under § 275.202(a) of the Commission's regulations, the Commission may make a preliminary finding, before any determination becomes final, that the determination is not supported by substantial evidence in the record. Based on the foregoing facts, the Commission hereby makes a preliminary finding that North Dakota's determination is not supported by substantial evidence in the record upon which it was made. North Dakota or the applicant may, within 30 days from the date of this preliminary finding, submit written comments and request an informal conference with the Commission pursuant to section 275.202(f) of the regulations. A final Commission order will be issued within 120 days after the issuance of this preliminary finding.

By direction of the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-26412 Filed 10-26-93; 8:45 am]

BILLING CODE 6717-01-M

[6] In any event, we note that the fact the zones penetrated by the dry holes have the demonstrated ability to accept and produce fluids shows that they must have more than the 0.00 md permeability that Amerada would impute to them.

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**[Docket No. RP93-186-001]**

## Carnegie Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 21, 1993.

Take notice that on October 15, 1993, Carnegie Natural Gas Company (Carnegie), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following substitute and revised tariff sheets:

First Revised Sheet No. 3
Sub Second Revised Sheet No. 7
First Revised Sheet No. 40
First Revised Sheet No. 141
First Revised Sheet No. 142
First Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146

Carnegie states that it is filing the above tariff sheets in compliance with the Commission's Order in Docket No. RP93-186-000 dated September 30, 1993, which required Carnegie to file proposed tariff language establishing an Account No. 858 cost tracking mechanism to recover the costs associated with unassigned upstream pipeline capacity.

Carnegie states that copies of the filing were served upon all parties to the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-26386 Filed 10-26-93; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ94-1-2-002]**

## East Tennessee Natural Gas Co.; Compliance Filing

October 21, 1993.

Take notice that on October 14, 1993, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Sub 41st Revised Tariff Sheet Nos. 4 and 5, with an effective date of October 1, 1993.

East Tennessee states that the purpose of this filing is to comply with the Commission's Letter Order dated September 29, 1993, in Docket No. TQ94-1-2-000 and 001 requiring East Tennessee to track the correct rates of its supplier, Tennessee Gas Pipeline Company.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before October 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–26383 Filed 10–26–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TQ94–1–2–003]**

## East Tennessee Natural Gas Co.; Revised Compliance Filing

October 21, 1993.

Take notice that on October 19, 1993, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute 42nd Revised Tariff Sheet Nos. 4 and 5, with an effective date of October 1, 1993.

East Tennessee states that the purpose of this filing is to revise its October 14, 1993, filing in compliance with the Commission's Letter Order dated September 29, 1993, in Docket No. TQ94–1–2 requiring East Tennessee to track the correct rates of its supplier, Tennessee Gas Pipeline Company (The October 14 Compliance Filing). East Tennessee has determined the October 14 Compliance Filing inadvertently failed to reflect the gas rates filed September 30, 1993, on Forty-Second Revised Sheet Nos. 4 and 5, in Docket No. TF94–1–2, effective October 1, 1993. East Tennessee hereby submits Substitute Forty-Second Revised Sheet Nos. 4 and 5 to reflect the demand rates filed October 14 in Docket No. TQ94–1–2 as well as the gas rates filed in Docket No. TF94–1–2.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before October 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–26384 Filed 10–26–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP94–25–000]**

## Florida Gas Transmission Co.; Request Under Blanket Authorization

October 21, 1993.

Take notice that on October 13, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP94–25–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point for Chesapeake Utilities Corporation (Chesapeake), under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new tap, approximately 100 feet of 8-inch connecting pipe, a turbine meter run, and related appurtenant facilities. The proposed tap would be located near mile post 25.0 on FGT's Sarasota Lateral in Polk County, Florida, and would accommodate up to 5,640 MMBtu per day and up to 2,058,600 MMBtu per year of natural gas.

Construction cost is estimated to be $210,112, of which, Chesapeake would reimburse FGT.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–26378 Filed 10–26–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP94–21–000]**

## Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 21, 1993.

Take notice that on October 14, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 1, 1993:

Second Revised Sheet No. 50
Second Revised Sheet No. 51
Second Revised Sheet No. 53
First Revised Sheet No. 296

Northern states that the filing establishes the mechanism and surcharge rates whereby Northern will collect the costs associated with system balancing agreements (SBAs) executed to assist Northern in managing peak demand swings in its temperature-sensitive Market Area by providing for no-notice swings and line pack replenishment.

Northern states that copies of this filing were served upon the Northern's 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party 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 inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–26385 Filed 10–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94-25-000]

## Northwest Alaskan Pipeline Co; Notice of Proposed Changes in FERC Gas Tariff

October 21, 1993.

Take notice that on October 15, 1993, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revisions to Rate Schedules X–1, X–2 and X–3, with a proposed effective date of November 1, 1993.

Northwest Alaskan states that the proposed tariff revisions to Rate Schedule X–1 implement, in part, a broader transaction which is intended to restructure the arrangements among Northwest Alaskan, its supplier, Pan-Alberta Gas, Ltd. (Pan-Alberta), its purchaser, Northern Natural Gas Company (Northern) and Northern Border Pipeline Company. Northwest Alaskan states that the proposed Rate Schedule X–1 tariff revisions provide, in summary, for an assignment at Pan-Alberta's request of the Gas Purchase Agreement between Northwest Alaskan and Northern (the Northern Agreement) from Northern to Pan-Alberta Gas (U.S.) Inc. (PAG-US), elimination of a settlement payment obligation, and a change in the commodity portion of the price to be paid by PAG-US under the Northern Agreement.

Northwest Alaskan further states that the proposed replacement of Rate Schedules X-2 and X-3 conforms those Rate Schedules to the existing terms of the Gas Purchase Agreements between Northwest Alaskan and Panhandle Eastern Pipe Line Company and United Gas Pipe Line Company, both of which Agreements have been assigned by the purchasers to PAG-US and reflect the changes necessitated by that assignment, together with a change to the minimum volume obligations under Rate Schedule X-3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party 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 inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–26387 Filed 10–26–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-27-000]

## Northwest Pipeline Corp., Notice of Request Under Blanket Authorization

October 21, 1993.

Take notice that on October 14, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94–27–000 a request pursuant to §§ 157.205 and 157. 212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate an upgraded delivery point in Idaho Falls, Idaho, to accommodate increased deliveries to IGI Resources, Inc. (IGI), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the existing facilities as the Idaho Falls Meter Station to accommodate an increase in the delivery of firm transportation volumes to IGI on behalf of Intermountain Gas Company (Intermountain). It is explained that the increase in capacity was requested by Intermountain. It is asserted that the upgraded facilities would increase the maximum design delivery capacity from approximately 50,000 Dt Equivalent of natural gas per day to 56,667 Dt equivalent per day. It is further asserted that IGI has requested a reallocation of 4,000 Dt equivalent of gas per day from the Payette and Gooding delivery points to the Idaho Falls delivery point. The cost of the upgraded facilities is estimated at $200. It is stated that Intermountain has agreed to reimburse Northwest for the construction cost.

Any person or the Commissin's staff may, within 45 days after issuance of the instant notice by the Commission file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–26388 Filed 10–26–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-24-000]

## Pacific Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 21, 1993.

Take notice that on October 15, 1993, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following revised tariff sheets, to become effective November 5, 1993:

First Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 6
Original Sheet No. 6A

PGT states that it is tendering the revised tariff sheets to commence recovery of approximately $154 million of gas supply realignment (GSR) costs in accordance with Section 30 of the General Terms and Conditions of PGT's FERC Gas Tariff, First Revised Volume No. 1–A and the Commission's Orders of July 12, 1993 and October 1, 1993, in PGT's restructuring case, Docket No. RS92–46–000. The amount of GSR costs proposed to be recovered represents 75% of the GSR costs PGT has so far agreed to pay pursuant to written obligations.

PGT states that it will recover 25% of its GSR costs by means of a direct bill and 50% of its GSR costs by means of a volumetric surcharge applicable to service under Rate Schedules FTS–1 and ITS–1. In the event no party successfully challenges the prudence of PGT's GSR costs, PGT will absorb the remaining 25% of its GSR costs.

PGT further states that a November 5, 1993, effective date for the above-referenced sheets is proposed so that PGT's recovery of its GSR will commence approximately with its payment of the GSR costs and the initiation of restructuring on PGT's system.

PGT states that copies of its filing were served on all parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party 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 inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–26382 Filed 10–26–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER82–616–036]**

## System Energy Resources, Inc.; Order Clarifying Policy Regarding Decommissioning Trust Fund Requirements

Issued: October 20, 1993.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, and Donald F. Santa, Jr.

### Background

Section 1917 of the Energy Policy Act of 1992 (EPAct),[1] inter alia, repealed a portion of section 468A(e)(4) of the Internal Revenue Code (IRC) which formerly limited the types of investments in which a Nuclear Decommissioning Reserve Fund could invest and still qualify for tax benefits. Prior to the enactment of section 1917, such investments were limited to: (1) Public debt securities of the United States; (2) obligations of a State or local government which are not in default as to principal or interest; and (3) time or demand deposits, in a bank (as defined in section 581 of the IRC)[2] or an insured credit union (within the meaning of section 101(7) (of the Federal Credit Union Act, 12 U.S.C. 1752(7) (1988))[3] located in the United States.

In 1986, in *System Energy Resources, Inc. (SERI)*,[4] the Commission set forth guidelines for all pubic utilities to use in developing external decommissioning trust funds. In those guidelines, the Commission stated:

> The trustee shall not invest in any securities issued by the utility beneficiary, its successors or assigns, *but shall limit the investment to those allowed in the [Internal Revenue Service] regulations* * * *.

37 FERC 61,727 (emphasis added). The IRS regulations to which the order referred limited the investments to those cited in the portion of IRC section 468A repealed by section 1917 of EPAct.

On December 30, 1992, the Internal Revenue Service (IRS) issued a final rule that modified the IRS regulations to implement IRC section 468A, as amended by section 1917 of EPAct. In the preamble to that rule, the IRS stated:

> The Treasury Department and the Internal Revenue Service believe that Congress intended the changes made by section 1917 to shift oversight of the types of investments made by nuclear decommissioning funds to the public utility commissions.

57 FR 62,189 (December 30, 1992). This statement is consistent with the House Ways and Means Committee Report, H.R. Rep. No. 474, 102d Cong., 2d Sess., pt. 6, at 47: "The Committee believes that a nuclear decommissioning fund should be allowed to invest in any asset that is considered appropriate by the applicable public utility commission or other State regulatory body."

### Discussion

In light of section 1917 of EPAct and the IRS' revised regulations, the Commission must clarify its *SERI* investment policy. The Commission in *SERI* limited the types of investments in which decommissioning funds subject to its jurisdiction may invest, in order to ensure that ratepayer-contributed funds will, in fact, be available when decommissioning occurs. The Commission incorporated the IRS regulations into its investment guidelines because the regulations "satisfy, in part, our concern regarding the adequacy of a decommissioning fund." 37 FERC at 61,726. Thus, as noted above, the Commission required a trustee of a decommissioning fund to "limit the investments to those allowed in the IRS regulations * * *." 37 FERC at 61,727. As further evidence of the Commission's overriding concern about the security of a decommissioning fund, the Commission stated:

> We will allow a utility to deviate from the requirements outlined above to the extent that it can demonstrate that its proposal provides an equal or greater assurance of the availability of funds at the time of decommissioning and is at least as beneficial to consumers as are the specified requirements.

37 FERC at 61,727.[5]

As noted, the House Ways and Means Committee report on section 1917 of the EPAct and the preamble to the IRS regulations, implementing section 1917 emphasize Congress' intent that a nuclear decommissioning fund be allowed to be invested in any asset deemed appropriate by the applicable public utility regulator. To that end, we find that the former IRS regulations, limiting the type of investments in which a Nuclear Decommissioning Reserve Fund may invest, continue to be appropriate for decommissioning funds subject to our jurisdiction. We continue to believe that the security of a decommissioning fund is of primary importance. Thus, the Commission reaffirms the application of the *SERI* guidelines to such funds except to the extent a public utility can demonstrate in advance that a proposal offers equal or greater assurance of the availability of funds at the time of decommissioning and is at least as beneficial to consumers as are the specified guidelines.

*The Commission orders:*

(A) Except to the extent that a public utility can demonstrate in advance that a proposal offers equal or greater assurance of the availability of funds at the time of decommissioning and is at least as beneficial to consumers as the guidelines specified below, public utilities shall limit the investments in Nuclear Decommissioning Reserve Funds to: (1) Public debt securities of the United States; (2) obligations of a State or local government which are not in default as to principal or interest; and (3) time or demand deposits in a bank, as defined in 26 U.S.C. 581 or an insured credit union, within the meaning of 12 U.S.C. 1752(7), located in the United States.

(B) The Secretary shall promptly publish a copy of this order in the **Federal Register.**

By the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–26417 Filed 10–26–93; 8:45 am]

BILLING CODE 6717–01–M

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[1] Pub. L. 102–486, 106 Stat. 2776, 3024–25 (1992); *See* 26 U.S.C. 468A(e) (1988).

[2] 26 U.S.C. 581 (1988) provides that: [t]he term "Bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

[3] Section 1752(7) provides that: [t]he term "insured credit union" means any credit union the member accounts of which are insured in accordance with the provisions of subchapter II of this chapter * * *.

[4] 37 FERC ¶ 61,261 (1986).

[5] *See also* Vermont Yankee Nuclear Power Corporation, 52 FERC ¶ 61,141 at 61,583–84 (1990) which reiterates the Commission's policy that a proposal must provide an equal or greater assurance of fund availability and be at least as beneficial to consumers as a *SERI* strategy.

**[Docket Nos. RS92-13-006, CP82-487-041, RP86-10-021, RP89-34-007, RP92-163-005, RP92-170-005, and RP92-236-003 (Not Consolidated)]**

### Williston Basin Interstate Pipeline Co.; Compliance Tariff Filing

October 21, 1992.

Take notice that on October 15, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Bismarck, North Dakota 58501, tendered for filing certain tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the tariff sheets submitted herewith reflect rates designed on the basis of final, binding nominations of post-Order No. 636 service levels by its converting sales customers.

As directed by the Commission in Ordering paragraph (A) of the September 17, 1993, Order, the proposed effective date of these tariff sheets is November 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-26379 Filed 10-26-93; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP93-175-001]**

### Williston Basin Interstate Pipeline Co.; Compliance Filing

October 21, 1993.

Take notice that on October 15, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), submitted its Compliance Filing pursuant to the Commission's September 30, 1993, "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Conference."

Williston Basin states that in accordance with Ordering Paragraph (B) of the Commission's Order, a verification of the settlement payment made to Koch Hydrocarbon Company is contained in the filing. The relief obtained by Williston Basin in exchange for the settlement payment is delineated in the "Settlement and Release of Claims" dated August 11, 1993, which document was also included in the filing and is to be treated in a confidential manner pursuant to § 388.112 of the Commission's Regulations. As specified in Ordering Paragraph (C), Williston Basin further submitted a complete version of its First Revised Volume No. 1 on electronic medium and a hard copy of Substitute Original Sheet No. 123J (First Revised Volume No. 1) to Williston Basin's FERC Gas Tariff, to be effective October 1, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211. All such protests should be filed on or before October 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and the non-confidential portions are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-26381 Filed 10-26-93; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-4793-9]**

### Acid Rain Program; Final Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final permits.

**SUMMARY:** The U.S. Environmental Protection Agency [EPA] is issuing five-year Acid Rain permits, according to the Acid Rain Program regulations [40 CFR part 72], to the following 5 utility plants: Elmer Smith and HMP&L Station 2 in Kentucky; Brunner Island and Sunbury in Pennsylvania; and Mount Storm in West Virginia.

**FOR FURTHER INFORMATION CONTACT:** For Brunner Island, Sunbury, and Mount Storm: Kimberly Peck at (215) 597-9839. Air, Radiation and Toxics Division, EPA Region 3 (3AT-22), 841 Chestnut Bldg., Philadelphia, PA 19107. For Elmer Smith and HMP&L Station 2: Brian Beals at (404) 347-5014. Air, Pesticides and Toxics Management Division, EPA Region 4, 345 Courtland Ave. NE., Atlanta, GA 30365.

Dated: October 19, 1993.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93-26406 Filed 10-26-93; 8:45 am]

BILLING CODE 6560-50-P

**[OPP-180904; FRL 4646-9]**

### Pesticide Programs Annual Report on Crisis Exemptions

**AGENCY:** Environmental Protection Agency. (EPA)

**ACTION:** Notice.

**SUMMARY:** This notice summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked during fiscal year 1992. During 1992, State and Federal agencies issued 85 crisis exemptions authorizing unregistered pesticide uses in accordance with the regulations in 40 CFR 166.40 pursuant to section 18 of the FIFRA. During this same time period, EPA revoked two crisis exemptions and revoked the authority to utilize the crisis provisions for two pesticide uses.

**FOR FURTHER INFORMATION CONTACT:** By mail: Rebecca S. Cool, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, 703-308-8417.

**SUPPLEMENTARY INFORMATION:** The regulations pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act require EPA to issue annually a notice for publication in the **Federal Register** which summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked.

Subpart C of 40 CFR part 166 sets forth the regulations pertaining to crisis exemptions. This subpart allows the head of a Federal or State agency to issue a crisis exemption in a situation involving an unpredictable emergency situation when: (1) An emergency condition exists; and (2) the time element with respect to the application of the pesticide is critical, and there is not sufficient time either to request a specific, quarantine, or public health

exemption or, if such a request has been submitted, for EPA to complete review of the request. This subpart also provides for EPA review of crisis exemptions and revocation of individual crisis exemptions or the authority of a State or Federal agency to utilize the crisis provisions.

During the fiscal year 1992 (October 1, 1991 through September 30, 1992), 85 crisis exemptions were declared by State and Federal agencies. A breakdown of the FY'92 crisis declarations by State/Federal agency follows:

| State/Federal Agency | No. of crisis exemptions | Pesticide | Site |
|---|---|---|---|
| Arizona | 2 | Avermectin | Melons |
| | | Bifenthrin | Melons |
| Arkansas | 1 | Fomesafen | Snap beans |
| California | 14 | Avermectin | Tomatoes |
| | | Bifenthrin | Broccoli |
| | | Bifenthrin | Cabbage |
| | | Bifenthrin | Cauliflower |
| | | Bifenthrin | Lettuce |
| | | Bifenthrin | Rapini |
| | | Carboxin | Onion seed |
| | | Cyfluthrin | Oranges |
| | | Cypermethrin | Sugar beets |
| | | Fenamiphos | Broccoli |
| | | | Cauliflower |
| | | Hexakis | Watermelons |
| | | Myclobutanil | Strawberries |
| | | Propargite | Avocados |
| | | Triadimefon | Peppers |
| Colorado | 4 | Chlorothalonil | Mushrooms |
| | | Chlorpyrifos | Wheat |
| | | Cyhalothrin | Onions |
| | | Permethrin | Wheat |
| Florida | 1 | Fosetyl-al | Lettuce |
| Idaho | 3 | Chlorpyrifos | Wheat |
| | | Paraquat | Dry peas, |
| | | Lentils | |
| | | Permethrin | Wheat |
| Illinois | 1 | Fomesafen | Snap beans |
| Indiana | 1 | Cryolite | Potatoes |
| Kansas | 3 | Glyphosate | Wheat |
| | | Permethrin | Small grains |
| | | Propiconazole | Corn |
| Kentucky | 1 | Metalaxyl | Tobacco |
| Louisiana | 2 | Clomazone | Sweet potatoes |
| | | Paraquat | Corn |
| Michigan | 2 | Cyromazine | Potatoes |
| | | Sethoxydim | Canola |
| Minnesota | 1 | Glyphosate | Spring wheat |
| Mississippi | 2 | Paraquat | Corn |
| | | Paraquat | Sorghum |
| Montana | 5 | Benomyl | Canola |
| | | Chlorpyrifos | Small grains |
| | | Glyphosate | Winter wheat |
| | | Glyphosate | Spring wheat |
| | | Permethrin | Small grains |
| Nebraska | 3 | Chlorpyrifos | Wheat |
| | | Permethrin | Wheat |
| | | Sodium chlorate | Wheat |
| Nevada | 1 | Cyhalothrin | Onions |
| New Mexico | 1 | Chlorpyrifos | Wheat |
| North Dakota | 1 | Glyphosate | Small grains |
| Oklahoma | 1 | Carbofuran | Cotton |
| Oregon | 1 | Permethrin | Raspberries |
| Pennsylvania | 1 | Chlorothalonil | Mushrooms |
| South Dakota | 3 | Glyphosate | Small grains |
| | | Pendimethalin | Mint |
| | | Permethrin | Small grains |
| Tennessee | 1 | Clomazone | Cotton [1] |

| State/Federal Agency | No. of crisis exemptions | Pesticide | Site |
|---|---|---|---|
| Texas | 9 | Chlorpyrifos | Wheat |
| | | Esfenvalerate | Sorghum |
| | | Glyphosate | Sorghum |
| | | Iprodione | Cabbage |
| | | Iprodione | Celery [1] [2] |
| | | Metalaxyl | Roses |
| | | Permethrin | Rice |
| | | Propiconazole | Corn |
| | | Triadimenol | Cotton [2] |
| USDA | 12 | Brodifacoum | Rose Atoll |
| | | Bromethalin | Rose Atoll |
| | | Methyl bromide | Asparagus |
| | | Methyl bromide | Chayote |
| | | Methyl bromide | Grapes |
| | | Methyl bromide | Melons |
| | | Methyl bromide | Pears |
| | | Methyl bromide | Pineapples |
| | | Methyl bromide | Plantains |
| | | Sodium cyanide | Coyote/Wild dogs |
| | | Sodium cyanide | Coyote/Wild dogs |
| | | Soybean oil | Ship decks, etc. |
| Washington | 3 | Avermectin | Hops |
| | | Paraquat | Dry peas, Lentils |
| | | Permethrin | Raspberries |
| Wisconsin | 4 | Bromoxynil | Sweet corn |
| | | Mancozeb | Ginseng |
| | | Metalaxyl | Ginseng |
| | | Sethoxydim | Canola |
| Wyoming | 1 | Chlorpyrifos | Wheat |

[1] Crisis revoked
[2] Crisis authority revoked

During the 1992 fiscal year, EPA revoked Tennessee's crisis exemption for the use of clomazone on cotton to control velvetleaf and spurred anoda, based on the determination that the pest problem was routine. The Agency also revoked Texas's crisis exemption and authority to issue crisis exemptions for the use of iprodione on celery because an emergency condition did not exist. Finally, EPA revoked Texas's authority to issue crisis exemptions for the use of triadimenol on cotton seed to control black root rot after the use season had ended, based on the finding that registered alternatives were available to control this disease.

**Authority:** 7 U.S.C. 136.

**List of Subjects**

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: September 23, 1993.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 93-26307 Filed 10-26-93; 8:45 am]
BILLING CODE 6560-50-F

**[PP 3G4210/T644; FRL 4590-3]**

## Iprodione; Establishment of Temporary Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established temporary tolerances for the combined residues of the fungicide iprodione and its isomer in or on certain raw agricultural commodities. These temporary tolerances were requested by Rhone-Poulenc Agricultural Company.

**DATES:** These temporary tolerances expire April 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-6900.

**SUPPLEMENTARY INFORMATION:** Rhone-Poulenc Agricultural Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, has requested in pesticide petition (PP) 3G4210, the establishment of temporary tolerances for the combined residues of the fungicide iprodione, 3-(3,5-dichlorophenyl)-*N*-(methylethyl)-2,4-dioxo-1-imidazolidinecarboximide, and its isomer, 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide, expressed as iprodione equivalents in or on the raw agricultural commodities tangerines and tangelos at 3.0 parts per million (ppm). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 264-EUP-94, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone-Poulenc Ag Co., must immediately notify the EPA of any

findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 15, 1995. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

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

**Authority:** 21 U.S.C. 346a(j).

**List of Subjects**

Environmental protection.

Dated: May 19, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93-26308 Filed 10-26-93; 8:45 am]

BILLING CODE 6560-50-F

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**[FRL-4787-1]**

## Beaunit/Circular Knit and Dying Plant Site; Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Beaunit Circular Knit and Dying Plant Site, Baldwin, Florida with five parties: Continental Assurance Company, El Paso Natural Gas Company, Kayser-Roth Corporation, Pepsico Incorporated, and Wilson Sporting Goods Company. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404-347-5059.

Written comments must be submitted to the person above by thirty days from the date of publication.

Dated: September 21, 1993.

**James S. Kutzman,**

*Acting Director, Waste Management Division.*

[FR Doc. 93-26427 Filed 10-26-93; 8:45 am]

BILLING CODE 6560-50-M

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**[FRL-4794-7]**

## Enterprise Recovery Systems Site; Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) and a group of 29 Respondents have entered into an Administrative Order on Consent (AOC) for removal action. In additional to the performance of the removal action, the Respondents have agreed to reimburse EPA for response costs incurred by EPA at the Enterprise Recovery Systems Site, Byhalia, Mississippi. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347-5059.

Written comment may be submitted to the person above within 30 days of the date of publication.

Dated: September 30, 1993.

**H. Kirk Lucius,**

*Acting Director, Waste Management Division.*

[FR Doc. 93-26407 Filed 10-26-93; 8:45 am]

BILLING CODE 6560-50-M

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

## Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before December 27, 1993.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

*Type:* Extension of 3067-0034.

*Title:* Application for Community Disaster Loan.

*Abstract:* Section 417(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, implemented by FEMA Regulation 44 CFR part 206, subpart K, authorizes the President to make loans to any local government which may suffer a substantial loss of tax or other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions. FEMA Form 90-7, Application for Federal Assistance (Application for Community Disaster Loan), is used by local governments to request Federal financial assistance.

*Type of Respondents:* Local governments.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 30 hours.

*Number of Respondents:* 5.

*Estimated Average Burden Time per Response:* 6 hours.

*Frequency of Response:* On occasion.

Dated: October 19, 1993.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 93-26432 Filed 10-26-93; 8:45 am]

BILLING CODE 6718-01-M

## Public Information Collection Requirements Submitted to OMB for Review

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**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

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**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

*Type:* Extension of 3067-0026.

*Title:* Application for Community Disaster Loan Cancellation.

*Abstract:* The Community Disaster Loan Program offers loans to local governments which have suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and demonstrates a need for Federal financial assistance in order to perform their governmental functions.

Section 417(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, implemented by FEMA Regulation 44 CFR part 206, subpart K, provides for cancellation of all or part of the loan if revenues of the local government during the 3 full fiscal years following the disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation nature. Under these conditions, repayment by the local government of all or any part of the Community Disaster Loan may be canceled. Loan cancellations that would result in duplication of benefits to the applicant will not be made.

Local governments will use FEMA Form 90-5, Application for Loan Cancellation, to request cancellation of Community Disaster Loans.

*Type of Respondents:* Local governments.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 30 hours.

*Number of Respondents:* 5.

*Estimated Average Burden Time per Response:* 6 hours.

*Frequency of Response:* On occasion.

Dated: October 19, 1993.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 93-26433 Filed 10-26-93; 8:45 am]

BILLING CODE 6718-01-M

## Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before December 27, 1993.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

*Type:* Extension of 3067-0215.

*Title:* Flood Map Recipient/Order Form.

*Abstract:* Federal, State, and local agencies, insurance providers, lenders, appraisers, realtors, engineers, builders, and individuals may order flood maps from FEMA's Flood Map Distribution Center. FEMA Form 81-52, Flood Insurance Map/Microfiche Order, is used by the various users to place or revise map orders, as well as to correct mailing addresses. The FMDC uses FEMA Form 81-52A to record orders received by telephone. The maps are used by recipients to determine if areas have been identified as flood prone areas.

*Type of Respondents:* Individuals and households, State and local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, and Small businesses or organizations.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 7,813 hours.

*Number of Respondents:* 75,000.

*Estimated Average Burden Time per Response:* 6.25 minutes.

*Frequency of Response:* As required.

Dated: October 18, 1993.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 93-26434 Filed 10-27-93; 8:45 am]

BILLING CODE 6718-01-M

## Public Information Collection Requirements Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**DATES:** Comments on this information collection must be submitted on or before December 27, 1993.

**ADDRESSES:** Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the above information collection request and supporting

documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

*Type:* Revision to 3067–0033.

*Title:* Notice of Interest/Private Non-Profit Checklist.

*Abstract:* Any grantee or subgrantee receiving Federal disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act is required to submit a Notice of Interest, FEMA Form 90–49. The form is used by grantees to identify property and facilities damaged as a result of a Presidentially declared major disaster or emergency so that inspectors can conduct formal damage surveys. The Private Non-Profit Checklist form, on the back of FEMA Form 90–49, is completed only by private non-profit grantees and is used by FEMA to determine eligibility and facilitate the processing of their applications for assistance.

*Type of Respondents:* State and local governments.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 1,750 hours.

*Number of Respondents:* 3,000.

*Estimated Average Burden Time per Response:* Notice of Interest—.5 hour; Private Non-Profit Checklist—.25 hour.

*Frequency of Response:* On occasion.

Dated: October 20, 1993.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 93–26435 Filed 10–26–93; 8:45 am]

BILLING CODE 6718–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement Number 405]**

### Grants for Injury Control Research Centers; Availability of Funds for Fiscal Year 1994

#### Introduction

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted for Injury Control Research Centers (ICRCs). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.

#### Authority

This program is authorized under sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b). Program regulations are set forth in 42 CFR, part 52.

#### Eligible Applicants

Eligible applicants include all nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state, local and tribal health departments, and small, minority and/or women-owned businesses are eligible for these grants. Applicants from non-academic institutions should provide evidence of a collaborative relationship with an academic institution. Current recipients of CDC injury control research center grants and injury control research program project grants are eligible to apply.

#### Availability of Funds

Approximately $1.5 million is expected to be available in fiscal year (FY) 1994 to fund approximately two new or re-competing center awards. New awards can be made for a project period not to exceed three years, and re-competing awards can be made for a project period not to exceed five years. The amount of funding available may vary and is subject to change. Beginning award dates for each submission are shown in the "Receipt and Review Schedule" section of this announcement. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

New center grant awards will not exceed $500,000 per year (total of direct and indirect costs) with a project period not to exceed three years. Depending on availability of funds, re-competing center awards may range from $750,000 to $1,500,000 per year (total of direct and indirect costs) with a project period not to exceed five years. The range of available funds is dependent upon the degree of comprehensiveness of the center in addressing the phases of injury control (i.e., Prevention, Acute Care, and Rehabilitation) as determined by the Injury Research Grants Review Committee (IRGRC).

Incremental levels within this range for successfully re-competing ICRCs will be determined as follows:

| | |
|---|---|
| Base funding (included in figures below). | Up to $750,000. |
| One phase ICRC (addresses one of the three phases of injury control). | Up to $1,000,000. |
| Two phase ICRC (addresses two of the three phases of injury control). | Up to $1,250,000. |
| Comprehensive ICRC (addresses all three phases of injury control). | Up to $1,500,000. |

Subject to program needs and the availability of funds, supplemental awards to expand/enhance existing projects, to add a new phase(s) to an existing ICRC grant, or to add biomechanics project(s) that support phases may be made for up to $250,000 per year.

#### Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in: Healthy People 2000; Injury in America; Injury Prevention: Meeting the Challenge; and Cost of Injury: A Report to the Congress. Information on these reports may be obtained from the individuals listed in the section Where to Obtain Additional Information;

B. To support ICRCs which represent CDC's largest national extramural investment in injury control research and training, intervention development, and evaluation;

C. To integrate collectively, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral and social sciences, in order to prevent and control injuries more effectively;

D. To identify and evaluate current and new interventions for the prevention and control of injuries;

E. To bring the knowledge and expertise of ICRCs to bear on the development and improvement of effective public- and private-sector programs for injury prevention and control; and

F. To facilitate injury control efforts supported by various governmental agencies within a geographic region.

#### Program Requirements

A. Applicants must demonstrate and apply expertise in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) as a core component of the center. The second and/or third phases do not have to be supported by

core funding but may be achieved through collaborative arrangements. Comprehensive ICRCs must have all three phases supported by core funding.

B. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.

C. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health. The director must have no less than 30% effort devoted solely to this project with an anticipated range of 30% to 50%.

D. Applicants must demonstrate experience in successfully conducting, evaluating, and publishing injury research and/or designing, implementing, and evaluating injury control programs.

E. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

F. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and/or public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs. An ICRC is encouraged to involve biomechanicists in its research. This, again, may be achieved through collaborative relationships as it is no longer a requirement that all ICRCs have biomechanical engineering expertise.

G. Applicants must have an established curricula and graduate training programs in disciplines relevant to injury control (e.g., epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, or economics).

H. Applicants must have the ability to disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.

I. Applicants must have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the state or region in which the ICRC is located. Cooperation with private-sector programs is encouraged.

Applicants should have an established or documented planned relationship with organizations or individual leaders in communities where injuries occur at high rates, e.g., minority health communities.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated October 1, 1990, as amended), as necessary to meet the requirements of the program and strengthen the overall application.

**Evaluation Criteria**

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the heading Program Requirements (A listing of where these requirements are described and/or documented in the application will facilitate the review process). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation by reviewers from the Injury Research Grants Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization.

Those applications judged to be competitive will be further evaluated by a dual review process. The primary review will be a peer evaluation (IRGRC) of the scientific and technical merit of the application. The final review will be conducted by the CDC Advisory Committee for Injury Prevention and Control (ACIPC), which will consider the results of the peer review together with program need and relevance. Funding decisions will be made by the Director, National Center for Injury Prevention and Control (NCIPC), based on merit and priority score ranking by the IRGRC, program review by the ACIPC, and the availability of funds.

*A. Review by the Injury Research Grants Review Committee (IRGRC)*

Peer review of ICRC grant applications will be conducted by the IRGRC, which may recommend the application for further consideration or not for further consideration. Site visits will be a part of this process for re-competing ICRCs. Reverse site visits may be a part of this process for new applicants.

Factors to be considered by IRGRC include:

1. The specific aims of the application, e.g., the long-term objectives and intended accomplishments.

2. The scientific and technical merit of the overall application, including the significance and originality (e.g., new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

3. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives.

4. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

5. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

6. The appropriateness (e.g., responsiveness, quality, and quantity) of consultation, technical assistance, and training in identifying, implementing, and/or evaluating intervention/control measures that will be provided to public and private agencies and institutions, with emphasis on state and local health departments, as evidenced by letters detailing the nature and extent of this commitment and collaboration. Specific letters of support or understanding from appropriate governmental bodies must be provided.

7. Evidence of other public and private financial support.

8. Progress thus far made as detailed in the application if the applicant is submitting a competitive renewal application. Documented success examples include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; impact on injury control outcomes including legislation/regulation, treatment, and behavior modification interventions.

*B. Review by CDC Advisory Committee for Injury Prevention and Control (ACIPC)*

Factors to be considered by ACIPC include:

1. The results of the peer review.

2. The significance of the proposed activities as they relate to national program priorities and the achievement of national objectives.

3. National and programmatic needs and geographic balance.

4. Overall distribution of the thematic focus of competing applications; the nationally comprehensive balance of the program in addressing: the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (such as biomechanics and epidemiology).

5. Within budgetary considerations the ACIPC will establish annual funding levels as detailed under the heading, Availability of Funds.

*C. Applications for Supplemental Funding*

Supplemental grant awards may be made when funds are available to support research work or activities. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the ACIPC.

*D. Continued Funding*

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly workplans are being met;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan;

5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds; and

6. Progress has been made in developing cooperative and collaborative relationships with injury surveillance and control programs implemented by state and local governments and private sector organizations.

**Award Priorities**

Special consideration will be given to re-competing Injury Control Research Centers.

**E.O. 12372 Review**

Applications are not subject to the review requirements of Executive Order 12372, entitled Inter-Governmental Review of Federal Programs.

**Public Health System Reporting Requirement**

This program is not subject to the Public Health System Reporting Requirement.

**Catalog of Federal Domestic Assistance Number (CFDA)**

The Catalog of Federal Domestic Assistance Number is 93.136.

**Application Submission and Deadlines**

*A. Preapplication Letter of Intent*

In order to schedule and conduct site visits as part of the formal review process, potential applicants are encouraged to submit a nonbinding letter of intent to apply to the Grants Management Officer (whose address is given in this section Item B). It should be postmarked no later than one month prior to the submission deadline (January 1, 1994, for February 1, 1994, submission deadline). The letter should identify the relevant announcement number for the response, indicate the submission deadline which will be met, name the principal investigator, and specify the injury control theme or emphasis of the proposed center (e.g., acute care, biomechanics, epidemiology, prevention, intentional injury, or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

*B. Applications*

Applicants should use Form PHS–398 (Rev. 9/91) and adhere to the ERRATA Instruction Sheet for PHS–398 contained in the Grant Application Kit. The narrative section for each project within an ICRC should not exceed 25 typewritten pages. Refer to section 4, page 10, of PHS–398 instructions for font type and size. Applications not adhering to these specifications may be returned to applicant. Applicants should submit an original and five copies to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, MS–E13, Atlanta, Georgia 30305.

*C. Deadlines*

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria in C.1. or C.2. above are considered late applications and will be returned to the applicant.

*D. Receipt and Review Schedule*

This is a continuous announcement. Consequently, these receipt dates will be ongoing until further notice. The proposed timetables for receiving applications and awarding grants are as follows:

| Receipt of new/revised/supplementary/competitive renewal applications | Initial review | Secondary review | Earliest award date |
|---|---|---|---|
| February 1, 1994 | May | July | September, 1994. |

Future receipt dates are as follows:

| Receipt of new/revised/supplementary/competitive renewal applications | Initial review | Secondary review | Earliest award date |
|---|---|---|---|
| October 12 | January | February | April. |

**Where to Obtain Additional Information**

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 405. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtain from Maggie Slay, Grants Management Specialist, Centers For Disease Control and Prevention (CDC), 255 E. Paces, Ferry Road, NE., MS–E13, Atlanta, Georgia 30305, (404) 842–6797. Programmatic technical assistance may be obtained from Tom Voglesonger, Program Manager, Injury Control Research Centers, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, MS–K58, Atlanta, Georgia 30341–3724, (404) 488–4265.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (202) 783–3238.

Dated: October 18, 1993.

**Robert L. Foster,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–26404 Filed 10–26–93; 8:45 am]

BILLING CODE 4160–18–P

## National Institutes of Health

### Notice of Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Acting Director, National Institutes of Health (NIH), announces the establishment of the Sleep Disorders Research Advisory Board.

This Board will advise the Director, NIH; the Director, National Heart, Lung, and Blood Institute; and the Director of the National Center on Sleep Disorders Research on matters related to planning, execution, conduct, support and evaluation of research in basic sleep and sleep disorders. The Board will also advise on areas and approaches that should be addressed by the Center's targeted programs including identification of basic, clinical and health education topics of importance to national health fields where more research is needed; and make recommendations and develop a long range plan for sleep disorders research.

Unless renewed by appropriate action prior to its expiration, the Board will terminate two years from the date of establishment.

Dated: October 20, 1993.

**Ruth L. Kirschstein,**

*Acting Director, National Institutes of Health.*

[FR Doc. 93–26444 Filed 10–26–93; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[OR–090–04–6332–25: GP4–002]**

### Closure of Public Lands; Lane County, Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Closure of public lands and access road in Lane County, Oregon.

**SUMMARY:** Notice is hereby given that certain public lands and access road in Lane County, Oregon are closed indefinitely to shooting defined as the discharge of firearms within or across the lands and roadway described below. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this closure are specifically identified as the Whites Creek Road, BLM No. 21–3–16, and adjoining public land located as follows:

**Willamette Meridian, Oregon**

T. 21 S., R. 3 W.
Sec. 17: SW¼,S½SE¼;
Sec. 19: NE¼, E½NW¼.
Containing 480 acres.

The Whites Creek Road is located partially on public land and partially on exclusive easements across private land.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: State, local and federal law enforcement personnel.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands and road closed to shooting under this order will be posted with signs at points of public access.

The purpose of this closure is to protect persons from potential harm from shooting. Uncontrolled shooting on the subject lands and road has reached a level that poses a serious threat to public safety.

**DATES:** This closure is effective beginning November 1, 1993 and will continue in effect indefinitely.

**ADDRESSES:** Copies of the closure order and maps showing the location of the closed lands and road are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

**FOR FURTHER INFORMATION CONTACT:** Terry Hueth, South Valley Area Manager, Eugene District Office, at (503) 683–6600.

Dated: October 20, 1993.

**Terry Hueth,**

*Area Manager.*

[FR Doc. 93–26399 Filed 10–26–93; 8:45 am]

BILLING CODE 4310–33–M

**[UT–040–03–4320–01]**

### Availability of Draft Environmental Assessment for Animal Damage Control Activities

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of environmental assessment availability for public comment.

**SUMMARY:** Notice is hereby given that the Cedar District, Bureau of Land Management has prepared a draft environmental assessment and proposed decision for authorization of animal damage control activities by the Animal Plant Health and Inspection Service (APHIS) in the Cedar City District. A 30-day comment period will be allowed for those wishing to review the draft documents.

**FOR FURTHER INFORMATION CONTACT:** District Manager Gordon R. Staker, Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720. Telephone: 801–586–2401.

Dated: October 14, 1993.

**Gordon R. Staker,**

*District Manager.*

[FR Doc. 93–26370 Filed 10–26–93; 8:45 am]

BILLING CODE 4310–DQ–M

**[Case Number: G4–011]**

### Notice of Intent to Prepare an Environmental Impact Statement

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The U.S. Department of the Interior through the Bureau of Land Management (BLM) gives notice of its intent to prepare an Environmental Impact Statement (EIS) on the effects of converting land of the newly acquired Wood River property into a functioning wetland community. The EIS is being prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA). The resulting land use plan and EIS will guide resource activities and allocations using the BLM's planning procedures (43 CFR part 1610).

Preparation of the Wood River Land Use Plan and Environmental Impact Statement (LUP/EIS) is a separate process from the on-going Klamath Falls Resource Area Resource Management Plan and Environmental Impact Statement (RMP/EIS) process. Although both plans will be comparable (i.e. guiding future management actions in specified areas), they are being prepared separately due to the geographical distance between the Wood River Ranch and the rest of the Resource Area.

**SCOPING:** Scoping of the issues affecting management of the Wood River property began in January 1993 with public meetings. Scoping comments have been received and considered. These comments were part of the decision that an EIS, rather than an environmental assessment, would be developed. To assist with the EIS process, the BLM created the Wood River Wetland Team, an interagency interdisciplinary team.

**ADDRESSES:** Additional scoping comments may be mailed or faxed to A. Barron Bail, Area Manager, Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Ave., Bldg 25, Klamath Falls, Oregon 97603 (facsimile 503–884–2097). Comments and other related planning documents are and will be available for public review at the Klamath Falls Resource Area office during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Write to the above address or call Cathy Humphrey at (503) 885–4242.

**SUPPLEMENTARY INFORMATION:** In fall 1992, a coalition of local groups and agencies approached the Congress about the possibility of appropriating money for the BLM to purchase ranch property in Klamath County, approximately 25 miles north of the city of Klamath Falls, Oregon for wetlands restoration. Historically wetland habitat, the property was diked and drained over 50 years ago to serve as irrigated pastureland.

The funding was appropriated by Congress in September and the Klamath Falls Resource Area (KFRA) completed purchase of 1,468 acres (the south half) of the Wood River Ranch on July 16, 1993. Acquisition of the north half of the property (1,850 acres) is being pursued in fiscal year 1994 through Congressional appropriation or exchange. The entire parcel is bounded on the south by Agency Lake, on the east by the Wood River and Wood River Marsh, on the north-northwest by a dike, and on the west-southwest by Sevenmile Canal. No management direction was specified by Congress with the appropriated funds; however, based on discussions with the Bureau of Reclamation, U.S. Fish and Wildlife Service, American Land Conservancy, Klamath Basin Water Resources Advisory Committee, and others, management of the Wood River property is intended for wetland restoration, which includes research of the methods for and effects of wetland restoration.

In addition, as part of the Congressional appropriations language for purchase of the property the BLM was directed to "dispose of appropriate lands under its control in Klamath County in order to compensate for the loss of local tax revenues associated with the Wood River Ranch acquisition." Identification of appropriate lands is separate from the Wood River LUP/EIS process. The Klamath Falls Resource Area is currently identifying appropriate lands from those found suitable for exchange or sale in Klamath County in the Klamath Falls draft RMP/EIS and in the Brothers/La Pine final RMP/EIS.

The BLM began public meetings to inform the public and to scope the issues in January 1993. In the spring, the Wood River Wetland Team (WRWT) was formed by the BLM to guide future management of the Wood River property. Federal, state, and local agencies are members of the team, as well as the Klamath Tribe, several interest groups, and individuals. The WRWT is open to anyone who wants to participate in the process. The BLM's interdisciplinary team, part of the WRWT, is responsible for much of the initial document writing; they represent the following disciplines: Lands and minerals, fisheries and wildlife biology, range conservation, hydrology, recreation, planning, geology, engineering, forestry, botany, and archaeology. The non-BLM Wood River Wetland Team members supplement the BLM's disciplines with knowledge and expertise in wetland restoration, fisheries biology, and historic tribal use of the area, as well as providing insight from other agencies, groups, and adjacent landowners.

In addition to the contributions of the WRWT, several governmental agencies have been asked to be cooperating agencies in the preparation of the Wood River Land Use Plan and Environmental Impact Statement. Cooperating agencies for this EIS include: the U.S. Fish and Wildlife Service, the Bureau of Reclamation, the Klamath Tribe, the U.S. Geological Survey, the Oregon Department of Fish and Wildlife, and the Water Resources Department.

Issues identified in the public meetings and by the WRWT include fish and wildlife habitat (which species will the BLM manage for), special status species (what will be done for endangered suckers), funding (where is funding for management of property, research projects coming from and is it guaranteed for the long term), economics and land tenure (how will the tax roles be equalized, which parcels will the BLM exchange for the Wood River property, and what is its value), recreation opportunities (will the property be open to hunting and fishing, what type of recreation facilities will be provided), access (what level of public access will be allowed), water resources (what will happen with water rights, how will water quality be improved), wetland restoration (what habitat types will be emphasized, how and when will the restoration occur), livestock grazing (will it still be allowed and if so, how much), Area of Critical Environmental Concern (ACEC) designation (will the consolidated property be designated an ACEC), and public involvement (what level of public involvement will occur).

The WRWT identified three primary and several secondary management goals for the property. The primary goals are to restore the majority of the Wood River property to a functing wetland community; to improve water quality entering Agency and Upper Klamath lakes; and to restore and enhance wetland habitat, primarily for Lost River and shortness suckers and waterfowl, as well as for other species. Secondary goals include providing for public recreation and environmental education; coordinating multi-agency research and adaptive management on the Wood River property; and addressing ecosystem goals with other agencies, landowners, and organizations while planning for and restoring the wetland habitat.

Presently, the WRWT is developing and refining the management alternatives and their environmental consequences. A proposed action will be chosen by the BLM and the WRWT in early November. The anticipated

completion date of the draft EIS is mid-December 1993, followed by a 90-day comment period, and final EIS in the late spring of 1994. Dates, times, and locations of public meetings will be announced in the local media and notices mailed to interested parties. A final decision is expected in the late summer of 1994 after a public protest period and a review by state and local governments for consistency with local plans.

Three management alternatives were developed and are being analyzed by the WRWT and the BLM. They are described as follows.

Alternative A—No Action. This alternative would continue current management direction on the Wood River property. Livestock grazing would remain at current levels. Water would be pumped off in the spring at current schedules. The amounts of upland, wet meadow, and marsh habitat would remain constant. Recreation facilities would not be developed. Recreation use, limited to day use only, would neither be encouraged nor restrained and the area would remain closed to motorized vehicles.

Alternative B—Wetland Restoration (Low Maintenance). The majority of the Wood River Property would be restored to a functioning wetland consistent with the primary goals developed by the WRWT. Initial high-intensity actions, such as dechannelizing the Wood River, would be allowed, but the long-term maintenance of the property would be low intensity. The low-intensity methods used would vary, including but not limited to grazing, prescribed fire, and mechanical or chemical vegetation manipulation. Some recreation facilities would be developed. Recreation use and some motorized access would be allowed, but would be limited to certain areas and times of day.

Alternative C—Wetland Restoration (High Maintenance). The majority of the Wood River property would be restored to a functioning wetland consistent with the primary goals developed by the WRWT. Initial and long-term restoration actions would be expected to be high maintenance. The methods used for wetland restoration could include experimental techniques, such as artificial water circulation, or other constructed wetlands. General design principles could be complex. The research would encompass both the methods used for wetland restoration and the examination of the effects of restoration on water quality and quantity, fish and wildlife habitat, etc. Recreation would be limited to day use only. Development of recreation facilities would emphasize wetland restoration education. Various tools, such as grazing, prescribed fire, and mechanical manipulation of vegetation, could be used to meet the goals of this alternative.

Several other alternatives were considered but are likely to be dropped from further consideration because they fail to meet the purpose and need, are not technically feasible, can not be implemented, are not legal, or do not appear to have much, if any, public support.

Interested parties should contact Cathy Humphrey of the BLM Klamath Falls Resource Area for further information or to be placed on the Wood River Ranch planning mailing list.

**A. Barron Bail,**

*Area Manager, Klamath Falls Resource Area.*

[FR Doc. 93-26372 Filed 10-26-93; 8:45 am]

BILLING CODE 4310-DQ-M

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**[OR-092-4210-04: GP4-015; OROR 48077]**

## Realty Action; Exchange of Public Lands; Lane, Linn, Polk and Yamhill Counties, Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action—exchange of public lands in Lane, Linn, Polk and Yamhill Counties, Oregon.

**SUMMARY:** The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

**Willamette Meridian, Oregon**

T. 8 S., R. 6 W.,
Sec. 7: W½NW¼, NW¼SW¼;
Sec. 17: W½NE¼, NW¼.
T. 8 S., R. 7 W.,
Sec. 8: SW¼NE¼, W½SE¼;
Sec. 15: SE¼SE¼;
Sec. 17: N½NE¼, NE¼NW¼.
T. 15 S., R. 1 W.,
Sec. 32: That portion of the SW¼ described as follows: Beginning at the Southwest corner of the Northwest quarter of Section 32, Township 15 South, Range 1 West of the Willamette Meridian, running thence East 40 chains to the center of said Section 32; thence South 0.25 chain to the Southeast corner of Lot 6 of Morden's Colony as platted and recorded in Lane County, Oregon; thence West along the south boundary of Lots 6, 7, 8, 9 and 10 of Morden's Colony to the West line of said Section 32; thence North along said West line of Section 32, 0.25 chain to the point of beginning.
T. 16 S., R. 1 W.,
Sec. 5: Unnumbered lot (NW¼NW¼).
T. 16 S., R. 2 W.,
Sec. 1: SW¼SW¼;
Sec. 3: Lots 1–4, SE¼NE¼, SW¼NW¼, NE¼SW¼, SE¼SE¼;
Sec. 11: NE¼NE¼.
T. 16 S., R. 2 E.,
Sec. 24: NW¼SW¼.
T. 17 S., R. 2 W.,
Sec. 7: Lot 3.
T. 17 S., R. 8 W.,
Sec. 9: Lots 1–6, NW¼NE¼.
T. 18 S., R. 1 E.,
Sec. 7: All.
T. 18 S., R. 1 W.,
Sec. 1: All.
T. 21 S., R. 1 W.,
Sec. 31: Tract 37.

Containing 2733.97 acres, more or less, in Lane, Linn and Polk Counties.

In addition, reserved Federal timber interests in the following lands located in Yamhill County have been examined and determined to be suitable for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

**Willamette Meridian, Oregon**

T. 3 S., R. 6 W.,
Sec. 22: SE¼NE¼, NE¼SE¼;
Sec. 23: E½NW¼.

In exchange for these lands, the United States will acquire the following described lands from Willamette Industries, Inc. or its subsidiaries Bohemia Inc. and Willamette Valley Lumber Company:

**Willamette Meridian, Oregon**

T. 15 S., R. 7 W., W.M.,
Sec. 14: All;
Sec. 22: All;
Sec. 24: All;
Sec. 26: All.
T. 16 S., R. 7 W., W.M.,
Sec. 20: Portion of Lot 10 and SW¼SW¼ lying west of Highway 36.
T. 16 S., R. 8 W., W.M.,
Sec. 35: SW¼, N½SW¼SE¼, portion of the NE¼SE¼ and SE¼SE¼ (tax lot 16-08-35-00-00200 and part of tax lot 16-08-36-00-01700);
Sec. 36: Portion of Lot 12 (balance of tax lot 16-08-36-00-01700).

Containing 2779.72 acres, more or less, in Lane County.

The purpose of the exchange is to improve the resource management program of the Bureau of Land Management and the property management program of Willamette Industries, Inc. The public lands to be exchanged are relatively isolated parcels, in some cases lacking public access. The private lands being offered have important timber, fisheries, wildlife habitat and recreation values. These lands will be managed for multiple use along with the adjoining public lands. The public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. A reservation to the United States of all mineral materials subject to disposition under authority of the Materials Act of 1947, as amended (30 U.S.C. 601, 602) in and upon the Southeast quarter of the Southeast quarter of Section 15, T. 8 S., R. 7 W., W.M.

4. A reservation to Bohemia Inc. of all ores and minerals of any nature whatsoever in and upon the Northwest quarter of the Northeast quarter of Section 14, Township 15 South, Range 7 West, Willamette Meridian, Lane County, Oregon, except for all geothermal steam and heat, oil shale, coal, lignite, and oil and gas, including coal seam gas.

Publication of this notice in the **Federal Register** segregates the public land, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of this publication, whichever occurs first.

**DATES:** Interested parties may submit comments to the Eugene District Manager at the address shown below on or before December 13, 1993. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

**ADDRESSES:** Detailed information concerning this exchange, including the environmental assessment, is available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

**FOR FURTHER INFORMATION CONTACT:** Ronald Wold, Eugene District Office, at (503) 683–6403.

Dated: October 21, 1993.

**Judy Ellen Nelson,**

*District Manager.*

[FR Doc. 93–26398 Filed 10–26–93; 8:45 am]

BILLING CODE 4310–33–M

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[ID–942–03–4730–12]

### Idaho: Filing of Plats of Survey

The plat, in two sheets, of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., October 15, 1993.

The plat, in two sheets, representing the dependent resurvey of portions of the subdivisional lines and certain mineral surveys, and the subdivision of sections 7 and 8, T. 48 N., R. 3 E., Boise Meridian, Idaho, Group No. 758, was accepted, October 8, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: October 15, 1993.

**Gary T. Oviatt,**

*Acting Chief Cadastral Surveyor for Idaho.*

[FR Doc. 93–26371 Filed 10–26–93; 8:45 am]

BILLING CODE 4310–GG–M

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## Fish and Wildlife Service

### Sport Fishing and Boating Partnership Council; Meeting

**TIME AND DATE:** The Sport Fishing and Boating Partnership Council will meet on November 1, 1993 at 8:30 a.m.

**PLACE:** The meeting will be held in the Potowmack Landing Restaurant at the Washington Sailing Marina, Number 1 Marina Drive, Alexandria, Virginia 22314.

**STATUS:** This meeting will be open to the public.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, this notice announces a meeting of the Sport Fishing and Boating Partnership Council. Interested persons may make oral statements to the Council or may file written statements for consideration. Summary minutes of meeting will be maintained by the Coordinator for the Sport Fishing and Boating Partnership Council at 4401 North Fairfax Drive, Arlington, VA 22203, and will be available for public inspection during regular business hours (7:30–4:00) Monday through Friday within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

**MATTERS TO BE CONSIDERED:** This will be the initial meeting of the Sport Fishing and Boating Partnership Council, since the Secretary of the Interior signed the Council Charter. Council members will establish operating procedures, elect a chairman, and establish committees.

**CONTACT PERSON FOR MORE INFORMATION:** For further information individuals may contact the Council Coordinator, Chris Dlugokenski, at 703 358–2156.

Dated: September 30, 1993.

**Kenneth L. Smith,**

*Acting Director.*

[FR Doc. 93–26391 Filed 10–26–93; 8:45 am]

BILLING CODE 4310–55–M

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

### Commission Determination Not To Review Initial Determination Granting Motion for Summary Determination of the Existence of a Domestic Industry

In the Matter of certain anisotropically etched one megabit and greater drams, components thereof, and Products containing such drams.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 20) in the above-captioned investigation granting a motion for summary determination of the existence of a domestic industry.

**FOR FURTHER INFORMATION CONTACT:** Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3093. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on December 14, 1992, based on a complaint alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation into the United

States, and the sale within the United States after importation of certain anisotropically etched one megabit and greater DRAMs, components thereof, and products containing such DRAMs, allegedly manufactured abroad by a process covered by claims 1, 2, 5, and 6 of U.S. Letters Patent 4,436,584 (the '584 patent).

On September 3, 1993, complainant Micron Semiconductor, Inc. filed a motion for summary determination that a domestic industry exists relating to the articles protected by the '584 patent. Micron's motion asserted that the requirements of 19 U.S.C. 1337(a)(2) and (3) were satisfied, by virtue of Micron's significant investment in plant and equipment, significant employment of labor and capital, and substantial investment, including engineering and research and development, in the United States with respect to the production of DRAMs. The motion did not request summary determination as to the issue of whether Micron actually practices the '584 patent in the production of DRAMs. Respondents Hyundai Electronics Industries Co., Ltd. and Hyundai Electronics America, Inc. did not oppose the motion, although they noted their intention to contest Micron's asserted practice of the '584 patent in the production of DRAMs. The Commission investigative attorney also did not oppose the motion.

On September 16, 1993, the presiding ALJ issued an ID granting Micron's motion. The ID specifically noted that the issue of whether Micron practices the '584 patent remains an issue for trial. No petitions for review or agency comments have been received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

Issued: October 19, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–26446 Filed 10–26–93; 8:45 am]

BILLING CODE 7020–02–P

**[Investigations Nos. 731–TA–661 and 662 (Preliminary)]**

## Color Negative Photographic Paper and Certain Chemical Components From Japan and the Netherlands

### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan and the Netherlands of color negative photographic paper (CNPP) and certain chemical components [2] that are alleged to be sold in the United States at less than fair value (LTFV).

### Background

On August 31, 1993, a petition was filed with the Commission and the Department of Commerce by Eastman Kodak Company, Rochester, NY, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of CNPP and certain chemical components from Japan and the Netherlands. Accordingly, effective August 31, 1993, the Commission instituted antidumping investigations Nos. 731–TA–661 and 662 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 9, 1993 (58 FR 47475). The conference was held in Washington, DC, on September 22, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 15, 1993. The views of the Commission are contained in USITC Publication 2687 (October 1993), entitled "Color Negative Photographic Paper and Certain Chemical Components from Japan and the Netherlands: Investigations Nos. 731–TA–661 and 662 (Preliminary)."

Issued: October 19, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–26449 Filed 10–26–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] CNPP is all sensitized, unexposed silver-halide color negative photographic paper, whether in master rolls, smaller rolls, or sheets. The chemical components of CNPP are the chemical mixtures and compounds used in making CNPP. They include sensitized and unsensitized emulsions, couplers, dispersions, and their precursors. CNPP is provided for in subheadings 3703.10.30 and 3703.20.30 of the Harmonized Tariff Schedule (HTS) of the United States. Emulsions are provided for in HTS subheadings 3703.10.00 and 3707.90.30. Couplers, dispersions, and precursor compounds are provided for in HTS subheadings 3707.90.30, 3707.90.60, 2933.19.30, 2933.90.25, and 2934.90.20.

**[Investigation No. 337–TA–344]**

## Commission Determination Not To Review an Initial Determination Finding a Violation of Section 337 and Schedule for the Filing of Written Submissions on Remedy, the Public Interest, and Bonding

In the Matter of certain cutting tools for flexible plastic conduit and components thereof.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) final initial determination (ID) in the above-captioned investigation finding a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cutting tools for flexible plastic conduit.

**FOR FURTHER INFORMATION CONTACT:** Robin L. Turner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3103.

**SUPPLEMENTARY INFORMATION:** Dawn Industries, Inc., Dextel Inc., and Duane Robertson (herein collectively "Dawn Industries") filed a complaint October 30, 1992, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging that two respondents: (1) Pro Mark, Inc. ("Pro Mark"), and (2) Orbit Underground, d/b/a Orbit Sprinklers, had violated section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cutting tools for flexible plastic conduit or components thereof. The cutting tools were alleged to infringe claims 1–7 of U.S. Letters Patent 4,336,652 (the '652 patent) and the

single claim of U.S. Letters Patent Des. 266,736 (the '736 patent). The Commission instituted this investigation by notice published in the **Federal Register** on December 2, 1992, at 57 FR 57075–76. The Commission terminated respondent Orbit Underground by notice published on March 3, 1993, at 58 FR 12253, added an additional respondent, Chewink Corporation ("Chewink"), by notice published on March 25, 1993, at 58 FR 16203, and deleted the claim of infringement of the '736 patent by notice published on April 26, 1993, at 58 FR 21994. The Commission found, pursuant to Commission interim rule 210.25, that respondent Chewink had waived its right to appear, to be served with documents, and to contest the allegations in issue in this investigation by notice published on August 25, 1993, at 58 FR 44850–51.

On September 2, 1993, the presiding ALJ issued his final ID finding that there was a violation of section 337. The ALJ found that claim 1 of the '652 patent was infringed, but that claims 2 and 7 of that patent were not infringed. The ALJ also found that a domestic industry exists with respect to the claims in issue. No petitions for review or government agency comments were received by the Commission. Having examined the record in this investigation, including the ID, the Commission has determined not to review the ID.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed, if remedial orders are issued.

**Written Submissions**

The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on Monday, November 1, 1993. Reply submissions must be filed no later than the close of business on Monday, November 8, 1993. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: October 20, 1993.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–26450 Filed 10–26–93; 8:45 am]

BILLING CODE 7020–02–P

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**[Investigation 337–TA–358]**

## Receipt of Initial Determination Terminating Respondents From Temporary Relief Phase of Investigation on the Basis of Consent Order Agreement

In the matter of certain recombinantly produced human growth hormones.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents from the temporary relief phase of the investigation on the basis of a consent order agreement: Novo-Nordisk A/S; Novo-Nordisk of North America, Inc.; Novo-Nordisk Pharmaceuticals, Inc. and ZymoGenetics, Inc.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on October 20, 1993.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**WRITTEN COMMENTS:** Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: October 21, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–26447 Filed 10–26–93; 8:45 am]

BILLING CODE 7020–02–P

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**[Investigation No. 337–TA–355]**

## Certain Vehicle Security Systems and Components Thereof; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Steven A. Glazer, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of John M. Whealan, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: October 20, 1993.

**Lynn I. Levine,**

*Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.*

[FR Doc. 93–26448 Filed 10–26–93; 8:45 am]

BILLING CODE 7020–02–P

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# INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32362]**

## The Broe Companies, Inc., the Great Western Railway Co., Railco, Inc., and Chicago West Pullman Transportation Corp., et al.; Corporate Family Exemption

The Broe Companies, Inc. (Broe), and its wholly owned subsidiaries, The Great Western Railway Company (Great Western), Railco, Inc. (Railco), Chicago West Pullman Transportation Corporation (CWPT) and their carrier subsidiaries have filed a notice of exemption under 49 CFR 1180.2(d)(3) to reorganize several of the subsidiaries within the Broe corporate family. The proposed consummation date of the transaction is on or after October 4, 1993.

Broe is a noncarrier holding company that directly controls carrier Central Kansas Railway, Inc. (CKR) and noncarriers Great Western and Railco. Great Western directly controls carriers Great Western Railway of Colorado, Inc. (GWRC) and Great Western Railway Company of Iowa, Inc. (GWRI). Great Western has created a new noncarrier subsidiary, Great Western Railway of Oregon, Inc. (GWRO), which is acquiring the lease of a 55-mile rail line between Alturas, CA and Lakeview, OR, from its affiliated company GWRC. As part of Broe's reorganization, Broe and Great Western are here seeking to continue in control of GWRO when it becomes a carrier.[1]

Railco controls noncarrier CWPT, which in turn controls five class III railroads: The Chicago West Pullman & Southern Railroad Company; the Georgia Woodlands Railroad Company; the Newburgh & South Shore Railroad Company; the Chicago Rail Link (CRL), a wholly owned subsidiary of noncarrier LaSalle Transportation, Inc. (LaSalle); and the Manufacturers' Junction Railway Company (MJR). As part of this reorganization, LaSalle is being dissolved so that CWPT will directly control CRL, and Railco and Broe will more closely control CRL. Broe, Railco, and CWPT are seeking here to alter their level of control of CRL once LaSalle is dissolved.

Also, a new noncarrier subsidiary of CWPT will be created—the Kansas Southwestern Railway Company (KSW). KSW is today a division of MJR. MJR will assign the lease of 297.5 miles of railroad in Kansas to KSW. In addition, KSW is acquiring incidental trackage rights over about 2 miles of The Atchison, Topeka and Santa Fe Railway Company in Kiowa, KS. As part of the reorganization, Broe, Railco, and CWPT are seeking here to continue in control of KSW when it becomes a carrier.[2]

The proposed transaction is a corporate family reorganization. This transaction is within a corporate family and is exempt from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, Taylor, Morell & Gitomer, suite 210, 919 18th Street NW., Washington, DC 20006.

Decided: October 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. 93–26424 Filed 10–26–93; 8:45 am]

BILLING CODE 7035–01–P

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**[Finance Docket No. 32363]**

## Great Western Railway of Oregon, Inc.; Lease and Operation Exemption; Great Western Railway of Colorado, Inc.

Great Western Railway of Oregon, Inc. (GWRO), a noncarrier, has filed a notice of exemption to acquire the lease from its affiliate Great Western Railway of Colorado, Inc. (GWRC) and operate approximately 55 miles of rail line. GWRO will become a class III rail carrier. The line involved extends from milepost 458.6 at Alturas, CA, to milepost 512.0 at Lakeview, OR. The proposed transaction was expected to be consummated on or after October 4, 1993.

This proceeding is related to the corporate reorganization being filed in Finance Docket No. 32362, *The Broe Companies, Inc., The Great Western Railway Company, Railco, Inc., and Chicago West Pullman Transportation Corporation, et al.—Corporate Family Exemption*, in which the Great Western Railway Company (GWR), which directly controls GWRC and GWRO, and GWR's parent the Broe Companies, Inc., have concurrently filed a notice seeking in part to continue in control of GWRO

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[1] A Notice of Exemption for GWRO to acquire the lease of the lines from GWRC has been concurrently filed in Finance Docket No. 32363, *Great Western Railway of Oregon, Inc.—Lease and Operation Exemption—Line of Great Western Railway of Colorado, Inc.*

[2] A Notice of Exemption for KSW acquire the lease of various lines from MJR has been currently filed in Finance Docket No. 32364, *Kansas Southwestern Railway Company—Lease and Operation Exemption—Missouri Pacific Railroad Company and Atchison, Topeka and Santa Fe Railway Company.*

as part of a corporate family reorganization.

Any comments must be filed with the Commission and served on: Karl Morell, Suite 210, 919 18th Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 21, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. 93–26425 Filed 10–26–93; 8:45 am]

BILLING CODE 7035–01–P

**[Docket No. AB–12; Sub-No. 161X]**

## Southern Pacific Transportation Company—Abandonment Exemption—In Karnes and Bee Counties, TX

Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 29.0-mile portion of its Rockport Branch rail line from milepost 62.8, near the Kenedy rail station, to milepost 91.8, near the Beeville rail station, in Karnes and Bee Counties, TX.

SPT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 26, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by November 8, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 16, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Esq., Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

SPT has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 1, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

*Decided:* October 19, 1993.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2nd 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–26423 Filed 10–26–93; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 93–75; Exemption Application No. D–9379, et al.]**

## Grant of Individual Exemptions; Zero Corporation Pension Plan, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the

Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Zero Corporation Pension Plan (the Plan) Located in Los Angeles, California**

[Prohibited Transaction Exemption 93–75; Exemption Application No. D–9379]

*Exemption*

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of certain real estate limited partnership interests (the Interests) from the Plan to Zero Corporation (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Interests is established by an appraiser independent of the Employer;

2. The Employer pays no less than the greater of the current fair market value of the Interests or the net total Plan expenditures on the Interests as of the date of sale;

3. The sale is a one-time transaction for cash; and

4. The Plan pays no fees or commissions in regard to the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 13, 1993, at 58 FR 43136.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

**Hazlehurst & Associates, Inc. Profit Sharing and Savings Plan (the Plan) Located in Bellevue, Washington**

[Prohibited Transaction Exemption 93–76; Exemption Application No. D–7226]

*Exemption*

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to two past loans of money from the individual account in the Plan of David M. Gladstone (Gladstone), a party in interest with respect to the Plan, to Gladstone, provided that, as of July 31, 1987, the following conditions have been met:

1. The terms of the loans have been at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party;

2. The two loans together have not exceeded 25 percent of the assets of the individual account of Gladstone throughout the term of the loans;

3. The loans have been secured through a promissory note and a perfected security agreement in collateral consisting of certain securities described in the notice of proposal;

4. The collateral securing the loans has been maintained throughout the duration of the loans at no less than 200 percent of the balance of the loans; and

5. The loans have involved only Gladstone's segregated account in the Plan.

**EFFECTIVE DATE:** This exemption is effective as of July 31, 1987.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 2, 1993, at 58 FR 46656.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

**Thrift Incentive Stock Ownership Plan (the Plan) of The Dime Savings Bank of New York, FSB Located in New York, New York**

[Prohibited Transaction Exemption 93–77; Exemption Application No. D–9440]

*Exemption*

The restrictions of sections 406(a), 406(b) (1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by The Dime Savings Bank of New York, FSB (the Employer), the sponsor of the Plan; (2) the past holding of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan; provided that the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Employer;

(B) All holders of the common stock of the Employer were treated in the same manner with respect to the Offering, including the Plan; and

(C) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering (except for those participants who failed to file timely and valid instructions concerning the Rights, in which case the Rights were sold).

**EFFECTIVE DATE:** This exemption, if granted, will be effective as of April 15, 1993.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 2, 1993 at 58 FR 46658.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

*General Information*

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the

transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 22d day of October 1993.

**Ivan Strasfeld,**

*Director of Exemption Determinations.*

[FR Doc. 93-26454 Filed 10-26-93; 8:45 am]

BILLING CODE 4510-29-P

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Geosciences; Meeting

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals, the meetings are closed to the public. These matters are with exemptions (4) and (6) of U.S.C., 552b(c), Government in the Sunshine Act.

*Name:* Special Emphasis Panel in Geosciences.

*Date:* November 18 and 19, 1993.

*Time:* 9 a.m. to 5 p.m. each day.

*Place:* Seventh Floor South Conference Room, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Agenda:* Review and evaluation of Comet Shoemaker-Levy IX and Jupiter Collision Proposals, submitted to the Divisions of Atmospheric and Astronomical Sciences.

*Contact:* Dr. Sunanda Basu, Program Director, Aeronomy Program, Division of Atmospheric Sciences, Washington, DC (202) 357-7619; Dr. Timothy Eastman, Program Director, Magnetospheric Physics Program, Division of Atmospheric Sciences, Washington, DC (202) 357-7618; or Dr. Vernon Pankonin, Program Director, Galactic Astronomy Program, Division of Astronomical Sciences, Washington, DC (202) 357-7620.

Dated: October 22, 1993.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 93-26397 Filed 10-26-93; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Date and Time:* Friday, November 19, 1993; 8:30 a.m. to 5 p.m.

*Place:* Room 341, National Science Foundation, 1800 G Street NW., Washington DC 20550.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Rolf M. Sinclair, Program Director for Cross Directorate Activities, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7996.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate the Research Experiences for Undergraduates proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 22, 1993.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 93-26395 Filed 10-26-93; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in Science Resources Studies; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Science Resources Studies.

*Date and Time:* November 19, 1993; 8:30 a.m. to 5 p.m.

*Place:* Room 370, 4201 Wilson Blvd, Arlington, VA.

*Type of Meeting:* Open.

*Contact Person:* Ann Lanier, Project Director for the Survey of Academic Research Facilities, Division of Science Resources Studies, National Science Foundation, 4201 Wilson Boulevard, Suite 965, Arlington, VA 22230, Telephone: (703) 306-1774.

*Purpose of Meeting:* To advise on the analysis plan and presentation of data from the NSF's 1994 National Survey of Academic Research Facilities.

*Agenda:* The morning will be used to review and evaluate the data analysis plan. The afternoon will be used to consider any changes in the presentation of data in the 1994 report to Congress.

Dated: October 22, 1993.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 93-26396 Filed 10-26-93; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Livermore Seismic Hazard Estimates; Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Updated Livermore Seismic Hazard Estimates: Availability.

**SUMMARY:** The NRC is issuing draft NUREG 1488, "Revised Livermore Seismic Hazard Estimates for 69 Nuclear Power Plant Sites East of the Rocky Mountains." The NRC is seeking comments from interested parties on the technical aspects of the proposed seismic hazard estimates and will consider any comments received in the final document. A fee single copy of the draft NUREG-1488 may be requested by those who wish to comment by writing to the Distribution and Mail Services Section, Mail Stop P-370, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of NUREG-1488 also may be obtained from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

**DATES:** Comment period expires on February 28, 1994. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments also may be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to

4:15 pm on federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Phyllis A. Sobel at (301) 504–2738.

Dated at Rockville, Maryland, this 15th day of October 1993.

For the Nuclear Regulatory Commission.

**James T. Wiggins,**

*Acting Director, Division of Engineering, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–26442 Filed 10–26–93; 8:45 am]

BILLING CODE 7590–01–M

## Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 4, 1993, through October 15, 1993. The last biweekly notice was published on October 13, 1993 (58 FR 52979).

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 29, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the

petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

**Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland**

*Date of amendments request:* September 17, 1993

*Description of amendments request:* The proposed amendments would implement the recommendations provided in Generic Letter (GL) 88-16, "Removal of Cycle-Specific Parameter Limits From Technical Specifications." The GL recommends the removal of cycle specific values from technical specifications (TSs) and to incorporate them in a separate document that could be revised by the licensee as long as previously approved methodologies are used. The proposed amendments also include two other requested changes. One is the removal of out-dated references to power operation with less than four reactor coolant pumps (RCPs) in operation and the other is to make administrative changes to clarify the existing TSs, but do not alter the current requirements.

As noted, the first portion of the request would implement the recommendations of GL 88-16. The second portion, removal of references in the TSs to operation with less than four RCP, is requested because the design features necessary to operate with less than four RCPs were never implemented. In addition, TS 3.4.1.1 requires all (four) RCPs be used during power operation and Unit 2 has a license condition, 2.c.5, which prohibits power operation with less than four pumps. The third portion of the request, administrative clarifications, resulted from the first two portions of this request which affected TS Sections 3/4.1, "Reactivity Control Systems," and 3/4.2, "Power Distribution Limits." It was recognized during the review of these TS sections that clarifications were needed to improve the overall use and consistency of the TS sections. Changes to the use and location of footnotes are proposed by incorporation into the body of the applicable TS or being moved to the Bases Section. Confusing or repetitive TSs were corrected. This effort did not delete nor add any requirements to the TSs.

Specifically, the requested changes involve 112 items. A detailed description of each requested change the affected TSs, and page numbers were provided as Attachment 1 to the submittal; Attachment 2 and 3 provided the marked-up TS pages for Units 1 and 2, respectively; and Attachments 4 and 5 provide Core Operating Limits Reports for Unit 1, Cycle 11, and Unit 2, Cycle 10, respectively.

Those items in Attachment 1 resulting from the first portion of the request, implementing the recommendations of GL 88-16 are Items 1, 3, 5, 6, 16, 17, 19, 20, 21, 27, 32, 33, 34, 36, 38, 39, 40, 41, 43, 44, 45, 46, 51, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 70, 74, 75, 76, 81, 82, 85, 94, 96, 98, 99, 100, 101, 102, 103, 104, 107, 108, 111, and 112.

Those items in Attachment 1 resulting from the second portion of the request, out-dated references to power operation with less than four RCPs are Items 9, 10, 11, 12, 13, 14, 15, 18, 22, 23, 24, 25, 26, 47, 48, 49, 56, 68, 79, 83, 84, 86, 90, 91, 92, 93, 109, and 110.

Those items in Attachment 1 resulting from the third portion of the request, administrative changes to clarify the existing TSs, which do not alter the current requirements are Items 2, 4, 7, 8, 28, 29, 30, 31, 35, 37, 42, 50, 52, 55, 65, 66, 67, 69, 71, 72, 73, 77, 78, 80, 87, 88, 89, 95, 97, 105, and 106.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocation of cycle-specific operating limits to a licensee-controlled report has no affect on the probability or consequences of any previously evaluated accident. The cycle-specific operating limits, although not in the Technical Specifications, will still be observed. The proposed amendment does not change the actions to be taken should those limits be exceeded.

Each accident analysis contained in the Updated Final Safety Analysis Report (UFSAR) will be evaluated for each reload cycle using NRC-approved reload design methodologies. Cycle-specific limits, to be

located in the Core Operating Limits Report (COLR), will be generated to ensure that the results of the accident analyses are bounded by results previously approved by the NRC.

The elimination of technical specification provisions for power operation with less than four reactor coolant pumps in operation has no affect on the probability or consequences of an accident previously evaluated because such operation is currently prohibited by the technical specifications.

The minor clarifications proposed neither add new requirements nor delete existing requirements but simply improve the readability of the existing specifications. Therefore, the probability or consequences of any accident previously evaluated is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The relocation of cycle-specific operating limits to a licensee-controlled report does not create the possibility of a new or different accident from any accident previously evaluated. The proposed change does not represent a change in the configuration or operation of the plant and the initial conditions assumed in the analysis of accidents in the UFSAR will continue to be valid.

The elimination of technical specification provisions for power operation with less than four reactor coolant pumps in operation does not create the possibility of a new or different type of accident from any accident previously evaluated. Such operation is currently prohibited by the technical specifications. Therefore, the proposed change does not represent a change in the configuration or operation of the plant.

The minor clarifications proposed neither add new requirements nor delete existing requirements but simply improve the readability of the existing specifications. The proposed change does not represent a change in the configuration or operation of the plant.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The cycle-specific limits will continue to be determined using methodologies previously approved by the NRC. The relocation of those limits into the Core Operating Limits Report has no affect on the margin of safety because the limits will be set to protect that margin afforded by previously approved methodologies. Any use of new methodologies must receive prior approval by the NRC. Therefore, the relocation of the cycle-specific limits would not involve a significant reduction in a margin of safety.

The elimination of technical specification provisions for power operation with less than four reactor coolant pumps in operation does not reduce the margin of safety. Such operation is currently prohibited by the technical specifications.

The minor clarifications proposed neither add new requirements nor delete existing requirements but simply improve the readability of the existing specifications. The proposed change has no affect on the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland 20678.

*Attorney for licensee:* Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Robert A. Capra

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of amendment request:* September 28, 1993

*Description of amendment request:* The proposed amendment revises Technical Specification (TS) 3/4.8.1, A. C. Sources, and the associated Bases to be consistent with NUREG-1431, Revision 0, "Standard Technical Specifications, Westinghouse Plants," dated September 1992. The proposed amendment would (1) revise the action statements in TS 3/4.8.1 and add additional action statements, (2) provide for slow start testing of the emergency diesel generators (EDG) and separate the EDG start and load testing into separate requirements; (3) revise TS Table 4.8-1, Diesel Generator Test Schedule; and (4) revise TS 3/4.7.1.2, Auxiliary Feedwater (AFW) System, Action Statement c, to be consistent with NUREG-1431 by adding a note regarding mode changes while all AFW trains are inoperable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A failure of an Emergency Diesel Generator (EDG) is not an initiator for any Final Safety Analysis Report (FSAR) Chapter 15 accident scenario. Accordingly, there can be no increase in the probability of any accident previously evaluated. Eliminating unnecessary testing and EDG starts reduces the overall wear and stress on the engines, reduces unnecessary engine degradation, and results in a greater overall engine reliability. Similarly, addition of the mode change restriction to the AFW Specification is not an initiator for any Final Safety Analysis Report (FSAR) Chapter 15 accident scenario. The restriction ensures that actions are not taken that could force the unit into a less safe condition. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not in and of itself result in any change to the plant configuration or operating modes. This change will (1) allow the EDGs to be slowly accelerated during the performance of surveillance tests required every 31 days, and (2) specifically preclude plant configuration or operating mode changes when no AFW trains are available. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Consistent with the new Standard Technical Specifications for Westinghouse Plants (NUREG-1431), the proposed changes include an increase in the allowable time (from two hours to four hours) to verify required safety equipment operable. However, this is an insignificant reduction and will result in a reduction in the risk associated with a possible unplanned shutdown. In addition, the proposed changes include restrictions on plant configuration or operating mode changes when three AFW trains are inoperable. This restriction, which is consistent with the new Standard Technical Specifications for Westinghouse Plants, ensures that actions are not taken that could force the unit into a less safe condition. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

*NRC Project Director:* S. Singh Bajwa

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois**

*Date of amendment request:* August 13, 1993, as supplemented by letters dated September 15 and 16, 1993.

*Description of amendment request:* The proposed amendment would revise Technical Specification 3/4.4.5, "Steam Generators," to allow sleeving of defective steam generator tubes as an alternative to tube plugging. Commonwealth Edison Company is requesting the approval of two different methods of sleeving: Westinghouse laser welded tube sleeving and Babcock and Wilcox (B&W) kinetic welded tube sleeving. These methods are described in WCAP-13698, Revision 1 and BAW-2045PA, Revision 1, and are submitted for review.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The tubesheet and/or tube support plate sleeves are installed with laser welded or kinetically welded joints. The sleeve configuration has been designed and analyzed in accordance with the requirements of the ASME Code. Fatigue and stress analyses of the sleeved tube assemblies produced acceptable results as documented in WCAP-13698 Revision 1, "Laser Welded Sleeves For 3/4 Inch Diameter Tube Feeding - Type and Westinghouse Preheater Steam Generators," and BAW-2045PA Revision 1, "Recirculating Steam Generators Kinetic Sleeve Qualification for 3/4 Inch O.D. Tubes." Mechanical testing has shown that the structural strength of Alloy 690 sleeves under normal, faulted and upset conditions is within acceptable limits. Leakage testing for 3/4" tube sleeves has demonstrated that primary to secondary leakage is not expected during all plant conditions.

The minimum acceptable sleeve wall thickness is determined using the criteria of Regulatory Guide 1.121 and the design requirements of Section III of the ASME Code. With respect to the design of the sleeve, the minimum acceptable wall thickness maintains a safety factor of three against tube failure under normal operating conditions. A bounding set of input conditions which envelop the operating parameters of all Model D steam generators was used for the minimum wall thickness evaluation. The minimum acceptable tube wall thickness determined by Reg. Guide 1.121 evaluation is no greater than 40% of the original sleeve wall thickness. Evaluation of the minimum acceptable wall thickness for postulated combined accident condition loadings, shows that the minimum wall requirement for Steam Line Break/Feed Line Break + Safe Shutdown Earthquake loadings, as well as the loading conditions during a Loss of Load transient, is bounded by the normal operating condition requirement of 40% minimum wall thickness.

Leak rates for the sleeves are a function of several operating parameters; of significance are the primary and secondary side pressures and the primary side temperature. For the present operating conditions at Byron and Braidwood the limiting primary-to-secondary leakage rate is bounded by the current Technical Specification limit of 500 gpd for steam generator leakage.

Based upon discussions with Westinghouse and B&W, the leak-before-break is considered to be an applicable failure mode to the sleeved tube assembly. The failure of the sleeve would be bounded by the current steam generator tube rupture analysis included in the Byron and Braidwood *FSAR*. Due to the slight reduction in the diameter caused by the sleeve wall thickness, it is expected that primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis, and therefore, would result in lower total primary fluid mass release to the secondary system. Additionally, further conservatism would be included if the break were postulated to occur at an elevation higher than where sleeves are installed. The combination of tube sheet sleeves and tube support plate sleeves would reduce the primary fluid flow through the sleeved tube assembly due to the series of diameter reductions the fluid would have to pass on its way to the break area. The overall effect would be reduced steam generator tube rupture release rates.

The proposed Technical Specification change to support the installation of Alloy 690 laser welded or kinetically welded sleeves does not adversely impact any other previously evaluated design basis accident or the results of LOCA and non-LOCA accident analyses for the current Technical Specification minimum reactor coolant system flow rate. The results of the analyses and testing, as well as plant operating experience demonstrate that the sleeve assembly is an acceptable means of maintaining tube integrity.

Plugging limit criteria are established using the guidance of Regulatory Guide 1.121, and is bounded by the current Technical Specification plugging limit for tubes of 40% throughwall degradation. Furthermore, as recommended by Regulatory Guide 1.83, the sleeved tube will be monitored through periodic inspections with present eddy current techniques. These measures demonstrate that installation of sleeves spanning degraded areas of the tube will restore the tube to a condition consistent with its original design basis.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of laser welded or kinetically welded sleeving will not introduce significant or adverse changes to the plant design basis. Stress and fatigue analysis of the repair has shown the ASME Code and Regulatory Guide 1.121 allowable values are met. Implementation of laser welded or kinetically welded sleeving maintains overall tube bundle structural and leakage integrity at a level consistent to that of the originally supplied tubing during all plant conditions. Leak and mechanical testing of sleeves support the conclusions of the calculations that the sleeve retains both structural and leakage integrity during all conditions. Sleeving of tubes does not provide a mechanism resulting in an accident outside of the area affected by the sleeves. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. The sleeve design does not affect any other component or location of the tube outside of the immediate area repaired. In addition, the tube rupture accident analysis accounts for the installation of sleeves and the impact on current plugging level analyses; therefore, the possibility that sleeving creates a new or different type of accident is not supported.

The proposed amendment does not involve a significant reduction in a margin of safety.

The laser welded and kinetically welded sleeving repair of degraded steam generator tubes, has been shown by analysis to restore the integrity of the bundle to its original design basis condition. The safety factors used in the design of sleeves for the repair of degraded tubes are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. The design of the tubesheet sleeve lower weld joints for the 3/4" sleeves have been verified by testing to preclude leakage during normal and postulated accident conditions.

The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of Regulatory Guide 1.83. The portion of the tube bridged by the sleeve joints is effectively removed from the pressure boundary, and the sleeve then forms the new pressure boundary.

Sleeving has no effect upon the design transients and accident analyses have been reviewed based on the installation of sleeves up to the level of steam generator tube plugging coincident with the minimum reactor flow rate. The installation of sleeves is to be evaluated as the equivalent of some level of steam generator tube plugging. Evaluation of the installation of sleeves is based on the determination that LOCA evaluations for the licensed minimum reactor coolant flow bound the effect of a combination of tube plugging and sleeving up to an equivalent of the actual steam generator tube plugging limit. Information provided in WCAP-13698, Rev. 1 and BAW-2045PA, Rev. 1, describes the method to determine the flow equivalency for all combinations of tubesheet and tube support plate sleeves in order that the minimum flow requirements are met.

Installation of either tube sheet or tube support plate sleeves will increase the

protective boundaries of the steam generators and will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; and for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

*NRC Project Director:* James E. Dyer

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois**

*Date of amendment request:* June 2, 1993

*Description of amendment request:* The proposed amendment would include Commonwealth Edison Company's Topical Report NFSR-0091, in Section 6.6 of the Technical Specifications. Topical Report NFSR-0091 has been reviewed and approved by the NRC staff.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Topical Report methodology to be referenced in the Technical Specifications is approved by the NRC and is used to evaluate reload designs and related core operating limits. Edison performing these analyses instead of the fuel vendor does not introduce physical changes to the plants which would involve a significant increase in the probability or consequences of an accident previously evaluated. The methodology is the same as is currently being used at Dresden Station. Edison will continue to analyze the same spectrum of limiting events for each reload, and an Interaction Procedure with the fuel vendor has been implemented to ensure the interface between the two organizations is working properly. The MCPR Safety Limit is assessed by the fuel vendor on a cycle by cycle basis to confirm its continued applicability. The fuel vendor will continue this assessment based on the specific core conditions provided by Edison. Therefore, the MCPR Safety Limit will continue to maintain fuel cladding integrity by ensuring that 99.9% of the fuel rods will avoid transition boiling during limiting anticipated operational occurrences. Thus, the changes do not affect the probability or consequences of accidents previously analyzed.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The referenced methodology is the same as that currently used to analyze in-core fuel management and neuronic licensing events and therefore does not introduce any physical changes to the plant which would create the possibility of a new or different kind of accident from any accident previously evaluated. Similarly, the statistical basis of the MCPR Safety Limit has not been impacted as demonstrated by the Topical and Supplements. The safety limit will therefore continue to maintain fuel cladding integrity during limiting anticipated operational occurrences. Therefore, the possibility of a new or different kind of accident is not created.

The proposed amendment does not involve a significant reduction in a margin of safety.

Since the Edison methodology is consistent with the currently approved neuronic methods for Dresden, it will continue to ensure fuel design and licensing criteria are met. The MCPR Safety Limit will continue to be based on the value specified by the fuel vendor, which is assessed on a cycle by cycle basis to ensure continued applicability. Therefore, the margin of safety between the MCPR Safety Limit and potential fuel failure after the onset of transition boiling is not decreased.

The limits based on mechanical design and LOCA considerations will continue to be specified by the fuel vendor (LHGR and MAPLHGR). Therefore, this proposed administrative change has no adverse impact on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

*NRC Project Director:* James E. Dyer

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* September 7, 1993

*Description of amendment request:* The Catawba Nuclear Station, Unit 1 is scheduled to shut down in October 1993 for a refueling outage and to begin the eighth fuel cycle in December 1993. The reactor core for Cycle 8 will consist of 117 burned fuel assemblies and 76 fresh fuel assemblies. The incoming Mark-BW fuel for Cycle 8 will be the third Catawba Unit 1 reload batch supplied by the B&W Fuel Company (BWFC). Certain changes to the Technical Specifications (TS) are needed to support operation of Unit 1 in Cycle 8 as follows:

(1) Reduce the magnitude of positive f-delta I slope in TS Table 2.2-1 from 2.316 to 1.525.

(2) Increase the refueling water storage tank minimum boron concentration in TS 3.1.2.5 and 3.1.2.6 from 2000 ppm to 2175 ppm.

(3) Increase the cold leg accumulator boron concentration range from 1900-2100 ppm to 2000-2275 ppm in TS 3.5.1. Also, increase the cold leg accumulator volume weighted average boron concentrations for ACTION c.

(4) Increase the refueling water storage tank boron concentration range in TS 3.5.4 from 2000-2100 ppm to 2175-2275 ppm.

(5) Increase the Reactor Coolant System minimum boron concentration from 2000 ppm to 2175 ppm.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

INCREASE IN BORON CONCENTRATION LIMITS FOR THE REFUELING WATER STORAGE TANK (RWST), COLD LEG ACCUMULATORS (CLAs), AND THE RCS & REFUELING CANAL IN MODE 6.

The minimum and maximum boron concentrations for the RWST and CLAs and the minimum volume weighted average boron concentration for the CLAs were increased for Unit 1 to offset the increase in reactivity associated with the Cycle 8 core reload. The additional boron is needed to counteract the additional reactivity which is being added to meet the energy requirements of a longer cycle length and the increased positive reactivity inserted following the cooldown of a core with a higher percentage of B&W MkBW fuel.

The increase in the required RCS and refueling canal minimum boron concentration was added only to maintain consistency between the boron concentration of the RCS and the RWST in Mode 6.

The boron concentration limits for the RWST and CLAs ensure the reactor will remain subcritical following a LOCA and that the assumptions given in the LOCA analyses will be met. As described in Section 7, Accident Analysis [of the licensee's application], the post-LOCA subcriticality reanalysis demonstrates that the revised boration limits are acceptable. An increase in the minimum boration values necessitated an increase in the maximum boration concentration limits in order to preserve

operating margin. The change in maximum boration concentration limits required a reanalysis of post-LOCA boron precipitation and post-LOCA containment sump pH analyses. The results of these analyses indicate that post-LOCA boron precipitation is prevented with a reduction in the hot leg recirculation initiation time from 9 hours to 7 hours and that the allowable pH range defined in the Technical Specification Bases is maintained.

The change in boron concentration limits for the RWST, the CLAs, and the RCS & refueling canal will not increase the probability of an accident since no accident initiators are involved with this change. The reanalysis of the post-LOCA subcriticality, boron precipitation, and sump pH analyses demonstrate that the consequences of an accident previously evaluated will not be increased. The increase in the boron concentration limit for the RCS and refueling canal in Mode 6 is conservative and adds further margin to the initial conditions assumed for the boron dilution accident in the safety analysis. Therefore, the consequences of the boron dilution accident previously evaluated will not be increased.

The possibility of a new or different kind of accident from any previously evaluated will not be created since these changes are bounded by previously evaluated accidents and do not introduce any new failure modes.

These changes do not involve a significant reduction in the margin of safety since the analyses performed demonstrate that the limits imposed meet all accident analysis and design basis requirements.

INCREASE IN THE SLOPE OF THE [f1-delta I] FUNCTION OF THE OVERTEMPERATURE DELTA T [(OTDT)] REACTOR TRIP FUNCTION

The OTDT trip provides core protection to prevent DNB for all combinations of pressure, power, coolant temperature, and axial power distribution. If axial power distribution peaks are greater than design, as indicated by the difference between top and bottom range nuclear detectors, the OTDT reactor trip setpoint is automatically reduced when the delta flux is outside prescribed bounds (outside the -39.9% and +3.0% breakpoints). The slope of the f1-delta I function being changed on Unit 1 is used to calculate the penalty imposed on the OTDT setpoint when the percentage difference in power between the top and bottom halves of the core is more positive than 3.0% (i.e. core upper half power is 3% greater than core lower half power). The penalty varies by the percentage power difference above 3.0% times the slope of the f1-delta I function.

The positive breakpoint and slope of the f1-delta I function for the OTDT reactor trip function was reevaluated for the Cycle 8 reload design. This analysis demonstrates that the current slope of the f1-delta I function is overly conservative with respect to optimal core operation. During cycle startup, the conservatism in the f1-delta I function causes an unacceptable decrease in the OTDT margin to trip. The reduction of this value from 2.316 to 1.525 for Unit 1 allows for better plant operation and is bounded by the existing licensing basis safety analysis.

This change in the slope of the f1-delta I function will not increase the probability of an accident since no accident initiators are involved with this change. Since all existing licensing basis safety analyses remain valid with a positive f1-delta I slope of 1.525 for Unit 1, the consequences of an accident previously evaluated will not be increased.

The possibility of a new or different kind of accident from any previously evaluated will not be created since this change is bounded by previously evaluated accidents and does not introduce any new failure modes.

This change does not involve a significant reduction in the margin of safety since the analysis performed demonstrates that the new limit imposed meets all present accident analysis and design basis requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* October 5, 1993

*Description of amendment request:* The proposed amendments change the Catawba Nuclear Station Technical Specifications (TS) affecting cold leg accumulator contained borated water volume and ECCS subsystem surveillance requirements. These changes are needed to ensure that the TS correctly reflect the appropriate operability requirements for cold leg accumulator water volume and surveillance requirement values for the centrifugal charging pumps (CCPs), safety injection pumps (SIPs), and residual heat removal pumps (RHRPs) to prevent possible runout conditions during a loss of coolant accident (LOCA) event. These changes are proposed for both units to maintain consistency between units.

The licensee was notified by Westinghouse and Dresser/Pacific Pumps of changes to the generic runout limits for the CCPs and SIPs at Catawba. This new information indicated that the flow rate values given in the TS may be non-conservative in preventing runout conditions following a LOCA. To correct this problem, the licensee states that it has instituted compensatory actions as temporary measures until a TS change can be processed. The proposed changes are stated below.

The cold leg accumulator (CLA) contained borated water volume requirement given in TS 3.5.1.b would be revised from between 7704 and 8004 gallons to between 7630 and 8079 gallons. The change would begin with operation in Cycle 8 and would apply to Units 1 and 2.

The following ECCS subsystem surveillance requirements would be revised beginning with operation of Catawba Unit 1 in Cycle 8.

(1) Increase the CCP minimum developed head requirement given in TS 4.5.2.f.1 from 2223 psid to 2349 psid.

(2) Increase the SIP minimum developed head requirement in TS 4.5.2.f.2 from 1341 to 1418 psid.

(3) For the CCPs, decrease the sum of the injection line flow rates, excluding the highest flow rate, in TS 4.5.2.h.1)a from 345 gpm to 320 gpm.

(4) For the SIPs, decrease the sum of the injection line flow rates, excluding the highest flow rate, in TS 4.5.2.h.2)a from 450 gpm to 423 gpm.

(5) For the RHRP lines with a single pump running, increase the sum of the injection line flow rates (all lines) in TS 4.5.2.h.3 from 3648 gpm to 3900 gpm.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*CLA Contained Borated Water Volume*

The Cold Leg Accumulators comprise a passive system that ensures a sufficient volume of borated water will be immediately forced into the reactor core in the event the Reactor Coolant System pressure falls below the pressure of the accumulators. The change being made by this amendment only affects the allowable water volume band and does not alter the function of the CLAs or their ability to perform their intended design function. In addition, the CLAs are not initiators of any Design Basis Accident. As a result, this change will not increase the probability of any accident previously evaluated.

The limit on accumulator volume ensures that the assumptions used for accumulator injection in the safety analysis are met. The latest LOCA analysis performed by Westinghouse incorporates this increased water volume band. The analysis was performed in accordance with the NRC approved LOCA methodology for Catawba

Nuclear Station. This analysis demonstrates that this increased band is acceptable since the results of the analysis indicate that all design basis requirements continue to be satisfied. Therefore, this change will not increase the consequences of an accident previously evaluated.

*ECCS Subsystem Surveillance Requirements*

The TS changes associated with ECCS subsystems do not affect the initiators of any Design Basis Accidents (DBA). During normal operation the SIPs and the RHRPs are in standby, they are not operating. In the event of an accident resulting in an Engineered Safeguard (ES) actuation, the pumps would start to provide flow to the reactor vessel. The minor changes proposed for these pumps (SIPs and RHRPs) would not cause any accidents or events that have been previously evaluated.

During normal operation, the CCPs are operating. The proposed minor changes provided by this submittal only impact the performance of these pumps in response to an ES actuation. The proposed changes do not affect, in any way, how these pumps are operated during normal operation. As such, the minor changes proposed for the CCPs would not cause any accidents or events that have been previously evaluated. Accordingly, the proposed TS changes would not increase the probability of an accident that has been previously evaluated.

The purpose of the ECCS subsystems is to ensure sufficient flow is provided to the core in the event of a LOCA to mitigate the consequences of a LOCA. A LOCA analysis was performed to determine the impact of the proposed TS changes. The results of the analysis demonstrate that the acceptance criteria of 10 CFR 50.46 are still satisfied. Further, the purpose of the proposed TS changes are to prevent runout of the ECCS subsystem pumps during the injection and recirculation phases of a LOCA. Accordingly, the proposed TS changes would not significantly [increase] the consequences of an accident that has been previously evaluated.

2. This amendment will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

*CLA Contained Borated Water Volume*

The proposed TS change only affects the allowable water volume band of the CLAs and does not alter the function of the CLAs or their ability to perform their intended design function. This change creates no new failure modes and will not alter the design or operation of any other structure, system, or component at Catawba Nuclear Station. Therefore, this change would not create a new or different kind of accident from any kind of accident previously evaluated.

*ECCS Subsystem Surveillance Requirements*

The proposed TS changes would not require any modifications to any structures, systems or components. Some minor changes to certain testing procedures for the ECCS subsystem pumps would be necessary. These minor changes would only involve specific values identified within the procedure and would not result in any changes on how the test would be performed. No other changes to procedures on how the station is operated or maintained would occur. Accordingly, the proposed TS change would not create a new or different kind of accident than what has been previously evaluated.

3. This amendment will not involve a significant reduction in the margin of safety.

*CLA Contained Borated Water Volume*

The results of the LOCA analysis which was performed utilizing the larger water volume band on the CLAs indicate that all accident analysis requirements are satisfied and that this change has noadverse impact on the ability of the ECCS systems to satisfy their design basis requirements. As a result, this proposed TS change will not involve a significant reduction in the margin of safety.

*ECCS Subsystem Surveillance Requirements*

The results of the LOCA reanalysis, which was performed to determine the impact the proposed TS changes would have in mitigating a LOCA, indicate that the acceptance criteria of 10 CFR 50.46 are still satisfied. The analysis that was performed demonstrate that the Peak Clad Temperature (PCT) would remain below 2200 degrees F. The proposed changes ensure that the ECCS subsystem pumps will be operated within the limits specified by the manufacturer. Accordingly, the proposed TS changes would not significantly reduce any margins of safety.

Based on the above and the supporting technical justification, Duke has concluded that there is no significant hazards consideration involved in this request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* October 5 and 14, 1993

*Description of amendment request:* Previous inservice inspections and examinations of the steam generator tubes at Catawba Unit 1 have identified intergranular stress corrosion cracking (IGSCC) on the outer diameter (ODSCC) of the tubes at the tube support plate (TSP) intersections. Based on the inspection results during the Unit 1 end-of-cycle six (EOC-6) outage, on August 24, 1992, the licensee submitted an application for interim modifications (interim plugging criterion or IPC) to the 40% throughwall thickness repair criterion and the primary-to-secondary leakage limit in the Technical Specifications (TS) for the subsequent cycle of operation. The proposed modifications to the tube repair limits included a one volt eddy current repair criterion for indications confined to the thickness of the TSP in lieu of the then applicable depth-based limit of 40%. This criterion only applied to ODSCC degradation confined to within the thickness of the TSPs. Amendments 102 and 96 to the Catawba licenses and TS were issued on September 25, 1992, in response to the application dated August 24, 1992.

Since the application and amendments mentioned above were applicable only to the current Cycle 7 of operation which is now scheduled to end on October 30, 1993, the licensee submitted the October 5, 1993, application requesting renewal of the voltage based steam generator interim plugging criterion for the forthcoming Cycle 8 of operation.

The associated revisions to the TS will (a) make the plugging limit for Unit 1 applicable to Cycle 8, (b) increase the upper end of the voltage band for acceptance of tubes without a confirming rotating pancake coil (RPC) eddy current measurement from 2.5 to 2.7 volts, (c) revise the reference for plant-specific guidelines for inspections to a Westinghouse Topical Report, WCAP-13854, "Technical Support for Cycle 8 Steam Generator Interim Tube Plugging for Catawba Unit 1," September 1993, (d) revise TS 4.4.5.4.a.13 to increase the limit on projected end-of-cycle primary to secondary leakage from 1.0 to 17.5 gallons per minute (gpm) based on the projected end-of-cycle distribution of crack indications, and (e) include a reporting requirement for TS 4.4.5.5.a for projected steam line break leakage.

These revisions to the TS reflect the following:

(a) The addition of tube pull burst and leakage data to the EPRI 3/4 inch tube diameter data base and its effect on the tube structural limit and tube steamline break analysis leakage consideration,

(b) The completion of main steam line leakage calculations consistent with the draft NRC NUREG-1477, "Voltage Based Interim Plugging Criteria For Steam Generator Tubes - Task Group Report," June 1993, and

(c) The implementation of Westinghouse non-destructive examination (NDE) data analysis guidelines which provide direction for

eddy current analysis in implementing the IPC.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Operation of Catawba Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A single tube rupture is not anticipated during Cycle 8 operation of Catawba Unit 1. Based on the existing data base, the limiting [Regulatory Guide] RG 1.121 criterion for tube burst capability of 3 times normal operating pressure differential is satisfied with 3/4" diameter tubing with bobbin coil indications with signal amplitudes less than 4.2 volts, regardless of the indicated depth measurement. This structural limit is based on a lower 95% prediction bound of the data and using LTL material properties. A 1.0 volt plugging criteria compares favorably with the structural limit considering the previously calculated growth rates for ODSCC [outer diameter stress corrosion cracking] within the Catawba Unit 1 steam generators. Considering voltage increase of 0.4 volts, and adding a 14% NDE uncertainty of 0.14 volts (90% cumulative probability) to the interim plugging criteria of 1.0 volt results in an EOC [end-of-cycle] voltage of approximately 1.6 volts for Cycle 7 operation. This end of cycle voltage compares favorably with the Structural Limit of 4.2 volts. The corresponding safety margin to the tube structural limit at end of Cycle 7 upon implementation of the 1.0 volt steam generator tube interim plugging limit is projected to be 2.6 volts. The applicability of Cycle 7 growth rates for Cycle 8 operation will be confirmed prior to return to power of Catawba Unit 1. A similar structural margin is anticipated.

In addition, for an EOC voltage structural limit of 4.2 volts, applying the 40% growth allowance and the 14% NDE uncertainty results in an alternate repair limit of 2.7 (4.2 divided by 1.54 = 2.72) volts. This repair limit will be applied for Cycle 8 IPC implementation to repair bobbin indications greater than 2.7 volts independent of RPC [rotating pancake coil] confirmation of the indication. The methodology used in calculating this new limit is consistent with that used in determining the Cycle 7 value.

Concerning SLB [steam line break] leakage in support of implementation of the interim plugging criteria, it will be determined whether the distribution of cracking indications at the tube support plate intersections at the end of Cycle 8 are projected to be such that primary to secondary leakage would result in site boundary doses within the pertinent 10 CFR 100 limits. The SLB leakage rate calculation methodology prescribed in Section 3.3 of draft NUREG-1477 will be used to calculate EOC 8 SLB leakage. Based on EOC 7 projections, it is anticipated that SLB leakage during a postulated SLB event at the EOC 8 will be limited to approximately 14.7 gpm which is shown to result in acceptable dose consequences [in accordance with Duke Power Calculation No. CNC-1227.00-00-0051, Rev. 2, "Offsite Dose From A Postulated Main Steam Line Break," 9/29/93]. [This report] shows that SLB leakage of 17.5 gpm in the faulted loop results in dose consequences which are less than the pertinent 10 CFR 100 limits. The NRC leakage rate calculation methodology applies a 98% confidence limit on leakage that is independent of voltage. This method for calculating SLB leakage is conservative as it assumes no correlation exists between SLB leakage and bobbin probe voltage as is shown to be the case in [the Westinghouse Topical Report, WCAP-13715, "NRC Requested Catawba-1 Steam Generator Leakage Evaluation," April 1993].

Therefore, as implementation of the proposed 1.0 volt interim plugging criteria during Cycle 8 does not adversely affect steam generator tube integrity and results in acceptable dose consequences [as in the above Duke Power calculation and in WCAP-13854], the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated within the Catawba Unit 1 FSAR [Final Safety Analysis Report].

2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed steam generator tube interim plugging criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations - no ODSCC is occurring outside the thickness of the tube support plates. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions).

Upon application of the interim plugging criteria, no primary to secondary leakage during normal operation is anticipated during all plant conditions due to degradation at the tube support plate elevations in the Catawba Unit 1 steam generators. However, additional conservatism is built into the existing operating leakage limit with regard to protection against the maximum permissible single crack length which may be achieved during Cycle 8 operation due, in large part, to the potential occurrence of through-wall cracks at locations other than the tube support plate intersections.

Application of the 1.0 volt interim steam generator tube plugging criteria at Catawba Unit 1 is not expected to result in tube burst during all plant conditions during Cycle 8 operation. Tube burst margins are expected to meet RG 1.121 acceptance criteria. The limiting consequence of the application of the interim plugging criteria is a potential for SLB leakage of approximately 14.7 gpm using the NRC prescribed methodology for calculating SLB leakage. The SLB leakage value will be confirmed to be less than allowable levels prior to return to power of Catawba Unit 1. This amount of leakage does not result in unacceptable radiological consequences [consistent with the above mentioned Duke Power calculation]. No unacceptable leakage is anticipated at normal operating or RCP locked rotor conditions.

Therefore, as the existing tube integrity criteria and accident analyses assumptions and results will continue to be met, the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3) The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage based bobbin probe interim tube support plate elevation plugging criteria at Catawba Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121.

[Regulatory Guide] 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should by removed from service. Implementation of the bobbin probe voltage based interim tube plugging criteria of 1.0 volt is supplemented by enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection size at the tube support plate elevations, and rotating pancake coil inspection requirements for the larger indications left in service to characterize the principle degradation as ODSCC. Even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions.

Based on the analyses which shows the new leakage values proposed and the leakage conditions required to be confirmed during accidents creating high differential pressures across the steam generator tubes (e.g., SLB), new dose analyses were run to determine the maximum permissible leakage that will result in acceptable offsite dose consequences. A new analysis of the MSLB [main steam line break] accident with a leakage growth of 14.7 gpm in the faulted generator results in the EAB and LPZ doses remaining within 10% of the 10 CFR 100 values of 25 Rem whole body and 300 Rem thyroid for the accident-initiated iodine spike, and 10 CFR 100 values for the pre-accident iodine spike [consistent with the above mentioned Duke Power calculation].

The EOC 8 distribution of crack indications at the tube support plate elevations will be confirmed to result in acceptable primary to secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

As noted previously, renewal of the tube support plate elevation plugging criteria for Cycle 8 operation at Catawba Unit 1 will decrease the number of tubes which must be repaired by sleeving or taken out of service

by plugging. The installation of steam generator tube plugs reduce the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any Bases of the plant Technical Specifications.

Based on the preceding analysis, [for the three factors in parts 1, 2, and 3 above], it is concluded that using voltage-based interim steam generator tube plugging criteria for removing tubes from service is acceptable and the proposed license amendment involves a no significant hazards consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* September 16, 1993

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) for the ultimate heat sink (UHS) to clarify the requirements for the wet cooling tower fan covers, increase the test interval for starting the dry and wet tower fans from 7 days to 31 days, increase the wet bulb temperature to 80°F for determining Operability (described as Action "f"), and make other editorial and clarifying changes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes will have no affect on any accident previously evaluated. All changes with the exception of the increased time in action "f", and the increased surveillance interval of 4.7.4.b, are editorial in nature or correct inconsistencies to meet the original intent of the TS. The changes to Action "f" will have no impact on initiating conditions or assumptions previously analyzed. Increasing the surveillance interval from 7 to 31 days is expected to enhance safety through improved reliability. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes will not alter the operation of the plant or the manner in which it is operated. The changes to Actions "c", "e", and Table 3.7-3 are being proposed to correct inconsistencies and provide clarification to the existing technical specification. The changes to Action "f" and 4.7.4.b will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any changes to safety limits or limiting safety settings. The proposed changes are consistent with the Waterford 3 licensing bases for the UHS and will ensure continued availability to perform its design function. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

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*NRC Project Director:* William D. Beckner

**Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* September 16, 1993

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TS) by removing the incore detection system requirements. These requirements would then be located in the Updated Final Safety Analysis Report (UFSAR). This action is in accordance with the Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (see 52 FR 3788, published February 6, 1987).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change relocates Incore Detection System requirements from the TS to the UFSAR consistent with the NRC Policy Statement on Technical Specification Improvements. The incore detectors[']' primary function is to provide inputs to the COLSS [core operating limit supervisory system]. The incore detectors and COLSS are not safety related and the COLSS is independent of the plant protection system. The CPCs [core protection calculators] operate independently of COLSS, using the excore detectors to preserve plant safety parameters. The proposed change does not affect any material condition of the plant that could directly contribute to causing or mitigating the effects of an accident. The TS will continue to define the LCOs [limiting conditions for operations] required to ensure that reactor coreconditions during operations remain within the initial conditions assumed in the UFSAR. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not involve any design change. The proposed change will not alter the operation of the plant or the manner in which it is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will relocate Incore Detection System requirements from the TS to the UFSAR. The proposed change will have no adverse impact on the plant protection system nor will any protective boundary or safety limit be affected. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

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*NRC Project Director:* William D. Beckner

**Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida**

*Date of amendment request:* September 23, 1993

*Description of amendment request:* The proposed amendment will make changes to Technical Specification 6.2.3, Independent Safety Engineering Group. The licensee believes that the proposed amendment is consistent with the Executive Order to reduce regulatory burden and with the Regulatory Review Group effort as discussed during the 1993 Regulatory Information Conference. The licensee considers this

proposed amendment to be a generic line-item improvement.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment maintains the requirement to perform independent technical reviews. The proposal does not change the plant design, limiting conditions for operation or related plant operating procedures. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not change the physical plant or the modes of plant operation defined in the Facility License. The change does not impact the operation, reliability or repair of existing equipment and cannot introduce any new failure mechanism to existing systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not change the physical plant, the procedures for operation or the maintenance of plant components. The change maintains the requirement to perform independent technical reviews. Assumptions, plant conditions, and analyses used to define or otherwise establish margins of safety for the operation of St. Lucie Unit 2 are not altered. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

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*NRC Project Director:* Herbert N. Berkow

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of amendment request:* September 20, 1993

*Description of amendment request:* The amendment request proposes a revision to the Units 1 and 2 Channel Functional Test frequency, from quarterly to once per 18 months, for the scram discharge volume float type level switches.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

*The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The requested change increases the interval for the SDV [Scram Discharge Volume] float type level switches from quarterly to once per eighteen months. No physical changes are being made to systems or equipment which would make the plant more vulnerable to any accident previously evaluated in chapters 14 and 15 of the Unit 1 and Unit 2 FSARs [Final Safety Analysis Reports], respectively. Neither are changes being made concerning the operation of the plant as a result of this proposed amendment. Therefore, the probability of occurrence of the accidents described in chapters 14 and 15 of Unit 1 and Unit 2 FSARs are not increased.

In addition, increasing the frequency of surveillance from quarterly to once per eighteen months does not increase the likelihood of inadvertent switch actuation; therefore, the probability of inadvertent reactor scrams is not increased.

These switches are not used for the mitigation of any previously analyzed accidents or transients and therefore, changing their frequency does not increase the consequences of these events.

As documented in the specific GE [General Electric] analysis for Hatch (GENE 770-25-1092-1) the scram failure increases from 3.14E-10 per year to 1.53E-09 per year. This is not a significant increase in the failure rate. Furthermore, this slight increase is justified by the man-rem exposure savings on plant personnel which will be realized by the less frequent surveillances.

If an actual failure to scram were to occur, the proposed change would not affect the operation of the Standby Liquid Control System (SBLC) (or any other system used to combat the failure to scram). Neither does the proposed change affect when and under what circumstances the SBLC would be initiated. The consequences of a failure to scram event would therefore not be increased.

*The proposed amendment does not create the possibility of a new or different kind of accident previously analyzed.*

The float type level switches do not function to prevent accidents. Their purpose is to monitor the water level in the instrument volume to detect any abnormal filling of the SDV and to provide control room alarms, control rod blocks, and a reactor scram should the water level reach certain points. Also, this proposed change does not involve any physical changes to the switches or the instrument or discharge volumes. Neither are any physical changes or new modes of operation involved concerning the RPS [Reactor Protection System], CRD [control rod drive] or any other plant system.

For these reasons, the possibility of a new or different accident is not introduced.

*The proposed amendment does not involve a significant reduction in the margin of safety.*

There are four level sensors on each side of the SDV, two thermal switches and two float type switches (which are the concern in this submittal). There are also two more switches of the float type which provide control room annunciation and a control rod block. In their analysis for Hatch, GE performed an industry review of Magnetrol level switches to determine their failure rate. GE found, through the Nuclear Power Reliability Data System (NPRDS) that the failure rate for these switches being used in CRD system applications is 1.8E-6 failures per hour; for all applications, the failure rate was 2.9E-6 failures per hour. Even if the float type switches were to fail, the thermal switches could still trip the RPS and initiate a scram before the volume filled to beyond its capacity to accommodate scram water.

Additionally, the Channel Calibration will continue to be performed at the current frequency; the proposed request only changes the frequency of the functional test. This amendment does not propose any change in the surveillances or the surveillance intervals for the thermal switches. Furthermore, the proposed extension of the float switch channel functional test interval does not significantly increase the probability of failure of the float type switches. As mentioned in the answer to question no. 1, the probability of a failure to scram event (as documented in the GE Hatch specific analysis) is increased only from 3.41E-10 events per year to 1.53E-09 events per year by extending the functional test interval from once per 3 months to once per eighteen months. This does not represent a significant reduction in the margin of safety.

The very small increase in the probability of a failure to scram event is acceptable because of the reduction in the radiation exposure of Instrument and Controls personnel performing the surveillance. The surveillance on these switches represents one of the highest sources of exposure for I&C [Instrumentation and Control] personnel. The exposure received from this surveillance is about .5 man-rem per calibration. Extending the frequency of surveillance to once per 18 months would significantly decrease

personnel exposure thus increasing the margin of personnel safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

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*NRC Project Director:* David B. Matthews

**GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania**

*Date of amendment request:* August 5, 1993

*Description of amendment request:* The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying the Appendix A Technical Specifications, removing the definition of Accident Generated Water (AGW) and the technical specification limiting condition for operation regarding the disposal of the AGW via the Processed Water Disposal System (PWDS). The TMI-2 Appendix A Technical Specification Section 3.9.13 specifies and quantifies the criteria limiting PWDS operations and effluents during the processing of the AGW by the PWDS. The licensee completed the processing of the AGW on August 12, 1993, and the PWDS has been dismantled and removed from the TMI-2 site. Therefore, there is no further need to define AGW in the TMI-2 Technical Specifications or specify unique limitations on the operation or effluents of the PWDS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

10 CFR 50.92 provides the criteria which the Commission uses to evaluate a No Significant Hazards Consideration. 10 CFR 50.92 states that an amendment to a facility license involves No Significant Hazard 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 direct release of residual water to the Susquehanna River is not different from the disposal options for liquid wastes outlined in the TMI-2 Final Safety Analysis Report (FSAR) and the consequences of the direct release of residual water are bounded by analyses provided in the FSAR and in the analysis of an accidental release of 2.1 million gallons of processed water.

The direct release of residual water would not increase the probability of an accident or malfunction of equipment important to safety. The direct release of residual water will be performed in accordance with plant procedures and requirements of the TMI National Pollutant Discharge Elimination System (NPDES) permit and Offsite Dose Calculation Manual (ODCM). Additionally, the consequences of any accident associated with the direct release is bounded by the evaluation given in the TMI-2 FSAR for a postulated failure of the Borated Water Storage Tank (BWST).

Supplement 2 of the FSAR evaluated the postulated failure of the BWST. This evaluation assumed that the BWST contained "design basis" radioisotopic concentrations. The mix of radioisotopes in the FSAR evaluation is vastly different from the mix of radioisotopes in the residual water. However, the resulting doses from the release of the BWST contents into the Susquehanna River can be compared to the expected doses resulting from the hypothetical release of the maximum probable volume of residual water. This comparison demonstrates the doses resulting from the accidental release of residual water are bounded by the previously reviewed BWST accident evaluation.

Table 1 of Supplement 2 (pages S2-13C) of the FSAR, presents the resulting concentrations in the river from the postulated failure of the BWST. For this mix of radioisotopes, the radiologically significant radioisotopes are Cs-134, Cs-136 and Cs-137. Using the concentrations given in Table 1 of Supplement 2 for the east side of the island and the dose methodology given in Regulatory Guide 1.109, the maximally exposed individual would receive an estimated dose of 7.8 rem to the liver from the consumption of one kilogram of fish. The liver is the limiting organ for exposure to radioactive cesium.

For comparative purposes, previous accident analysis of the release of 2.1 million gallons of processed water to the river found the maximally exposed individual is estimated to receive a dose of 0.56 rem to the bone (the limiting organ for the mix of radioisotopes in the processed water), and 0.015 rem to the liver (F.R. Standerfer to W. D. Travers, Disposal of Processed Water, 4410-86-L-0114, July 31, 1986).

The Accident Generated Water Completion Report, Attachment 1, shows the maximum volume of water available to be released after AGW processing is completed is less than 1 percent of the 2.1 million gallons of processed water assumed in the processed water accidental release analysis. The radionuclide content of the residual water accidently released is equal to or less than that assumed for processed water. Therefore, the dose consequences from the accidental release of residual water and the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The direct release of residual water to the Susquehanna River does not create the possibility of a new or different accident from those previously evaluated. Postulated accidents associated with the residual water disposal would consist of line breaks or tank ruptures for which the bounding accidents have been evaluated (in both the FSAR and as noted above in the Standerfer to Travers letter).

Disposal of the processed water does not reduce any margin of safety as defined in the basis for any technical specification. The disposal of the residual water by direct release to the Susquehanna River has been evaluated. All releases will be controlled, by compliance with governing procedures, to ensure that public exposure to the planned liquid discharges is well within the objectives of 10 CFR 50, Appendix I.

In summary, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the AGW and Base Case Water definitions and the requirements pertaining to the disposal of AGW via the PWDS has no effect on the probability of an accidental release of contaminated water. An accidental release of residual water is no more likely to occur during the release of water through existing approved site discharge pathways than via evaporation. The consequences of an accidental discharge of AGW have been shown to be significantly less than the postulated failure of the BWST analyzed in the TMI-2 FSAR and the accidental release of 2.1 million gallons of processed water. The dose consequences for the disposal of residual water are not significantly different whether disposed via evaporation or released to the Susquehanna River via approved discharge pathways.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change has no potential to create a new or different kind of accident. Effluent releases to the environment will be required to meet existing regulatory requirements and, in the case of liquid releases to the Susquehanna River, the discharge pathways authorized by the existing NPDES permit.

3. Involve a significant reduction in a margin of safety. There is no impact on any margin of safety because the disposal of the residual water at TMI will still meet the requirements of the NPDES permit, the Offsite Dose Calculation Manual (ODCM), and 10 CFR 50, Appendix I limits.

Based on the above analysis, it is concluded that the proposed changes involve no significant hazards considerations as defined by 10 CFR 50.92.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

*Attorney for licensees:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRR Project Director:* Seymour H. Weiss

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of application for amendment:* September 15, 1993

*Brief description of amendment request:* The purpose of the amendment is to implement the new requirements of 10 CFR Part 20. The proposed changes to the South Texas Project Technical Specifications are editorial changes that provide consistency between the Technical Specifications and the revised 10 CFR Part 20 or are changes to the effluent limits cross referenced to the former 10 CFR Part 20 in the implementation of 10 CFR Part 50, Appendix I limits. The changes proposed are consistent with the philosophy to keep dose to the public as low as is reasonably achievable (ALARA) and below the limits set forth in 10 CFR Part 50, Appendix I.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed revisions to the liquid and gaseous release limits will not change the type or amount of effluent released nor will there be an increase in individual or cumulative dose. The changes will result in levels of radioactive materials in effluents being maintained ALARA and comply with 10 CFR 50.36a and 10 CFR 50 Appendix I. The change to the high radiation area dose measurement distance will ensure that high radiation areas are conservatively posted per 10 CFR 20.1601(a)(1) and provide controls to minimize individual dose. The changes do not impact the operation or design of any plant structure, system or component. Other proposed changes are administrative only. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not affect the plant design or operation nor do they result in a change to the configuration of any equipment. No change is proposed that will change the type or quantity of effluents released off site or change the source terms available for release. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes do not change the type or increase the amount of effluents released off site. No change in the methodology used to control radioactive waste or radiological environmental monitoring is proposed. Control of radioactive effluents and effluent monitor setpoints will be based on current dose to the public limitations. Under the proposed change, high radiation area measurements are more conservative and will not result in an increase in individual or cumulative occupational radiation exposures. Compliance with the limits of the revised 10 CFR 20.1301 will be demonstrated by operating within the limits of 10 CFR 50 Appendix I and 40 CFR 190. Therefore, these changes do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488.

*Attorney for licensee:* Jack R. Newman, Esq., Newman & Holtzinger, P. C., 1615 L Street, N.W., Washington D.C. 20036

*NRC Project Director:* Suzanne C. Black

**Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut**

*Date of amendment request:* October 7, 1993

*Description of amendment request:* The proposed change will modify Operating License Condition 2.C(3), "Fire Protection," by deleting the existing wording of the license condition and replacing it with the standard wording provided in Generic Letter (GL) 86-10, "Implementation of Fire Protection Requirements."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with 10CFR50.92 and has concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The NRC issued GL 86-10 to assist utilities in the relocation of technical specifications that relate to fire protection and to incorporate a consistent license condition. The relocation of the technical specification was addressed via NNECO's letter of April 16, 1993. The incorporation of the GL 86-10 standard license condition, via this letter, will have no impact on the probability or consequences of an accident or malfunction previously evaluated. The new condition will ensure uniform application or fire protection methodology/criteria by clearly defining the licensing basis as it exists for Millstone Unit No. 1.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The incorporation of the standard license condition wording has no effect on plant operation, and will not result in the plant being operated differently than previously. Therefore, there is no new or different kind of accident that can be created by this revised license condition.

3. Involve a significant reduction in a margin of safety.

The Fire Protection Program will continue to be reviewed and controlled under existing regulations and procedures. This change will ensure that the regulations are uniformly applied. This license condition change does not add any new requirements, nor does it delete any requirement that NNECO is already committed to. This license condition change consolidates these commitments. Thus, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

*NRC Project Director:* John F. Stolz

**Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of amendment request:* August 10, 1993

*Description of amendment request:* The proposed amendment would involve several improvements to the Radiological Effluents portion of the Technical Specifications. One of the changes is intended to provide clarification of sampling and analysis requirements prior to primary containment venting or purging. A second portion of the change involves an update to liquid effluent sampling and analysis requirements to reflect improvements in sample analysis technology. The remaining changes are editorial in nature and are intended to correct typographical errors in the Technical Specifications section.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

*1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

With respect to primary containment venting, obtaining and analyzing a containment atmosphere sample prior to venting is not a factor in any accident analysis, therefore, elimination of this requirement will not increase the probability or consequences of any accident previously analyzed. Venting through the 2 inch bypass flow path prevents damage to the standby gas treatment system in the unlikely event of a loss of coolant accident during a vent or purge evolution, as discussed in the current Bases for Technical Specification 3.8.B.6. Venting under accident conditions would be performed as directed by the Emergency Operating Procedures and is considered beyond the scope of this change.

With respect to the liquid effluent sample analysis, the proposed changes involve grab sample analysis methods only. The specific method utilized is not a factor in, and thus has no impact on, the probability or consequences of any accident previously evaluated.

The proposed editorial corrections are of no safety significance and thus have no impact on any previous accident analysis.

Based on the above, we conclude the proposed amendment has no adverse impact on the probability or consequences of any accident previously evaluated.

*2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

With respect to primary containment venting, elimination of the requirement to obtain and analyze a containment atmosphere sample prior to venting will not introduce a new or different accident scenario. The proposed change does not involve any plant or equipment modifications, nor does it change Technical Specification requirements concerning vent path limitations.

With respect to liquid effluent sample analysis, the proposed changes involve effluent grab sample analysis methods only, which has no impact on plant operations or equipment.

The proposed editorial corrections do not change the scope or intent of the Technical Specifications and are of no safety significance.

Based on the above, we conclude the proposed changes in no way create the possibility of a new or different kind of accident from any accident previously analyzed.

*3. The proposed amendment will not involve a significant reduction in the margin of safety.*

With respect to primary containment venting, operators will continue to be cognizant of significant changes in the level of activity in the drywell as well as the level of activity being released while venting, and will be able to discontinue venting in he event release rates are higher than anticipated. As before, venting will be performed through the standby gas treatment system via the 2 inch bypass line to protect against a postulated loss of coolant accident while venting, thus there will be no significant decrease in the margin of safety. The proposed amendment will ensure that the intent of the plant operating procedures (prompt operator action in a non-accident situation to vent the containment in order to avoid an unnecessary high drywell pressure trip and accompanying challenges to safety systems) is fulfilled. From the standpoint of risk assesement, the proposed change represents an enhancement to safety because the elimination of unnecessary challenges to safety systems yields a corresponding reduction in the projected core damage frequency.

With respect to liquid effluent sample analysis, technology has advanced to the point that either of the proposed analysis methods (gross beta or gamma isotopic) is by itself sufficiently sensitive to detect the presence of any liquid effluent activity that would be of concern. Either analysis method will detect activity at a low enough level to ensure that the Technical Specification bases are satisfied; thus the margin of public health and safety will be preserved.

The proposed editorial corrections do not change the scope or intent of the current Technical Specifications and are of no safety significance.

Based on the above, we conclude the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

*NRC Project Director:* William M. Dean, Acting

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of amendment request:* September 8, 1993 (Reference LAR 93-06)

*Description of amendment request:* The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise Technical Specifications (TS) 1.44, "Radiological Monitoring and Controls Program," 3/4.11, "Radioactive Effluents," and 6.14, "Radiological Monitoring and Controls Program (RMCP), Offsite Dose Calculation Procedure (ODCP) and Environmental Radiological Monitoring Procedure (ERMP)," to change the Semiannual Radioactive Effluent Release Report to Annual Radioactive Effluent Release Report. The LAR also proposes to revise TS 6.2.3, "Onsite Safety Review Group (OSRG)," 6.5.2, "Plant Staff Review Committee," and 6.5.3.7, "Nuclear Safety Oversight Committee Review," to implement organizational changes. The specific TS changes proposed are as follows:

(1) TS 6.2.3, "Onsite Safety Review Group (OSRG)," would be deleted and replaced by TS 6.5.4, "Independent Technical Review Responsibilities." The requirements of the TS would be revised to incorporate organizational changes as follows:

a. The requirement to maintain a five-person OSRG organization would be deleted;

b. Independent Technical Reviewer responsibilities would include making recommendations to the Senior Vice President and General Manager, Nuclear Power Generation;

c. Qualification requirements would be identified for personnel performing the responsibilities and functions of an Independent Technical Reviewer;

d. A Records section would be added to maintain written records of technical reviews; and

e. The format of the TS would be changed to be consistent with the Westinghouse Standard TS (NUREG-1431).

(2) TS 6.5.3.7, "Nuclear Safety Oversight Committee Review," would be revised to replace a reference to the OSRG with the Independent Technical Review Program.

(3) TS 6.5.2, "Plant Staff Review Committee (PSRC)," would be revised to

delete the requirement that members of the PSRC be plant management individuals.

(4) Administrative changes would be made to TS 1.44, "Radiological Monitoring and Controls Program," 3.11.1.4, "Liquid Holdup Tanks," 3.11.2.6, "Gas Storage Tanks," and 6.14, "Radiological Monitoring and Controls Program (RMCP), Offsite Dose Calculation Procedure (ODCP) and Environmental Radiological Monitoring Procedure (ERMP)," to replace references to the Semiannual Radioactive Effluent Release Report with Annual Radioactive Effluent Release Report.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes are administrative in nature, should result in improved administrative practices, and do not affect plant operations.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature, do not result in physical alterations or changes to the operation of the plant, and cause no change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed change is administrative in nature and does not affect margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

*Attorney for licensee:* Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

*NRC Project Director:* Theodore R. Quay

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania**

*Date of application for amendment:* September 15, 1993

*Description of amendment request:* The licensee proposes to modify Section 1.1.A of the Peach Bottom Atomic Power Station, Unit 2 Technical Specifications. The proposed change would revise the safety limit minimum critical power ratio (MCPR) for two-recirculation loop and single-recirculation loop operation to 1.07 and 1.08 respectively. The change is requested to accommodate use of GE-11 type fuel, during Cycle 10 operation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PECo [Philadelphia Electric Company] proposes that the changes to the MCPR Safety Limits do not involve significant hazards considerations for the following reasons.

i) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Because the MCPR Safety Limits are operational thresholds analytically selected using proven methods, they cannot, themselves, initiate an accident. The probability of occurrence of transients is determined by the frequency of operator errors and equipment failures, not by the adequacy of the MCPR Safety Limits selected. Because the proposed MCPR safety limits have been selected such that no fuel damage is calculated to occur during the most severe moderate frequency transient events, they will ensure that the consequences of these events are not increased. The response of the plant to transients will be within the bounds of the discussion in Chapter 14 and Appendix G of the Updated Final Safety Analysis Report since the proposed MCPR Safety Limits will accomplish the same objectives as the previous limits.

ii) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed MCPR Safety Limits have been selected such that the design basis is satisfied. The MCPR Safety Limits are operational thresholds analytically selected using proven methods; therefore, they cannot, themselves, initiate an accident. An improperly selected limit could result in fuel damage, which is a consequence of previously evaluated accidents. Thus, no new or different type of accident could be created by revising the limits.

iii) The proposed changes do not involve a significant reduction in a margin of safety because the proposed MCPR Safety Limits have been selected such that the design basis is satisfied and such that the conservatism described in the Bases for Fuel Cladding Integrity Safety Limit TS are maintained. Thus, margins of safety with the proposed MCPR Safety Limits are the same as with the previous limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* Charles L. Miller

**Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station (FSV), Unit No. 1, Platteville, Colorado.**

*Date of amendment request:* May 7, 1993

*Description of amendment request:* This amendment would revise the FSV Decommissioning Technical Specifications (DTS) to facilitate removal of core outlet coolant thermocouple assemblies.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Revising DTS Design Feature 4.3 to allow temporary removal of the seven core outlet thermocouple penetration covers, one at a time, does not significantly increase the probability or consequences of an accident previously evaluated in the DP. The design calculations indicate that the push rod assembly redundant shaft seals are adequate for the pressure conditions. The wiper-type shaft seals are expected to prevent shield water leakage during use of the push rod assemblies, and any minor leakage that might result could be readily collected and contained. However, should the seals completely fail, the resulting maximum flow rate of less than two gallons/minute is well within that which could safely be contained.

With the resultant force on the penetration cover of approximately 16 pounds-force, if the redundant seals did fail, the blind flange covers could be replaced. The accident analysis described in DP Section 3.4.7, Loss of PCRV Shielding Water Accident, assumes that the entire contents of the PCRV shield water system (conservatively assumed 423,500 gallons) is emptied into the reactor building due to a pipe rupture. In addition, the activity concentration is assumed to be the maximum allowed by DTS LC 3.4 of 62.4 μCi/cc. The loss of shield water accident analysis clearly bounds any potential leakage past the push rod assembly.

2. Revising DTS Design Feature 4.3 to allow temporary removal of the seven core outlet thermocouple penetration covers does not create the possibility of a new or different kind of accident from any accident previously evaluated in the DP. The potential loss of shield water due to the push rod assembly redundant shaft seals failing is of the same type/kind of accident as the accident analysis described in DP Section 3.4.7, Loss of PCRV Shielding Water Accident. The loss of shield water accident assumes that the entire contents of the PCRV shield water is released due to a pipe rupture which would be at a much greater volume flow rate than two gallons/minute.

3. Revising DTS Design Feature 4.3 to allow temporary removal of the seven core outlet thermocouple penetration covers does not involve a significant reduction in a margin of safety. The Loss of Shielding Water Accident described in DP Section 3.4.7 assumes that the entire contents of the PCRV shield water is released due to a pipe rupture. This accident compared to the postulated failure of the push rod assembly redundant shaft seals is not a reduction in the margin of safety. The activity concentration in the loss of shielding water accident is limited by DTS LC 3.4 which is independent of this evaluation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Weld Library District - Downtown Branch, 919 7th Street, Greeley, CO 80631.

*Attorney for licensee:* James K. Tarpey, Esq., and Mark A. Davidson, Esq., Kelly, Stansfield & O'Donnell, Public Service Company Building, Denver, CO 80202.

*NRC Division Director:* John T. Greeves

**Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station (FSV), Unit No. 1, Platteville, Colorado**

*Date of amendment request:* May 18, 1993

*Description of amendment request:* This amendment would revise the FSV Decommissioning Technical Specifications (DTS) by: imposing more stringent High-Efficiency Particulate Air (HEPA) filter requirements; requiring more stringent leak test acceptance criteria to demonstrate the efficiency of the Reactor Building ventilation system HEPA filters; and extending the applicability of the requirements for the Reactor Building confinement integrity and ventilation system operability by expanding the definition of activated graphite blocks.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Revising DTS SR 3.2.3 leakage test acceptance criteria to "less than 0.05 percent," and DTS SR 3.2.3 BASES to have a stated HEPA filter efficiency of 99 percent does not increase the probability or consequences of an accident previously evaluated in the DP. Revising the leakage test acceptance criteria, specified in DTS SR 3.2.3, to "less than 0.05 percent," will make the DTS consistent with the recommendations of Position C.5.c of Regulatory Guide 1.52 and consistent with the recommendation of NUREG-1431 (Revision 0), "Standard Technical Specifications, Westinghouse Plants," September 1992.

The integrity of the Reactor Building, in conjunction with operation of the Reactor Building ventilation system, limits the off-site doses under normal and abnormal conditions during decommissioning activities. Changing the leakage test acceptance criteria does not create any new failure modes for the ventilation system or the integrity of the Reactor Building confinement. No new limiting single failure has been identified for the HEPAs. The ability of the Reactor Building ventilation exhaust system to perform its filtering function and the integrity of the Reactor Building confinement are not adversely affected by the proposed changes. Furthermore, the HEPAs and leakage testing are not initiators for any of the postulated DP accidents analyzed. Therefore, it can be concluded that revising DTS SR 3.2.3 leakage test acceptance criteria to "less than 0.05 percent," and DTS SR 3.2.3 BASES to have a stated HEPA filter efficiency of 99 percent has no effect on the probability of occurrence of any accident evaluated in the DP.

Expanding the DTS 2.2 definition of ACTIVATED GRAPHITE BLOCKS to include all activated graphite components in the PCRV implicitly extends the applicability of the DTS for Reactor Building confinement integrity and ventilation exhaust fan and filter operability to activities involving essentially all graphite components removed from the PCRV and remaining inside the Reactor Building. This proposed change is not expected to create any new limiting single failure modes for the ventilation system or the Reactor Building confinement.

With respect to the consequences of accident analyses, analyses of postulated decommissioning accidents are provided in Section 3.4 of the DP. The Heavy Load Drop accident, in Section 3.4.5 of the DP, is the only accident analysis that takes credit for filtration of air released from the Reactor Building. Changing the DTS SR 3.2.3 leakage test acceptance criteria to "less than 0.05 percent," and subsequently changing DTS SR 3.2.3 BASES to have a stated HEPA filter efficiency of 99 percent will decrease the offsite radiological consequences of the heavy load drop accident involving a single large side reflector block as reported in the DP. Furthermore, the proposed change will make the test acceptance criteria more stringent and will therefore provide greater assurance that the radiological consequences from the postulated decommissioning accident scenarios remain well within the 10 CFR Part 100 guidelines and are only a small fraction of the EPA Protective Action Guidelines (PAG).

In all cases, including the postulated dropping of multiple large side reflector blocks, the radiological consequences from the postulated decommissioning accidents will be bounded by the doses of 121 millirem to the whole body and 215 millirem to the lung predicted for the worst case decommissioning accident of a postulated fire, as presented in Section 3.4.6 of the DP. The integrity of the Reactor Building, in conjunction with operation of the ventilation exhaust system, will continue to limit the off-site doses under normal and abnormal conditions during decommissioning activities.

Expanding the DTS 2.2 definition of ACTIVATED GRAPHITE BLOCKS to include all activated graphite components in the PCRV extends the applicability of the DTS for Reactor Building confinement integrity and ventilation exhaust fan and filter operability to activities involving core support blocks and core support posts. These graphite components have lower activity concentrations than the large side reflectors used in the heavy load drop accident analysis, and their packages will be evaluated to ensure that the consequences of a postulated drop of core support blocks and posts would be bounded by the radiological consequences predicted for the dropping of large side reflectors. In all cases, the radiological consequences at the EPZ will be a small fraction of the EPA PAG.

2. Revising DTS SR 3.2.3 leakage test acceptance criteria to "less than 0.05 percent," and DTS SR 3.2.3 BASES to have a stated HEPA filter efficiency of 99 percent does not create the possibility of different types of accidents or malfunctions other than those evaluated previously in the DP. Revising the leakage test acceptance criteria, specified in DTS SR 3.2.3, to make the Decommissioning Technical Specifications consistent with the recommendations of Position C.5.c of Regulatory Guide 1.52 and consistent with Technical Specifications of light water cooled commercial nuclear power plants does not place the ventilation system in configurations conducive to the occurrence of accidents or malfunctions not previously evaluated.

As previously stated expanding the DTS 2.2 definition of ACTIVATED GRAPHITE BLOCKS to include all graphite components in the PCRV, except for defueling elements, extends the applicability of the DTS for Reactor Building confinement integrity and ventilation exhaust fan and filter operability to activities involving essentially all remaining in-core graphite components. However, no new performance requirements are being imposed on the ventilation system or its components such that any design criteria is expected to be exceeded. Therefore, the original design intent and performance criteria of the ventilation system continue to be met.

3. Revising the leakage test acceptance criteria to "less than 0.05 percent," will allow use of 99 percent filter efficiency in the heavy load drop accident, consistent with the recommendations of Position C.5.c of Regulatory Guide 1.52 and with the recommendation of NUREG-1431 (Revision 0), "Standard Technical Specifications, Westinghouse Plants," September 1992.

Although this represents a change to an assumption used in the Heavy Load Drop accident, it does not involve a significant reduction in a margin of safety. In all cases, the radiological consequences from the postulated decommissioning accident scenarios will remain a small fraction of the one rem whole body dose and five rem to any specific organ guidelines cited in the EPA PAG.

Expanding the DTS 2.2 definition of ACTIVATED GRAPHITE BLOCKS to include all graphite components in the PCRV except defueling elements, ensures that potential offsite consequences from accident scenarios postulated for handling of multiple core support blocks and/or core support posts will be very low. In all cases, the radiological consequences at the EPZ from postulated decommissioning accidents will be a small fraction of the EPA PAG. The potential offsite radiological consequences from any accident involving graphite components will remain within the bounds of safe, analyzed conditions as defined in the DP. As such, the margin of safety, as defined in the Bases to the Decommissioning Technical Specifications will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Weld Library District - Downtown Branch, 919 7th Street, Greeley, CO 80631.

*Attorney for licensee:* James K. Tarpey, Esq., and Mark A. Davidson, Esq., Kelly, Stansfield & O'Donnell, Public Service Company Building, Denver, CO 80202.

*NRC Division Director:* John T. Greeves

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* March 6, 1991, September 20, 1991, December 19, 1991, January 31, 1992, August 19, 1992, April 28, 1993, and September 30, 1993. The March 6, 1991, September 20, 1991, December 19, 1991, January 31, 1992, August 19, 1992 and April 28, 1992 requests were previously noticed (58 FR 43931 dated August 18, 1993). This notice supersedes that previous notice.

*Description of amendment request:* The amendment request modifies Technical Specification (TS) Sections 3/4.8.1.1 and 3/4.8.1.2 and the associated Bases Section for Salem, Units 1 and 2. It incorporates guidance of Generic Letter 84-15 with regard to modified surveillance testing and operability requirements to improve diesel generator reliability. It also includes changes outside the scope of the Generic Letter, based on operating experience and accepted industry practice, intended to improve the TS regarding A.C. power sources. The minimum allowable emergency diesel generator output voltage has been increased to assure adequate vital bus voltage.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. do not involve a significant increase in the probability or consequences of an accident previously evaluated. Reducing the test frequency while in an action statement and modifying Emergency Diesel Generator (EDG) starting and loading requirements is intended to enhance diesel reliability by minimizing repetitive testing and facilitating testing in accordance with the manufacturer's recommendations. The proposal to eliminate Action Statement operability testing for a diesel inoperable because of preventive maintenance or pre-test inspection will facilitate the performance of activities to enhance overall EDG reliability.

The proposed changes to EDG test loads will continue to demonstrate the ability of the EDG's to respond to loading conditions, consistent with the manufacturer's ratings. Using the proposed basis for determining test frequency according to individual diesel generator performance will prevent overtesting of the diesels because it would increase the test frequency of only those diesels which have an increase in failure rate.

The changes proposed to make the Unit 1 EDG surveillance requirements identical to that of Unit 2 is a conservative change; it will provide Unit 1 with a more comprehensive testing program. The proposed changes will continue to assure availability of the diesels and should serve to enhance EDG reliability and consequently the overall safe operation of the Salem Generating Station.

The proposed minimum voltage limit for surveillance testing is more restrictive than the present Technical Specification limit. It would require EDG voltage to be above the minimum value needed to ensure operability of the vital bus loads, within the time specified by the surveillance test criteria.

2. do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes affect testing frequency, starting and loading practices only and have no impact on the accident analysis. No new operating modes or equipment are introduced which could initiate or affect the progression of an accident.

3. do not involve a significant reduction in a margin of safety. The changes in the testing requirements do not adversely affect the capability of the diesels to perform their required function. The purpose of the proposed changes is to increase the overall reliability of the diesels. In adopting many of the suggestions identified in GL 84-15, the requested change would implement actions which have been determined by the NRC to reduce the risk of core damage from station blackout events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* Larry E. Nicholson, Acting

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* September 27, 1993 TS 93-13

*Description of amendment request:* The proposed amendment would revise the diesel generator loading Surveillance Requirement 4.8.1.1.2.a.5 for the Operability Test from "greater than or equal to 4400 kW" to "between 3960 kW and 4400 kW." A proposed change to Surveillance Requirement 4.8.1.1.2.d.7 would revise the two-hour loading test criteria from "greater than or equal to 4840 kW" to "between 4620 kW and 4840 kW and between 2380 kVAR and 2600 kVAR." Proposed change to the Bases for Sections 3/4.8.1 and 3/4.8.2 would (1) include the Regulatory Guide 1.9, Revision 3

recommendation associated with testing the load-run and 24-hour diesel generator endurance and margin tests, and (2) state that momentary transients ouside of the kW and kVAR load ranges do not invalidate the test results.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c) Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes only affect the criteria for testing the diesel generators (D/Gs) for loading, endurance, and margin. No plant equipment or functions are altered by this change. In fact, undue stress to the D/G is minimized by testing to this new criteria that is consistent with the latest regulatory guidance. Since these tests do not create potential accident conditions and the D/G only serves safety functions for accident mitigation, there is no increase in the probability of an accident. These tests will continue to verify D/G capability to support accident mitigation functions, but will not impose the potential to routinely overload the D/G. These tests continue to be conducted under plant conditions that maintain D/G availability for accident conditions. Therefore, the proposed changes will not increase the consequences of an accident by maintaining accident mitigation functions that minimize offsite radiation dose.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As described above, these tests will not create an accident, and no plant functions or equipment will be changed. This change alters testing criteria for the D/G that ensure accident capabilities are verified without overloading the D/G. Therefore, no new accident can be created since all functions and equipment remain the same and test conditions continue to maintain the D/G in a configuration that will not affect accident generation possibilities.

3. Involve a significant reduction in a margin of safety.

The proposed changes continue to provide testing criteria that verify the loading capability, endurance, and margin provided by the D/G. By implementing load ranges that sufficiently exercise the D/G without creating the potential for routine overloading, the D/G's overall health is enhanced. This enhancement does not reduce the margin of safety provided by the D/G during accident conditions. Safety functions for the D/G are not changed by the proposed revision and the D/G loading capability, endurance, and margin for providing these functions will continue to be adequately tested. Therefore, the margin of safety is not reduced.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* October 4, 1993

*Description of amendment request:* The proposed changes would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2). The proposed changes would allow the use of ZIRLO alloy instead of Zircaloy-4 for fuel cladding.

The licensee plans to insert fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes, and mid-span grids fabricated with Westinghouse Electric Corporation's (Westinghouse's) advanced zirconium alloy material, ZIRLO, into the NA-1&2 reactors, beginning with Cycle 11 at NA-1&2, which is presently scheduled to begin in October 1994 and May 1995, respectively. In the current fuel design, these components are fabricated from Zircaloy-4. Changing the material of these components from Zircaloy-4 to the ZIRLO alloy will provide operational benefit relative to the current fuel design due to the ZIRLO alloy's improved corrosion resistance and dimensional stability under irradiation.

Because the TS define the fuel rod cladding material as Zircaloy-4, implementation of this material change requires changes to the TS. TS 5.3.1 is being modified to allow the use of either Zircaloy-4 or ZIRLO fuelrod cladding, and an additional reference for the calculation of the heat flux hot channel factor for loss-of-coolant accident evaluations of fuel with ZIRLO cladding is being defined in TS 6.9.1.7.e. The use of ZIRLO-fabricated guide thimble tubes, instrumentation tubes, and mid-span grids does not require changes to the TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the Technical Specifications changes will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. The North Anna fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy meet the same fuel assembly and fuel rod design bases as the current fuel assemblies fabricated with Zircaloy-4 components. In addition, the 10 CFR 50.46 criteria will be applied to the fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy. The use of these fuel assemblies will not result in a change to the North Anna Units 1 and 2 reload design and safety analysis limits. The ZIRLO alloy is similar in chemical composition to Zircaloy-4, and also has physical and mechanical properties similar to those of Zircaloy-4. Thus the cladding integrity is maintained and the structural integrity of the fuel assembly is not affected. The ZIRLO clad fuel rods improve corrosion resistance and dimensional stability. Since the dose predictions in the safety analyses are not sensitive to the fuel rod cladding material changes as specified in this report, the radiological consequences of accidents previously evaluated in the safety analyses remain valid. Therefore, neither the probability of occurrence nor the consequences of any accident previously evaluated is significantly increased.

2. Create the possibility of a new or different kind of accident from any accident previously identified, since the North Anna Units 1 and 2 fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy will satisfy the same design bases used for previous fuel regions containing Zircaloy-4 components. Since the original design criteria are being met, the fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy will not be initiators for any new accident. All design and performance criteria will continue to be met and no single failure mechanisms have been created. In addition, the use of these fuel assemblies does not involve any alteration to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety. The North Anna Units

1 and 2 fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy do not change the North Anna Units 1 and 2 reload design and safety analysis limits. The use of fuel assemblies containing fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy will take into consideration the normal core operating conditions allowed in the Technical Specifications. For each cycle reload core these fuel assemblies will be specifically evaluated using approved reload design methods and approved fuel rod design models and methods. This will include consideration of the core physics analysis peaking factors and core average linear heat rate effects. In addition, the 10 CFR 50.46 criteria will be applied each cycle to the fuel rods, guide thimble tubes, instrumentation tubes and mid-span grids fabricated with ZIRLO alloy. Analyses or evaluations will be performed each cycle to confirm that 10 CFR 50.46 will be met. Therefore, the margin of safety as defined in the Bases to the North Anna Unit 1 Technical Specifications and the North Anna Unit 2 Technical Specifications is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* Herbert N. Berkow

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* October 8, 1993

*Description of amendment request:* The proposed change would revise the NA-1&2 Technical Specifications (TS) by removing certain tables that list plant components, and references thereto, and correcting minor administrative errors. TS 3.6.3.1 for NA-1&2 lists the containment isolation valves. The operability of these valves ensures that the containment atmosphere will be isolated from the outside environment in the event of a release of radioactive material to the containment atmosphere or pressurization of the containment. The NA-2 TS 3.8.2.5 lists the containment penetration conductor overcurrent protective devices. The operability of these protective devices ensures the integrity of their penetrations in the event of a creditable fault current. NA-2 TS 3.8.2.6 lists the motor-operated valves thermal overload protection devices for safety-related systems. The operability of these devices ensures that they will not prevent safety-related valves from performing their function. NA-2 TS 3.8.2.7 lists those circuits that are normally deenergized during reactor operation. These circuits are deenergized to ensure that their penetrations will remain functional during reactor operation. The proposed TS changes will relocate the above lists to plant procedures governed by the provisions of the administrative controls section of the applicable TS and revise the associated TS in accordance with Generic Letter 91-08.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the North Anna Power Station in accordance with the proposed technical specification changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed technical specification change removes certain component lists from the technical specifications, but it does not alter the application of the technical requirements which are contained in the specifications. This proposed technical specification change does not require any modifications to plant hardware or operating practices. Therefore, the proposed technical specification change has no effect on any previously analyzed accidents.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed technical specification change does not affect any operating, maintenance, or surveillance practices or methods. Also, there are no design or hardware modifications associated with the proposed change. Therefore, the possibility of a malfunction or failure, or the possibility of a work practice resulting in a new or different kind of accident, remains unchanged.

(3) Involve a significant reduction in a margin of safety. The removal of the lists has no impact on the performance of the plant nor does it reduce the scope or the requirement of the technical specifications. Therefore, there is no reduction to any safety margins due to this technical specification change request.

Virginia Electric and Power Company concludes that the activities associated with this proposed Technical Specification change satisfies the no significant hazards consideration criteria of 10 CFR 50.92 and, accordingly, a no significant hazards consideration finding is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* Herbert N. Berkow

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia**

*Date of amendment request:* September 29, 1993

*Description of amendment request:* The proposed changes will modify the required inspection frequency of the low pressure turbine blades to permit the blade inspections to be concurrent with the low pressure turbine disk and hub inspections. A few administrative changes are also proposed.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

Changing the low pressure turbine blade inspection frequency does not significantly affect the probability of occurrence or consequences of any previously evaluated accidents. An inspection frequency based on turbine operating time will continue to assure that low pressure turbine blade flaws that may lead to brittle failure of a blade at speeds up to 120% of design will be detected prior to failure. Operation of the turbine is not being altered and the overspeed protection system is unchanged. Since the low pressure turbine blades are not considered credible missiles, the UFSAR's [the Updated Final Safety Analysis Report's] turbine overspeed/missile analysis is

unaffected by the proposed changes. Likewise, the administrative changes have no impact on plant operations.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the low pressure turbine blade inspection frequency does not involve any physical modification of the plant or result in a change in a method of operation. A new failure mode is not introduced. Low pressure turbine blade failures are enveloped by the existing turbine missile analysis. Likewise, the administrative changes have no impact on plant operations. Therefore, a new or different type of accident is not made possible.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not affect any safety limits or limiting safety system settings. System operating parameters are unaffected. The availability of equipment required to mitigate or assess the consequences of an accident is not reduced. An inspection frequency based on turbine operating time will continue to assure that low pressure turbine blade flaws that may lead to failure of a low pressure turbine blade at speeds up to 120% of design will be detected prior to failure. Likewise, the administrative changes have no impact on plant operations or the safety analysis. Safety margins are, therefore, not decreased.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* Herbert N. Berkow

**Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration. For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas**

*Date of amendment request:* September 24, 1993

*Brief description of amendment:* The proposed amendment would modify the operability requirements specified by Technical Specification 3.3.3.2 for the incore detection system by reducing the minimum number of required incore detectors and detector locations from the currently specified 75 percent to a proposed 50 percent for the remainder of the current operating cycle.

*Date of publication of individual notice in* **Federal Register:** October 4, 1993 (58 FR 51655)

*Expiration date of individual notice:* November 3, 1993

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia**

*Date of amendment request:* September 30, 1993

*Description of amendment request:* The proposed amendment would be a one-time only revision to Technical Specification 4.6.1.2d, adding a footnote that would extend the 10 CFR Part 50, Appendix J, Section III.D.3, Type C test interval, for the Unit 1 auxiliary component cooling water supply and return containment isolation valves, from 24-months to prior to entry to Mode 4 following the next outage requiring entry into Mode 5, but no later than November 1, 1994.

*Date of publication of individual notice in* **Federal Register:** October 12, 1993 (58 FR 52796)

*Expiration date of individual notice:* Comment period ends October 27, 1993; Notice period ends November 12, 1993.

*Local Public Document Room location:* Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

**Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama.**

*Date of amendment request:* May 28, 1993, as supplemented on July 29, 1993, September 14, 1993, and September 22, 1993.

*Brief description of amendment request:* The amendment changes Technical Specifications 4.4.6.4 and 3.4.7.2, and Bases 3/4.4.6, to allow the implementation of interim steam generator tube plugging criteria for the tube support plate elevations. The amendment reduces the Farley TS limit for specific activity of dose equivalent Iodine 131 as specified in TS 3/4.4.9. In addition, the amendment reduces the allowed primary-to-secondary operational leakage from any one steam generator from 500 gallons per day to 150 gallons per day. The total allowed primary-to-secondary operational leakage through all steam generators is reduced from one gallon per minute (1440 gallons per day) to 450 gallons per day. This amendment is only applicable for the tenth Farley Unit 2 operating cycle.

*Date of publication of individual notice in* **Federal Register:** October 5, 1993 (58 FR 51889)

*Expiration date of individual notice:* October 20, 1993

*Local Public Document Room location:* Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

**Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama**

*Date of application for amendment:* September 15, 1993 (TS 343T)

*Brief description of amendment:* The proposed change would revise Technical Specification Table 3.2.B to allow specific reactor vessel level instrumentation to be taken out of service in order to perform the reactor vessel water level instrumentation modifications requested by NRC Bulletin 93-03.

*Date of publication of individual notice in the* **Federal Register:** September 30, 1993 (58 FR 51120)

*Expiration date of individual notice:* November 1, 1993

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the

Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

**Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina**

*Date of application for amendment:* August 5, 1993

*Brief description of amendment:* The amendment provides a clarification of the emergency diesel generator (EDG) testing requirements as specified in Technical Specification (TS) 4.6.1.1 and 4.6.1.4. In TS 4.6.1. According to TS 4.6.1.1, the monthly EDG surveillance tests are to be conducted at the nameplate rating of the EDG that limits the loading of the EDGs to not exceed the long-term (continuous) rating of 2500 kW. In TS 4.6.1.4 the change includes the limitations for the continuous load rating and the short-term overload rating.

*Date of issuance:* October 5, 1993

*Effective date:* October 5, 1993

*Amendment No.* 147

*Facility Operating License No.* DPR-23. Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 1, 1993 (58 FR 46224) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois**

*Date of application for amendments:* August 5, 1992

*Brief description of amendments:* The amendments revise the Byron Station, Units 1 and 2, Technical Specifications (TS) regarding Engineered Safety Features Actuation System (ESFAS) instrumentation. The ESFAS, Functional Units, Analog Channel Operational Test interval is changed from monthly to quarterly. Eighteen changes to the Reactor Trip System (RTS) are also included in this TS change.

*Date of issuance:* October 4, 1993

*Effective date:* October 4, 1993

*Amendment Nos.:* 55 and 55

*Facility Operating License Nos.* NPF-37 and NPF-66: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 28, 1992 (57 FR 48816) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois**

*Date of application for amendments:* December 22, 1992

*Brief description of amendments:* The amendments relocate certain fire protection Technical Specifications (TS) from the Zion Station, Units 1 and 2, TS to the fire protection program and replaces the current fire protection license conditions with the standard license conditions in accordance with the guidance provided in Generic Letters 86-10 and 88-12.

*Date of issuance:* October 13, 1993

*Effective date:* October 13, 1993

*Amendment Nos.:* 148 and 136

*Facility Operating License Nos.* DPR-39 and DPR-48. The amendments revised the license and Technical Specifications.

*Date of initial notice in* **Federal Register:** March 25, 1993 (58 FR 16219). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 13, 1993. No significant hazards consideration comments received: No

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois**

*Date of application for amendments:* April 22, 1993

*Brief description of amendments:* The amendments revise the Technical Specifications to account for completion of the Eagle 21 process protection system upgrade, incorporate administrative changes, and correct typographical errors.

*Date of issuance:* October 14, 1993

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 149 and 137

*Facility Operating License Nos.* DPR-39 and DPR-48. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 23, 1993 (58 FR 34073). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 14, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut**

*Date of application for amendment:* July 21, 1993

*Brief description of amendment:* The amendment modifies the Haddam Neck Technical Specifications (TS) Tables 3.3-9 and 4.3-7 by deleting an obsolete footnote and replacing it with a clarification as to when the steam generator blowdown radioactivity monitors are required to be operable.

*Date of issuance:* October 4, 1993

*Effective date:* October 4, 1993

*Amendment No.:* 166

*Facility Operating License No.* DPR-61. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 1, 1993, 58FR46225 The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 4, 1993. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut**

*Date of application for amendment:* July 26, 1993

*Brief description of amendment:* The amendment changes the Haddam Neck Technical Specifications (TS) Section 3.5.1, "ECCS Subsystems - $T_{avg}$ Greater Than or Equal to 350°F," ACTION statement "a." This change will allow redundant train operability to be verified operable by examination of appropriate plant records rather than performing test of redundant equipment which would render the entire ECCS subsystem inoperable while the testing is being performed. In addition, editorial changes moving surveillance requirement 4.5.1.b from TS Section 3/4.5.1 to TS Section 3/4.5.2 as surveillance requirement 4.5.2.c and relettering the appropriate sections are made.

*Date of issuance:* October 4, 1993

*Effective date:* October 4, 1993

*Amendment No.:* 167

*Facility Operating License No.* DPR-61. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 1, 1993 (58 FR 46226). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 4, 1993. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

**Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan**

*Date of application for amendment:* July 19, 1993, as supplemented August 24, 1993

*Brief description of amendment:* The amendment changes the reporting requirement for effluent releases from semiannual to annual. This change is consistent with the revision of 10 CFR 50.36a(a)(2) which was published in the Federal Register August 31, 1992 (57 FR 39358).

*Date of issuance:* October 5, 1993

*Effective date:* October 5, 1993

*Amendment No.:* 111

*Facility Operating License No.* DPR-6. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 18, 1993 (58 FR 43924). The August 24, 1993, letter provided clarifying information within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1993. No significant hazards consideration comments received: No.

*Local Public Document Room location:* North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

**Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of application for amendments:* June 11, 1993, as supplemented October 8, 1993.

*Brief description of amendments:* These amendments revise the Appendix A Technical Specifications relating to core fuel design. The amendments permit the use of reconstituted fuel assemblies with zirconium alloy or stainless steel filler rods.

*Date of issuance:* October 14, 1993

*Effective date:* As of date of issuance and to be implemented prior to loading a reconstituted fuel assembly into the core, or within 60 days of issuance, whichever occurs first.

*Amendment Nos.:* 177 and 58

*Facility Operating License Nos.* DPR-66 and NPF-73: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 7, 1993 (58 FR 36434) The October 8, 1993, submittal provided additional information which did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 14, 1993

No significant hazards consideration comments received: No.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of application for amendments:* June 28, 1993

*Brief description of amendments:* The amendments revise Hatch Unit 1 Technical Specification (TS) 3.7.A.4 and Hatch Unit 2 TS 3.5.4.1, and their associated Bases, to allow one or more suppression chamber-drywell vacuum breakers to open during surveillance testing or when performing their intended function without considering them inoperable.

*Date of issuance:* October 6, 1993

*Effective date:* To be implemented no later than 60 days from the date of issuance.

*Amendment Nos.:* 189 Unit 1 and 128 Unit 2

*Facility Operating License Nos.* DPR-57 and NPF-5. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 21, 1993 (58 FR 39051) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia**

*Date of application for amendments:* July 2, 1993

*Brief description of amendments:* The amendments modify Action a. of Technical Specification 3.11.1.4, Liquid Holdup Tanks. Currently, Action a. references a "Semiannual Radioactive Release Report." This would be renamed "Annual Radioactive Release Report." This change decreases the frequency for submitting reports on events which lead to exceeding radioactive material limits for the liquid holdup tanks from a semiannual to an annual basis.

*Date of issuance:* October 1, 1993

*Effective date:* October 1, 1993

*Amendment Nos.:* 68 and 47 for Units 1 and 2, respectively

*Facility Operating License Nos.* NPF-68 and NPF-81: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 1, 1993 (58 FR 46235) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia**

*Date of application for amendments:* July 31, 1992, as supplemented January 22, and July 27, 1993

*Brief description of amendments:* The amendments add a new Technical Specification 3/4.7.1.6, entitled "Main Feedwater Isolation Systems," and associated Bases. The TS addition incorporates a Limiting Condition for Operation to require that the main feedwater isolation and regulating valves (MFIVs and MFRVs) and their respective bypass valves (BFIVs) be operable when the reactor is in Modes 1 or 2 (unless the MFIV, MFRV, or associated BFIV is closed and deactivated).

*Date of issuance:* October 6, 1993

*Effective date:* October 6, 1993

*Amendment Nos.:* 69 Unit 1; 48 Unit 2

*Facility Operating License Nos.* NPF-68 and NPF-81: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 31, 1993 (58 FR 16859) The July 27, 1993, letter provided a minor change to improve consistency with the Standard Technical Specifications (NUREG-1431) and did not change NRC's proposed finding of no significant hazards consideration determination..

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* August 5, 1993

*Brief description of amendments:* The amendments change the Appendix A Technical Specifications by revising the Limiting Conditions for Operation of Technical Specification 3.2.1.5, 3.2.1.6, 3.5.5.5, and 3.9.1 to reflect changes in systems containing borated water for Unit 1. These identical changes were made to Unit 2 by the issuance of Amendment No. 40 which were implemented during the third refueling outage for Unit 2.

*Date of issuance:* October 4, 1993

*Effective date:* October 4, 1993, to be implemented not later than the completion of the fourth refueling outage for Unit 1.

*Amendment Nos.:* Amendment No. 54 for Unit 1; Amendment No. 43 for Unit 2.

*Facility Operating License Nos.* NPF-76 and NPF-80. Amendment revised the Technical Specifications.Date of initial notice in the **Federal Register:** September 1, 1993 (58 FR 46236). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1993. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488.

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of application for amendment:* August 10, 1992, as supplemented by letter dated September 14, 1993.

*Description of amendment request:* The amendments change the technical specifications by revising Technical Specifications 3/4.4.4 and 3/4.4.9 to incorporate the recommendations provided in Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' Pursuant to 10 CFR 50.54(f)."

*Date of issuance:* October 7, 1993

*Effective date:* October 7, 1993, to be implemented within 10 days of issuance.

*Amendment No.:* Unit 1 Amendment No. 55, Unit 2 Amendment No. 44.

*Facility Operating License Nos.* NPF-76 and NPF-80. Amendment revised the Technical Specifications.

*Date of initial notice in the* **Federal Register:** June 9, 1993 (58 FR 32384). The September 14, 1993, submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 1993. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488.

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York**

*Date of application for amendment:* April 7, 1993, as superseded September 2, 1993

*Brief description of amendment:* The amendment deletes Technical Specification (TS) 4.1.3.5.b.2 which required control rod scram accumulator check valve leak testing once per 18 months and specified test acceptance criteria. In order to support deletion of the check valve leak test requirement, the amendment also modifies the required actions for inoperable control rod scram accumulators in OPERATIONAL CONDITIONS 1 and 2 that are contained in Actions a.1 and a.2 of TS 3.1.3.5.

*Date of issuance:* October 13, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 49

*Facility Operating License No.* NPF-69: Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 28, 1993 (58 FR 25858) and renoticed September 10, 1993 (58 FR 47771). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut**

*Date of application for amendment:* April 16, 1993, as supplemented June 23, 1993.

*Brief description of amendment:* The amendment removes requirements from the Technical Specification pertaining to the Fire Protection Program, and places these same requirements in a Technical Requirements Manual and the Millstone Unit 1 Updated Final Safety Analysis Report.

*Date of issuance:* October 12, 1993

*Effective date:* October 12, 1993

*Amendment No.:* 65

*Facility Operating License No.* DPR-21. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 12, 1993 (58 FR 28057) The June 23, 1993, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1993. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of application for amendment:* July 30, 1993

*Brief description of amendment:* The amendment increases the volume requirements of the boric acid storage system of Technical Specification 3.1.2.6 in order to meet the requirements of the redesigned core for Cycle 5 operation.

*Date of issuance:* October 5, 1993

*Effective date:* October 5, 1993

*Amendment No.:* 83

*Facility Operating License No.* NPF-49. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 18, 1993 (58 FR 43928) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1993. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of application for amendments:* September 21, 1992, as supplemented February 2, 1993, March 8 and 31, 1993, May 7 and 27, 1993, June 1 and 18, 1993, and August 11 and 27, 1993 (Reference LAR 92-05).

*Brief description of amendments:* The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to reflect: (1) installation of the Eagle 21 digital process protection system in place of the Westinghouse 7100 analog process protection system, and (2) elimination of the bypass manifolds for the reactor coolant system (RCS) resistance temperature detectors (RTDs).

The specific TS changes are as follows:

(1) A definition for a digital CHANNEL FUNCTIONAL TEST would be added and ANALOG CHANNEL OPERATIONAL TEST would become CHANNEL OPERATIONAL TEST and apply to both analog and digital channels.

(2) The allowable values of TS Tables 2.2-1 and 3.3-4 would be revised to reflect rack drift allowances associated with the removal of the Westinghouse 7100 analog process protection system and installation of the Eagle 21 digital process protection system.

(3) The Low-Low Steam Generator Water Level entries of TS Tables 2.2-1, 3.3-1, 3.3-2, 4.3-1, 3.3-3, 3.3-4, 3.3-5, and 4.3-2 would be revised to reflect incorporation of the Trip Time Delay (TTD) feature.

(4) The Overtemperature and Overpower delta T entries of TS Tables 2.2-1, 4.3-1, and 3.3-2 would be revised to reflect RTDBR.

(5) A new Steam Line Break (SLB) protection logic would be implemented that results in deletion of the Safety Injection (SI) and Steam Line Isolation on High Steam Line Flow coincident with P-12 Low-Low $T_{avg}$ and Steam Line Flow coincident with Low Steam Line Pressure. SI on High Differential Pressure Between Steam Lines also would be deleted. SI and Steam Line Isolation on Low Steam Line Pressure and Steam Line Isolation on High Negative Steam Line Pressure Rate Coincident with P-11 Pressurizer Pressure would be added in place of the deleted functions (TS Tables 3.3-3, 3.3-4, 3.3-5, and 4.3-2).

(6) Testing and Maintenance in the bypass condition would be permitted for those functions for which the Eagle 21 system has an installed bypass testing capability.

(7) Reactor Trip and Engineered Safety Features Actuation System (ESFAS) allowable values would be implemented based on the Westinghouse Statistical Setpoint Methodology.

(8) The Steam Generator Water Level High-High trip setpoint for Turbine Trip and Feedwater Isolation, TS Table 3.3-4, would be revised to increase the setpoint from ≤87 to ≤75 percent of narrow range instrument span.

The Westinghouse Eagle 21 upgrade replaces the Westinghouse 7100 analog process protection equipment with digital equipment that will improve the reliability and availability of the Reactor Protection System (RPS). The Eagle 21 equipment is also designed to permit maintenance and testing of individual protection channels in the bypass mode at power. Other enhancements provided as part of the Eagle 21 upgrade include (1) a trip time delay feature designed to reduce the potential for unnecessary Steam Generator Water Level Low-Low reactor trips below 50 percent power, (2) a new steam line break logic designed to reduce the potential for spurious safety injections at low power, and (3) an increased Steam Generator Water Level High-High Turbine Trip setpoint to reduce the likelihood of spurious trips due to normal operating transients.

The RTD bypass elimination modification involves removal of all RCS hot and cold leg bypass manifolds and associated piping and valves. Dual element RTDs will be installed in thermowells in the hot and cold legs to provide the necessary reactor coolant temperature information. This modification will result in reduced personnel radiation exposure, improved availability, and reduced maintenance.

*Date of issuance:* October 7, 1993

*Effective date:* Unit 1: after the Eagle 21 reactor protection system upgrade and the resistance temperature detection bypass elimination, to be completed during the 1R6 refueling outage that is currently scheduled to begin in February 1994.

Unit 2: after the Eagle 21 reactor protection system upgrade and the resistance temperature detection bypass elimination, to be completed during the 2R6 refueling outage that is currently scheduled to begin in September 1994.

*Amendment Nos.:* 84 and 83

*Facility Operating License Nos.* DPR-80 and DPR-82: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 12, 1992 (57 FR 53786) The supplemental letters dated February 2, 1993, March 8 and 31, 1993, May 7 and 27, 1993, June 1 and 18, 1993, and August 11 and 27, 1993, provided clarifying information and did not affect the initial Federal Register notice and proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 7, 1993. No significant hazards consideration comments received: No.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

**Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania**

*Date of application for amendments:* April 23, 1993

*Brief description of amendments:* These amendments deleted the requirement for the Superintendent - Technical, or the Technical Engineer to hold an SRO License.

*Date of issuance:* October 8, 1993

*Effective date:* October 8, 1993

*Amendment Nos.* 63 and 28

*Facility Operating License Nos.* NPF-39 and NPF-85. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 23, 1993 (58 FR 34086) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 8, 1993. 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. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* July 7, 1993

*Brief description of amendment:* The amendment revises Technical Specifications (TSs) 4.0.C and 4.0.D and associated Bases to be consistent with the guidance provided in NRC Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The changes to TS 4.0.C incorporate a 24-hour delay in implementing the Action requirements due to a missed surveillance requirement when the Action requirements provide a restoration time that is less than 24 hours. The change to TS 4.0.D allows mode changes to be made as required to comply with Action requirements even if the surveillance requirements to enter a mode are not complete.

*Date of issuance:* October 4, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 198

*Facility Operating License No.* DPR-59: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 1, 1993 (58 FR 46239) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* June 24, 1993

*Brief description of amendment:* The amendment removes Technical Specification 4.6.A.7 which provided the schedule for removing reactor vessel material specimens. The amendment also incorporates associated Bases changes. Guidance on these changes was provided in Generic Letter 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications," dated January 4, 1990.

*Date of issuance:* October 7, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 199

*Facility Operating License No.* DPR-59: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 4, 1993 (58 FR 41511) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey**

*Date of application for amendment:* June 11, 1993 and supplemented July 19, 1993, August 3, 1993, and September 16, 1993

*Brief description of amendment:* The amendment reduces the boron concentration in the boric acid tank from 12 percent by weight to between 3.75 and 4 percent by weight. The reduced boron concentration results in eliminating the need for heat tracing in the boric acid tank piping system.

*Date of issuance:* October 15, 1993

*Effective date:* As of its date of issuance and shall be implemented prior to restart from the eleventh refueling outage, currently scheduled to end on December 13, 1993.

*Amendment No.* 145

*Facility Operating License Nos.* DPR-70. The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 18, 1993 (58 FR 43932) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey**

*Date of application for amendment:* August 4, 1993, supplemented by letter dated August 24, 1993

*Brief description of amendment:* The amendment modifies the TS for the A.C. power sources, on a one-time basis, to allow connection of two new 500/13.8 kV transformer bus sections as part of the Salem switchyard project. This change extends the allowed outage time for one inoperable offsite power circuit from 72 hours to 120 hours and modifies the emergency diesel generator testing requirements during the action statement entries.

*Date of issuance:* October 4, 1993

*Effective date:* October 4, 1993

*Amendment No.* 123

*Facility Operating License No.* DPR-75: This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 1, 1993 (58 FR 46250) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York**

*Date of application for amendment:* March 20, 1992, and August 20, 1993, superseding your application dated October 25, 1991.

*Brief description of amendment:* The amendment revises Technical Specifications (TS) 5.1 and Figure 5.1-1 to define, rather than depict, the site boundary. The staff's review finds that the proposed change is administrative in nature.

*Date of issuance:* October 12, 1993

*Effective date:* October 12, 1993

*Amendment No.:* 55

*Facility Operating License No.* DPR-18: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 7, 1993 (58 FR 36444) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

**Texas Utilities Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas**

*Date of amendment request:* October 19, 1992, as supplemented by letters

dated March 17, 1993, April 1, 1993, and August 6, 1993.

*Brief description of amendment:* The amendments change the Technical Specifications to (1) increase the minimum boron content of fluid in the refueling water storage tank, (2) increase the boron content range of the refueling water storage tank fluid in Modes 1, 2, 3 and 4, (3) increase the boron content range of fluid in the cold leg injection accumulators in Modes 1, 2, and 3, and (4) increase the minimum boron content of fluid in the refueling water storage tank in Mode 6.

*Date of issuance:* October 5, 1993

*Effective date:* October 5, 1993

*Amendment Nos:* Unit 1 - Amendment No. 19; Unit 2 - Amendment No. 5

*Facility Operating License Nos.* NPF-87 and NPF-89: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 28, 1993 (58 FR 25865). The August 6, 1993, submittal provided additional clarifying information and did not change the initial no significant hazards determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1993. No significant hazards consideration comments received: No

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

**The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of application for amendment:* March 16, 1992

*Brief description of amendment:* The amendment revised Technical Specification Table 3.3.7.4-1, "Remote Shutdown System Controls," by removing the line item for controls to the Reactor Core Isolation Cooling (RCIC) pump discharge valve for the lube oil cooler.

*Date of issuance:* October 15, 1993

*Effective date:* October 15, 1993

*Amendment No.* 51

*Facility Operating License No.* NPF-58. This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 24, 1992 (58 FR 28206) The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 15, 1993. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of application for amendment:* August 20, 1992, as supplemented on December 17, 1992.

*Brief description of amendment:* The amendment changes the voltage setpoint values, time delay, and testing frequency of the degraded grid voltage (DGV) relays and makes appropriate corrections to the Basis and Tables shown in TS Section 3.5, "Instrumentation System," and TS Section 4.1, "Operational Safety Review" to reflect these changes.

*Date of issuance:* September 30, 1993

*Effective date:* September 30, 1993

*Amendment No.:* 101

*Facility Operating License No.* DPR-43. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 28, 1992 (57 FR 48831) The December 17, 1992, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1993

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

**Notice of issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action.

Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By November 29, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* September 30, 1993, as corrected October 1, 1993

*Brief description of amendment:* The amendment revised the Technical Specifications by adding a footnote to the Containment Isolation Valves, 3/4 3.6.3, requirements that containment spray isolation valves, CS 125 A and/or B, may be left in the open position until startup (prior to Mode 4) following Refueling Outage 6.

*Date of issuance:* October 1, 1993

*Effective date:* October 1, 1993

*Amendment No.:* 86

*Facility Operating License No.* NPF-38. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 1, 1993.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

*Attorney for licensee:* N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

*NRC Project Director:* William D. Beckner

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of application for amendment:* October 2, 1993

*Brief description of amendment:* The amendment adds a one-time extension to the requirement for testing response times of actuation channels for containment isolation. The testing requirements are contained in Technical Specification 4.3.2.3. The amendment changes the testing requirements from at least once per 18 months to the next cold shutdown or no later than the Spring 1994 Refueling Outage.

*Date of issuance:* October 15, 1993

*Effective date:* October 15, 1993

*Amendment No.:* 119

*Facility Operating License No.* NPF-21: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 8, 1993.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352

*Attorney for licensee:* M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street N.W., Washington, D.C. 20005-3502

*NRC Project Director:* Theodore R. Quay

Dated at Rockville, Maryland, this 20th day of October 1993.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation*

[Doc. 93-26353 Filed 10-26-93; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 50-341]

**Detroit Edison Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing; FERMI-2**

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Detroit Edison Company, (licensee) for an amendment to Facility Operating License No. NPF-43 issued to the licensee for operation of the Fermi-2 facility, located in Frenchtown Township, Monroe County, Michigan.

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to eliminate selected response time testing requirements at Fermi-2.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated October 19, 1993. An additional request to add a response time testing requirement for main steam line flow-high for the main steam isolation valves will be handled by separate correspondence.

By November 26, 1993, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 27, 1992, and (2) the Commission's letter to the licensee dated October 19, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 19th day of October, 1993.

For the Nuclear Regulatory Commission.

**William M. Dean,**

*Acting Director, Project Directorate III-1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93-26443 Filed 10-26-93; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Final Subcontract Reporting System Test Plan and Reporting Form

**AGENCY:** Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy.

**ACTION:** Final subcontract reporting system test plan and reporting form.

**SUMMARY:** The Subcontract Reporting System Test Plan and Reporting Form are being issued to implement section 202(d) of the Small Business Credit and Business Opportunity Enhancement Act of 1992, (Pub. L. 102-366). Section 202(d) requires that the Administrator for Federal Procurement Policy conduct a limited test of a simplified system to collect data on the participation of small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) as other than prime contractors. The system is limited to collecting subcontract data on prime contracts for architectural and engineering (A&E) services (including surveying and mapping) that are procured under 40 U.S.C. 541 *et seq.* (the Brooks A-E Act). The system is applicable only to the Environmental Protection Agency, the National Aeronautics and Space and Administration, the United States Army Crops of Engineers (Civil Works), and the Department of Energy.

The primary purpose of this limited test is to demonstrate whether the actual rate of small business participation on A&E prime contracts is substantially higher than is now being reflected in data captured by the Government's

existing procurement data system. Also, this new system is intended to collect subcontracting data under a broader range of A&E contract awards than are covered by the existing reporting requirements of Public Law 95–507.

**FOR FURTHER INFORMATION CONTACT:** Linda G. Williams, Deputy Associate Administrator, (202) 395–3302.

**SUPPLEMENTARY INFORMATION:**

## A. Background

Pursuant to the Small Business Act, prime contractors and subcontractors (except small business firms) that receive one or more contracts over $500,000 ($1 million for construction) are required to submit a subcontracting plan with goals for using small business and small disadvantaged business concerns as subcontractors under Federal prime contracts, and to report accomplishments against the goals. Concerns have been expressed that small business firms actually receive more subcontracting opportunities than are being reported under the existing reporting system. As part of the Small Business Competitiveness Demonstration Program, OFPP is required to conduct a limited test of a simplified system that collects data on the rate of small business and small disadvantaged business participation at the subcontract level under Federal prime contracts for A&E services (including surveying and mapping).

A proposed Subcontracting Reporting System Test Plan and Reporting Form were published in the **Federal Register** for public review and comment on April 16, 1993 (58 FR 19856). Comments were received from two Government and four private organizations. All comments were reviewed, and where warranted, changes have been made. The main issues and concerns raised in the comments are summarized below:

1. *Relationship to Current Reporting Requirements Under Public Law 95–507.* Comments from both Government organizations suggested that we add language to clarify that the Subcontracting Reporting System Test Plan and Reporting Form do not affect, and are independent of, current reporting requirements in Public Law 95–507 and FAR Section 52.219–9 (which require that prime contractors and subcontractors, except small businesses, that receive one or more contracts over $500,000 ($1 million in construction) submit a subcontracting plan with goals for using small business and small disadvantaged business concerns as subcontractors under Federal prime contracts and to report accomplishments against the goals). These comments were accepted.

2. *Definition of United States Army Corps of Engineers (Civil Works).* One Government organization commented that although section 202(d) of Public Law 102–366 specifies that data shall be collected from the United States Army Corps of Engineers (Civil Works), there in fact is no such entity. The commenter recommended that we add language to indicate that United States Army Corps of Engineers (Civil Works) means purchases of A&E services by the Army Corps of Engineers in support of its civil works function. This comment was accepted.

3. *Coverage of Joint Ventures.* One private organization suggested that we include joint ventures as prime contractors that are covered by the reporting requirements of the system. This commenter pointed out that the legislative history of Public Law 102–366 indicates that the system should cover joint venture arrangements as the prime contract level. This comment was accepted. For purposes of this Reporting System, joint ventures will be considered large business Federal prime contractors.

4. *Expanded Coverage.* One private organization suggested that system coverage be expanded to include two additional agencies and one additional industry. This comment pointed out that Public Law 102–366 gives OFPP the authority to add industries and agencies to those specifically covered by the statute. This comment was not accepted. The system is established as a limited test and specifically was narrowed from a broader requirement contained in Public Law 100–656 that subsequently was repealed due to its unmanageability. Accordingly, we do not think inclusion of additional agencies or industries is appropriate at this time. If experience shows that the current coverage could be expanded without being unduly burdensome, we will consider adding additional industries and/or agencies at a later date.

5. *Exclusion of Small and Small Disadvantaged Businesses.* One private organization commented that there is no authority to exclude small and small disadvantaged businesses from the reporting requirements established by the system. This commenter believes that such businesses should be covered in order to capture the full range of subcontract awards to small businesses. This comment was not accepted. Public Law 102–366 gives OFPP broad authority to "develop and implement a simplified" data collection system. Excluding small and small disadvantaged businesses from the system reporting requirements avoids saddling small and small disadvantaged businesses with administratively burdensome and costly reporting requirements; most such businesses do not have systems in place to collect the necessary data since they are excluded from the reporting requirements of Public Law 95–507.

6. *Implementation Should be Delayed Until Cost Impact Can be Determined.* One private organization commented that the system will require reporting and oversight of subcontracts by prime contractors substantially beyond current requirements and will necessitate increased costs for additional manpower and systems implementation. The commenter suggested that the plan not be implemented until the cost impact can be determined. This comment was not accepted. The system is mandated by Public Law 102–366, and as previously discussed, is a more restricted version of a broader requirement contained in Public Law 100–656 that was subsequently repealed because it was deemed to be unduly burdensome. Further, there is no practical way to determine in advance the cost of implementing the system. We do note, however, that another private organization commented that it does not anticipate that the system will place any undue burdens on A&E prime contractors (the only prime contractors covered by the system). This organization based its conclusion on the fact that coverage is limited to solicitations covered by the Brooks A–E Act, issued by only four Government agencies, and the fact that many contractors are already required to report subcontracting activity under Public Law 95–507. This commenter states that a survey of its members determined that collection of subcontract data as required by the system would not pose hardships on A&E prime contractors.

7. *Exclusion of Subcontracts with Non-Profits and Educational Institutions.* One Government organization questioned the exclusion of subcontracts with non-profits and educational institutions from the system reporting requirements. This commenter stated that exclusion of these groups is not consistent with existing requirements under Public Law 95–507 for subcontracting plans. However, we note that the SF 294 Form, "Subcontracting Report For Individual Contracts" (FAR 53.301–294), which is used to collect subcontract data under a subcontracting plan established pursuant to Public Law 95–507, only requires reporting of subcontract awards

to business "concerns." The definition of concern at FAR 19.001 is "any business organized for profit * * *." Further, exclusion of non-profits and educational institutions is consistent with the coverage of the Small Business Competitiveness Demonstration Program, which does not count prime contract awards to non-profits and educational institutions toward attainment of the small business goals established by the Program. Since subcontracting awards reported under the system will count toward attainment of goals under the Demonstration Program, coverage between the two should be consistent.

8. *Criteria for Determining "Substantially Higher" Rate of Small Business Participation.* The stated purpose of the system is to determine whether the actual rate of small business participation on A&E prime contracts is "substantially higher" than is now reflected in data captured by the Government's existing data collection system. One Government organization suggested that we should establish criteria for determining "substantially higher." This comment was not accepted. We do not think its practical to establish such criteria in advance. Rather, we believe we should compare and analyze data collected before and after the test, and then make a determination as to whether the change in performance is significant. This may require subjective judgments, and consideration of possible alternative interpretations of the data.

9. *Coverage Should Be Limited to Standard Industrial Codes Covered by the Small Business Competitiveness Demonstration Program.* One Government and one private organization commented that system coverage should be limited to subcontracts awarded in one of the standard industrial codes covered by the Small Business Competitiveness Demonstration Program. These comments were not accepted. We do not believe coverage should be limited because most subcontractors are not familiar with, and do not have access to, the codes. Therefore, we determined that any subcontract needed for prime contract performance, irrespective of the product or service provided, should be reported.

10. *General.* Other comments accommodated in the final test plan include:

—The addition of the words "if needed" in the first sentence of test plan paragraph IV.C. to indicate that a procedure for the collection by the OSDBU of the hardcopy Forms XXX from the contracting office need be established only if agency procedures do not otherwise provide for the OSDBU to receive copies of the forms.

—The exclusion of non-profits, educational institutions, and state and local governments from the definition of "Federal prime contractor" in Attachment B. These entities are excluded from the Small Business Competitiveness Demonstration Program, and therefore, are also being excluded from the prime contractors covered by the system.

—The addition of language in the last two sentences of test plan paragraph IV.C. to indicate that the backup data to be provided to OFPP should be the compiled data from the Forms XXX, and not the forms themselves.

—The addition of "direct" before the word "support" in paragraph 2 of Attachment B. This is to clarify that only subcontracts in direct support of the prime contract are covered.

### B. Regulatory Flexibility Act

This reporting system will not have a significant impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and, therefore, no Regulatory Impact analysis has been prepared.

The system seeks to measure the amount of small business participation in subcontracts. The reporting requirements of the system will be imposed on large businesses and, as such, there is no cost to small businesses.

### C. Executive Order No. 12866

This reporting system has been reviewed in accordance with the objectives and criteria of Executive Order No. 12866. The system will not result in any of the economic or regulatory impacts associated with a significant regulatory action. The system will not have an annual effect on the economy of $100 million or more and will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. It also will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

### D. Paperwork Reduction Act

The information collection requirements for this reporting system have been approved by the Office of Management and Budget through February 28, 1996 and assigned OMB Control No. 9000–0100.

### List of Subjects

Government Procurement, Small Business Procurement.

Dated: October 14, 1993.

**Allan V. Burman,**

*Administrator.*

October 14, 1993.

Memorandum for Selected Agency Senior Procurement Executives

From: Allan V. Burman, Administrator

Subject: Final Subcontract Reporting System Test Plan and Reporting Form—Small Business Competitiveness Demonstration Program

1. *Purpose.* This memorandum provides policy direction to the Environmental Protection Agency, the National Aeronautics and Space Administration, the United States Army Corps of Engineers (Civil Works) and the Department of Energy for implementation of section 202(d) of the Small Business Credit and Business Opportunity Enhancement Act of 1992, (Pub. L. 102–366), that establishes the requirement for a simplified Subcontract Reporting System.

2. *Authority.* The requirement for a simplified Subcontract Reporting System is established pursuant to section 202(d) of Public Law 102–366, and section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413, which provides for the testing of innovative procurement methods and procedures.

3. *Background.* Pursuant to the Small Business Act, prime contractors and subcontractors (except small business firms) that receive one or more contracts over $500,000 ($1 million in construction) are required to submit a subcontracting plan with goals for using small business and small disadvantaged business concerns as subcontractors under Federal prime contracts and to report accomplishments against the goals. Concerns have been expressed that the current reporting system does not provide information on the full range of participation by small business firms in the Federal procurement process. As part of the Small Business Competitiveness Demonstration Program, OFPP is to develop and implement a simplified system to collect data on the participation of small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) as other than prime contractors. The system shall collect subcontract data regarding prime contracts for architectural and engineering (A&E) services (including surveying and mapping) that are procured under 30 U.S.C. 541 *et seq.* (the Brooks A–E Act). This reporting system is independent of current reporting requirements in Public Law 95–507 and FAR section 52.219–9. The results of the test shall not affect those existing requirements.

4. *Policy.* The primary purpose of this new simplified Subcontract Reporting System is to demonstrate whether the actual rate of small business participation on A&E prime contracts is substantially higher than is now being reflected in data captured by the Government's existing procurement data system. The procedures for implementing the test reporting system are set forth in the attached test plan.

5. *Implementation.* The participating agencies are required to implement the attached test plan commencing on October 1, 1993. Since this is a limited test, these requirements will not be implemented in the Federal Acquisition Regulation.

6. *Expiration Date.* The simplified Subcontract Reporting System shall be in effect through September 30, 1996.

**Attachment**

c. Selected OSDBU Directors, Selected FPDS Policy Advisory Board Members

**Selected Agency Senior Procurement Executives**

Mr. G.L. Allen, Assistant Secretary for Procurement and Assistance Management, Department of Energy, Room 6B162, 1000 Independence Avenue, SW., Washington, DC 20585

Dr. Betty L. Bailey, Director, Office of Acquisition Management (PM–214 F), Environmental Protection Agency, 401 M Street, SW.—Room 805, Washington, DC 20460

Ms. Deidre Lee, Associate Administrator for Procurement, NASA Headquarters, Code H, Room 4L13, 300 E Street, SW., Washington, DC 20546

Mr. John Deutch, Under Secretary of Defense for Acquisition and Research, Department of Defense, Room 3E933 (Pentagon), Washington, DC 20301

Honorable George E. Dausman, Acting Assistant Secretary of the Army (Research, Development, and Acquisition), Department of the Army, Room 2E672 (Pentagon), Washington, DC 20310

**Selected OSDBU Directors**

Mr. Leonel V. Miranda, Director, Office of Small and Disadvantaged Business Utilization, Department of Energy, 1707 H Street, NW., Room 904, Washington, DC 20585

Mr. Leon Hampton, Director, Office of Small and Disadvantaged Business Utilization, Environmental Protection Agency, 401 M Street, SW. (A149C), Washington, DC 20460

Mr. Ralph C. Thomas, Associate Administrator, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration (Code K), Washington, DC 20546

Ms. Diane Sisson, Director, Office of Small and Disadvantaged Business Utilization, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW., Washington, DC 20314–1000

**Selected FPDS Policy Advisory Board Members**

Mr. James Nelson, Director, Procurement Management Systems and Analysis Div. (MA–432), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Mr. Edward Murphy, Procurement and Contracts Management Division (PM214F), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Mr. Herb Baker, Procurement Management Div. (Code HM), National Aeronautics and Space Administration, Washington, DC 20546

Mr. Carl Brotman, Office of the Deputy Under Secretary of Defense for Acquisition Management, Room 3C838 (Pentagon), Washington, DC 20301

**Final Subcontract Reporting System Test Plan, Small Business Competitiveness Demonstration Program**

**I. Purpose**

This document implements section 202(d) of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366). Section 202(d) requires the Administrator for Federal Procurement Policy to develop and implement a simplified system to collect data on the participation of small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) as other than prime contractors. The system shall collect subcontract data regarding prime contracts for architectural and engineering (A&E) services (including surveying and mapping) that are procured under 40 U.S.C. 541 *et seq.* (the Brooks A–E Act).

The primary purpose of this simplified reporting system is to demonstrate whether the actual rate of small business participation on A&E prime contracts is substantially higher than is now being reflected in data captured by the Government's existing procurement data system. Also, this new reporting system is intended to collect subcontracting data under a broader range of A&E contract awards than are covered by the existing reporting requirements of Public Law 95–507.

This new simplified reporting system will cover subcontract activity through the second tier under A&E prime contracts and be applicable to four participating agencies. This reporting system is independent of current reporting requirements in Public Law 95–507 and FAR section 52.219–9. The results of this test shall not affect those existing requirements.

**II. Authority**

The requirement for a simplified subcontract reporting system (the System) is established pursuant to section 202(d) of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366), and section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413, which provides for the testing of innovative procurement methods and procedures.

**III. Program Requirements**

*A. Applicability*

The System shall be in effect from October 1, 1993 through September 30, 1996 and shall include subcontract data under A&E prime contracts awarded under the Brooks A–E Act from solicitations issued during the same period. The System shall be applicable to data collected from prime contractors, including joint ventures, (except small business and small disadvantaged business firms, non-profits, educational institutions, and state and local governments) that receive a prime contract for A&E services (including surveying and mapping) under the Brooks A–E Act with an anticipated award value over $100,000 and which has the possibility for subcontracting opportunities. (See subsections (C) and (D) below.) The prime contractors shall report information on subcontract awards over $25,000 through the second tier that are directly needed for prime contract performance, irrespective of the product or service provided under the subcontract. (See Attachment A "Flowchart for Reporting Subcontracting Activity.")

*B. Covered Agencies*

1. The following agencies are covered by the System:

a. The Environmental Protection Agency,

b. The National Aeronautics and Space Administration,

c. The United States Army Corps of Engineers (Civil Works) (i.e. purchases of A&E services by the Army Corps of Engineers in support of its civil works function or otherwise awarded under a contract number beginning with "DACWXX"), and

d. The Department of Energy.

2. All contracting offices at the covered agencies shall report information from prime contractors to the System.

*C. Covered Designated Industry Group*

Subcontract awards under prime contracts in the following designated industry group are to be reported under the System: A&E services (including surveying and mapping) under standard industrial classification (SIC) codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404) awarded under the Brooks A–E Act.

*D. Small Business Goal Determination*

The value of other than prime contract awards to small business concerns shall count toward determining whether the small business participation goal under the Small Business Competitiveness Demonstration Program is attained for A&E services.

*E. Contract Clause for Procurements Covered by the System*

The following clause shall be inserted in contracts and solicitations covered by the System that are issued from October 1, 1993 through September 30, 1996 with an estimated contract value over $100,000 and which have the possibility for subcontracting opportunities. The clause is not applicable to small business and small disadvantaged business firms.

Subcontract Reporting Under the Small Business Competitiveness Demonstration Program (October 1992)

(a) The Contractor shall submit a completed Form XXX in accordance with instructions on the Form.

(b) The Contractor shall include subparagraph (a) of this clause in subcontracts with an estimated value over $25,000 awarded under this contract, excluding subcontracts with small business and small disadvantaged business firms, non-profits, educational institutions, and state and local governments. The Contractor shall also include this subparagraph (b), or its equivalent, in any such subcontract so that these requirements will be binding upon subcontracts awarded through the second tier.

(c) The Contractor shall include the prime contract number in its subcontracts and require its subcontractors through the second tier (except small business and small disadvantaged business firms, non-profits, educational institutions, and state and local governments) to include both the prime contract number and their subcontract number in their subcontracts. (Note: The prime contract number shall be the identifier used to track all subcontract activity under the prime contract.)

**IV. Reporting**

*A. Prime Contractor Responsibility*

The attached flow chart (Attachment A) indicates the responsibility of the Federal prime contractor for collecting and reporting subcontract data by tiers.

*B. Forms*

1. A separate reporting form has been designed to collect data from contractors in support of the System (see Attachment B—Form XXX). The instructions require the prime contractors to report the data, on a quarterly basis, to the covered agencies within 30 days after the end of the reporting period. The Federal prime contractor shall establish a reporting schedule for its subcontractors such that the consolidated reports can be submitted to the covered agency within 30 days.

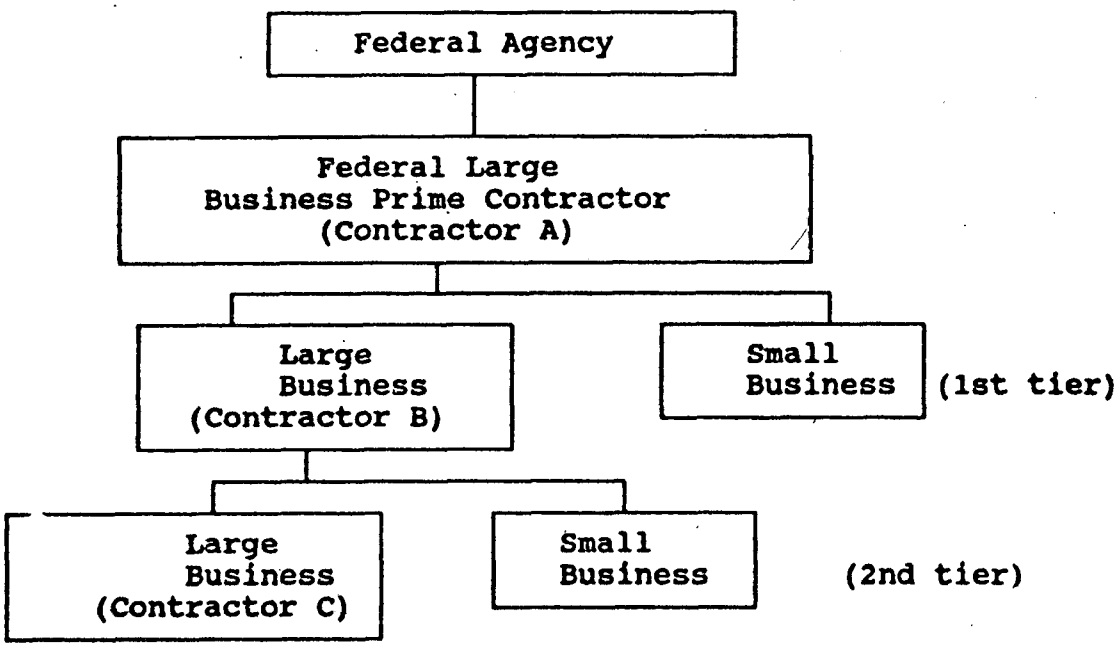
2. Copies of Form XXX will be forwarded to the covered agencies by OFPP. Contracting officials shall be responsible for providing the original copy of Form XXX to the prime contractors. The Federal prime contractor shall be responsible for ensuring that its subcontractors in support of the prime contract receive copies of the Form. Each subcontractor (other than small business and small disadvantaged business firms, non-profits, educational institutions, and state and local governments) shall also ensure that its subcontractors receive copies of the Form.

*C. Determining Small Business Participation Rates*

Each covered agency's Office of Small and Disadvantaged Business Utilization (OSDBU), or other designated office, shall be responsible for establishing a procedure, if needed, for the collection of the hardcopy Forms XXX from each contracting office in order to determine small business participation at the subcontract level. The prime A&E contract and subcontracting dollars to small business shall be added to derive the total small business participation level. This information shall be reported to OFPP in the agency's quarterly reports under the Demonstration Program. The compiled information on subcontracting from the Form XXX that was added to the prime A&E contract dollars shall be provided to OFPP as backup data with the agency's quarterly reports. The compiled data will provide the rate of small business participation at the subcontract level.

**Attachment A**

**Flowchart for Reporting Subcontracting Activity**
**Subcontract Reporting System Test Plan**
**Small Business Competitiveness Demonstration Program**




• The Federal prime contractor (other than a small business or small disadvantaged business firm, non-profit, educational institution, or state and local government) receives a contract in excess of $100,000 for

A&E services (including surveying and mapping) under Brooks A–E Act procedures.

• The Federal prime contractor shall report information on subcontracts awards over $25,000 through the second tier that are directly needed for prime contract performance, irrespective of the product or service provided under the subcontract.

• The Federal prime contractor is responsible for ensuring that data concerning subcontracting activity in support of the prime contract is collected and reported in accordance with instructions on Form XXX.

• Subcontracting activity is reported by the first tier subcontractor (other than small business or small disadvantaged business subcontractors, non-profits, educational institutions, and state and local governments) to the Federal prime contractor rather than to the Federal agency.

• The Federal prime contractor must include the prime contract number in each subcontract and require the subcontractor (other than a small business and small disadvantaged business subcontractor, non-profit, educational institution or state and local government) to include both the prime contract number and its subcontract number in its subcontracts.

• An example of a Federal prime contractor's responsibility for collecting and reporting subcontracting activity under a Federal prime contract:

—Contractor A is a Federal prime contractor (other than a small business or small disadvantaged business firm, non-profit, educational institution, or state and local government) who received a prime contract over $100,000 from a Federal agency for A&E services (including surveying and mapping) under the Brooks A–E Act.

—Contractor A subcontracts part of the effort to other large (Contractor B) or small business firms. This is considered the 1st tier of subcontracting in support of the prime contract. Contractor A is responsible for reporting its subcontracting activity in Item 11 on Form XXX.

—Contractor B is a subcontractor (other than a small business or small disadvantaged business firm, non-profit, educational institution, or state and local government) who received a subcontract in excess of $25,000 from Contractor A and subcontracts part of the effort to other large (Contractor C) or small business firms. This is considered the 2nd tier of subcontracting. Contractor B is responsible for reporting its subcontracting activity to Contractor A using Item 11 on Form XXX.

—Contractor A is responsible for aggregating the subcontracting data and reporting the information in Item 12 on Form XXX.

*General Instructions Subcontract Activity for Individual Contracts*

1. This form collects subcontract data from prime contractors, including joint ventures, (except small business and small disadvantaged business firms, non-profits, educational institutions, and state and local governments) that receive a Federal contract over $100,000 for architectural and engineering (A&E) services (including surveying and mapping) under Brooks A–E Act procedures. This data collection is required by the Subcontract Reporting System Test Plan established pursuant to section 202(d) of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366).

The form also shall be used by the prime contractor to collect subcontract data from its first tier subcontractors (excluding small business and small disadvantaged business firms, non-profits, educational institutions, and state and local governments) that receive a subcontract over $25,000 in support of the Federal prime contract.

2. Federal prime contractors are responsible for collecting and reporting subcontract activity through the second tier in direct support of the prime A&E contract irrespective of the product or service provided under the subcontract.

3. Federal prime contractors are also required to include the prime contract number in each of their subcontracts and to require their subcontractors (except small business and small disadvantaged business firms, non-profits, educational institutions, and state and local governments) to include both the prime contract number and the subcontract number in their subcontracts. The prime contract number shall be the identifier used by the large business Federal prime contractor to track all subcontract activity under the prime contracts covered by the System.

4. Federal prime contractors shall submit the report quarterly, within 30 days after the end of each reporting period. The Federal prime contractor must establish a reporting schedule for its subcontractors such that the reports can be consolidated and submitted to the Federal agency within 30 days. A negative report shall be submitted when there has been no subcontracting activity or there has been no change from the last reporting period.

5. All dollar amounts shall be rounded to the nearest whole dollar.

6. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands shall be included in this report.

7. This report shall not be submitted by small business and small disadvantaged business firms.

8. Copies of Form XXX are available from the contracting office awarding the prime contract. For subcontractors, the Form is available from the contractor who awarded the subcontract.

*Specific Instructions*

Part I.—To Be Completed by Federal Department or Agency

Item 1. Enter the name of the Federal Department or Agency designated to participate in the test reporting system.

Item 2. Enter the name and address of the contracting activity awarding the Federal prime contract.

Item 3. Enter the Federal prime contract number.

Item 4. Enter the standard industrial classification (SIC) number of the prime A&E contract, i.e. SIC codes 7389, 8711, 8712, or 8713.

Part II.—To be Completed by Federal Prime Contractors and/or Subcontractors

Item 5. Enter the name and address of the entity completing the form. The form is a multi-purpose form and shall be used by Federal prime contractors and subcontractors to report their subcontract activity.

Item 6. Enter the date that the form is prepared.

Item 7. Enter the reporting entity's contract number. If this report is from a subcontractor, enter the subcontract number.

Item 8. Enter the reporting entity's tier level. Federal prime contractors and subcontractors through the second tier (in relation to the Federal prime contract) shall identify their tier level to their subcontractors. As an example, when the Federal prime contractor subcontracts part of the prime contract effort, the prime contractor shall notify the subcontractor that this is the first tier of subcontracting. The first tier subcontractor shall, in turn, notify its subcontractors that they are the second tier subcontractors.

Item 9. Enter the Federal Fiscal Year and check the appropriate block for the period covered by the report.

Item 10. Check whether the report is a regular quarterly report, final report, or a revision to a prior report. If the report is a regular quarterly report which contains revisions to a previously submitted report, check revision. Check final report only if the reporting prime contractor/subcontractor has completed all work under the prime contract/subcontract.

Item 11. Enter the dollar amount for subcontract awards to small business (including small disadvantaged business) and large business (excluding subcontracts to non-profits, educational institutions, and state and local governments) subcontractors during the reporting period. Amounts reported include direct awards only. Enter zero if no subcontract awards have been made during the reporting period.

Item 11(d). Enter the dollar amount for subcontract awards to small disadvantaged business subcontractors. This figure is a portion of the total subcontract dollars in 11(c).

Part III.—To Be Completed by Federal Prime Contractors Only

Item 12. Enter the cumulative dollar amount for subcontract awards to small business (including small disadvantaged business) and large business through the second tier of subcontracting related to the prime contract. This figure is the sum of all subcontract dollars reported by the large business subcontractors since award of the prime contract. (For example, the Federal prime contractor shall report in the 1st tier line, its cumulative direct subcontract awards. Under the 2nd tier line, the Federal prime contractor shall include all subcontract awards made by the 1st tier subcontractor.)

Item 12(d). Enter the cumulative dollar amount for subcontract awards to small disadvantaged business subcontractors. This figure is a portion of the total subcontract dollars in 12(c) for each respective tier.

Part IV.—To Be Completed by Federal Prime Contractors and/or Subcontractors

Item 13. Enter the name, title, signature and telephone number of the person completing the report.

Item 14. Enter the name, title, and signature of the approving official. The approving official shall be the chief executive officer or in the case of a separate division or plant, the senior individual responsible for the overall division/plant operations.

*Definitions*

1. *Federal prime contractor*, as used for this test reporting system, is a business firm, including a joint venture, (other than small business or small disadvantaged business firms, non-profits, educational institutions, and state and local governments) who is awarded a Federal prime contract for A&E services (including surveying and mapping) under the Brooks A–E Act by one of the participating agencies (EPA, NASA, Army Corps of Engineers (Civil Works), and DOE).

2. *Subcontract* means a contract, purchase order, amendment, or other legal obligation executed by a prime contractor or subcontractor calling for supplies or services required for the performance of the prime contract or subcontract. Purchases from a corporation, company, or subdivision which is owned or controlled by the reporting prime contractor are not considered "subcontracts" and shall not be included in this report.

3. *Direct Subcontract Awards* are those which are identified with the performance of a specific government contract, including allocable parts of awards for materials which are to be incorporated into products under more than one contract.

*Submittal Addresses For Prime Contractors*

For DoD Contractors: All Federal prime contractors (other than small business and small disadvantaged business firms, non-profits, educational institutions, and state and local governments) shall distribute the original and copies as follows:

(1) The original of each report shall be sent directly to the contracting officer at the activity awarding the prime contract.

(2) Copies shall be submitted to: Headquarters, U.S. Army Corps of Engineers, Director, Office of Small and Disadvantaged Business, Utilization, 20 Massachusetts Avenue, NW., Washington, DC 20314–1000.

For Civilian Agency Contractors: The original of each report shall be sent directly to the contracting officer at the activity awarding the prime contract. A copy of each report shall be sent as follows:

NASA—NASA Headquarters, Procurement Systems Division (Code HM), Washington, DC 20546.

DOE—Office of Small and Disadvantaged Business Utilization, Washington, DC 20585.

EPA—Office of Small and Disadvantaged Business Utilization, Washington, DC 20460.

BILLING CODE 3110–01–M

# SUBCONTRACT ACTIVITY FOR INDIVIDUAL CONTRACTS
## SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM
## (THIS FORM SHALL NOT BE COMPLETED BY SMALL BUSINESS FIRMS)

**PART I. TO BE COMPLETED BY FEDERAL CONTRACTING ACTIVITY**

1. PARTICIPATING AGENCY

2. CONTRACTING ACTIVITY

3. FEDERAL PRIME CONTRACT NUMBER _____

4. SIC CODE _____

**PART II. TO BE COMPLETED BY FEDERAL PRIME CONTRACTORS AND/OR SUBCONTRACTORS**

5. REPORTING CONTRACTOR/SUBCONTRACTOR _____

6. DATE: __/__/__

7. REPORTING ENTITY'S CONTRACT NUMBER _____

8. REPORTING ENTITY'S TIER LEVEL _____

9. REPORTING PERIOD:
FISCAL YEAR _____
[ ] OCT 1 - DEC 31
[ ] JAN 1 - MARCH 31
[ ] APRIL 1 - JUNE 30
[ ] JULY 1 - SEPT 30

10. REPORT IS:
[ ] REGULAR
[ ] FINAL
[ ] REVISION

11. SUBCONTRACT AWARDS THIS PERIOD *(ROUNDED WHOLE DOLLARS)*

| | DOLLARS |
|---|---|
| (a) SMALL BUSINESS (INCLUDING SMALL DISADVANTAGED) ($ AMOUNT OF 11(c)) | $_____ |
| (b) LARGE BUSINESS ($ AMOUNT OF 11(c)) | $_____ |
| (c) TOTAL (SUM OF 11(a) and 11(b)) | $_____ |
| (d) SMALL DISADVANTAGED BUSINESS ($ AMOUNT OF 11(c)) | $_____ |

**PART III. TO BE COMPLETED BY FEDERAL PRIME CONTRACTORS ONLY**

12. CUMULATIVE SUBCONTRACT AWARDS (BY TIER)

| TIER | (a) SMALL BUSINESS (INCL. DISADVANTAGED | (b) LARGE BUSINESS | (c) CUMULATIVE TOTAL | (d) SMALL DISADVANTAGED BUSINESS |
|---|---|---|---|---|
| 1st | $_____ | $_____ | $_____ | $_____ |
| 2nd | $_____ | $_____ | $_____ | $_____ |
| Total | $_____ | $_____ | $_____ | $_____ |

**PART IV. TO BE COMPLETED BY FEDERAL PRIME CONTRACTORS AND/OR SUBCONTRACTORS**

13. NAME/TITLE _____ SIGNATURE _____ TELEPHONE NUMBER _____

14. REPORT APPROVED BY: _____ NAME AND TITLE _____ SIGNATURE

[FR Doc. 93-26393 Filed 10-26-93; 8:45 am]
BILLING CODE 3110-01-C

FORM XXX

## SECURITIES AND EXCHANGE COMMISSION

[Rel. Nos. 33-7023; 34-33085]

### Changes and Corrections to EDGAR Phase-In List

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is publishing a list of changes and corrections to the EDGAR phase-in list for companies with filings processed by the Division of Corporation Finance.

**FOR FURTHER INFORMATION CONTACT:** Sylvia J. Reis, Assistant Director, CF EDGAR Policy, Division of Corporation Finance at (202) 272-3691.

**SUPPLEMENTARY INFORMATION:** In connection with the adoption of interim rules to implement the operational phase of the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system, on March 18, 1993 the Commission published a list of companies whose filings are processed by the Division of Corporation Finance to place registrants on notice as to when they would become subject to mandated electronic filing.[1] The registrants were divided into ten groups to be phased in over the next three years. Rule 901 of Regulation S-T[2] provides that registrants may request a change to their assigned phase-in dates. Such requests may be granted pursuant to delegated authority. In addition, corrections to the published list may be necessary. Changes to the Division of Corporation Finance phase-in list are published from time to time in the SEC News Digest. The Commission today is publishing a comprehensive list of all changes in Division of Corporation Finance phase-in group assignments made since the phase-in list was published in March; this list supersedes the list of changes published in the **Federal Register** on July 2, 1993 (Release No. 33-7003 (June 28, 1993) (58 FR 35987)). This procedure will be repeated from time to time, in order to further notify the public of changes to the list. A change to a company's phase-in date is of particular importance to persons or entities filing documents with respect to that company, since generally such persons must file electronically when the company becomes subject to electronic filing.[3]

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE #33-6977 (FEBRUARY 23, 1993)

| Company name | CIK No. | Former group | New group |
|---|---|---|---|
| Acme Cleveland Corp | 002066 | CF-04 | Remove. |
| Acme Steel Co | 002093 | CF-04 | CF-04 |
| Change to Acme Metals Inc /DE | 002093 | CF-04 | CF-04 |
| ADVO System Inc | 801622 | CF-04 | CF-04 |
| Change to ADVO Inc | 801622 | CF-04 | CF-04 |
| AFG Industries Inc | 007668 | CF-02 | Remove. |
| Alamar Biosciences Inc | 888335 | None. | CF-10 |
| Allegheny Corp /DE | 775368 | CF-03 | Remove. |
| Ambase Corp | 020639 | CF-02 | CF-09 |
| American Biogenetic Sciences Inc | 856984 | None. | CF-10 |
| American Capital Corp | 004707 | CF-03 | CF-09 |
| American Express Co | 004962 | CF-02 | CF-03 |
| American Financial Enterprises Inc/CT/ | 319157 | CF-08 | CF-02 |
| American Healthcorp Inc/DE | 704415 | None. | CF-10 |
| Ames Department Stores Inc | 006071 | CF-02 | CF-03 |
| AM International Inc | 002310 | CF-03 | CF-09 |
| Amoskeag Co | 006161 | CF-03 | CF-05 |
| Amphenol Corp | 820313 | None. | CF-10 |
| ANAC Holding Corp | 805741 | CF-02 | Remove. |
| Anntaylor Stores Corp | 874214 | CF-10 | CF-04 |
| Apple Bancorp | 829761 | CF-03 | Remove. |
| Arkansas Power & Light Co | 007323 | CF-02 | CF-01 |
| Armor All Products Corp | 797975 | CF-04 | CF-03 |
| AT&T Capital Corp | 861940 | CF-01 | CF-01 |
| Change to AT&T Capital Corp | 897708 | CF-01 | CF-01 |
| AVX Corp | 859163 | CF-03 | Remove. |
| Bank of New England Corp | 071322 | CF-02 | CF-09 |
| Bingo King Co Inc | 355142 | CF-06 | CF-06 |
| Change to Stuart Entertainment Inc | 355142 | CF-06 | CF-06 |
| BNY Master Credit Card Trust | 872257 | None. | CF-10 |
| Bonneville Pacific Corp | 7951827 | CF-03 | CF-09 |
| Bowater Inc | 743368 | CF-02 | CF-04 |
| Brauvin Corporate Lease Program IV L P | 878657 | CF-10 | CF-06 |
| Brauvin High Yield Fund L P II | 832775 | CF-09 | CF-06 |
| Brauvin Income Plus L P III | 850142 | CF-10 | CF-06 |
| Brauvin Income Properties LP 6 | 793066 | CF-09 | CF-06 |
| Brauvin Real Estate Fund I | 318722 | CF-07 | CF-06 |

[1] See Release No. 33-6977 (February 23, 1993), published on March 18, 1993 at 58 FR 14628. The timing for each phase-in group was included in that release as Appendix A, and the phase-in list as Appendix B. As is true with all rules promulgated by the Commission, persons making filings with the Commission are responsible for apprising themselves of their new obligations associated with filing on the EDGAR system. While the Commission attempts to contact registrants in each phase-in group by furnishing a copy of the EDGAR Filer Manual and EDGARLink software prior to phase-in, filers will not be relieved of their electronic filing obligations in the absence of such notification.

[2] 17 CFR 232.901.

[3] Rule 901(b) provides that a party making a filing pursuant to section 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n, respectively) with respect to a registrant that has become subject to mandated electronic filing is required to submit that filing in electronic format. Consequently, persons filing a Schedule 13D or 13G, a proxy statement, or tender offer material with respect to an electronic filer are required to make such filings electronically.

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE #33-6977 (FEBRUARY 23, 1993)—Continued

| Company name | CIK No. | Former group | New group |
|---|---|---|---|
| Brauvin Real Estate Fund II | 701467 | CF-07 | CF-06 |
| Brauvin Real Estate Fund LP 3 | 715988 | CF-09 | CF-06 |
| Brauvin Real Estate Fund LP 5 | 762848 | CF-05 | CF-06 |
| Calton Inc | 717216 | CF-03 | CF-08 |
| Cambridge Electric Light Co | 016573 | CF-09 | CF-02 |
| Canal Electric Co | 016906 | CF-03 | CF-02 |
| Capital Gaming International Inc | 867443 | None. | CF-10 |
| Care Enterprises Inc /DE | 794456 | CF-04 | CF-04 |
| Change to Care Enterprises Inc /DE | 716302 | CF-04 | CF-04 |
| Carolco Pictures Inc | 801441 | CF-03 | CF-04 |
| Cell Technology Inc /DE/ | 816159 | CF-06 | CF-06 |
| Change to Air Methods Corp | 816159 | CF-06 | CF-06 |
| Central Illinois Light Co | 018651 | CF-03 | CF-02 |
| Chambers Development Co Inc | 776074 | CF-03 | CF-04 |
| Chartwell Group LTD | 790230 | CF-04 | CF-10 |
| Change to IL International Inc | 790230 | CF-04 | CF-10 |
| Cinergy Corp | 899652 | None. | CF-02 |
| CIPSCO Inc | 860520 | CF-01 | CF-02 |
| Clinical Technologies Associates Inc | 805326 | CF-08 | CF-08 |
| Change to Emisphere Technologies Inc | 805326 | CF-08 | CF-08 |
| Cole National Corp | 769644 | CF-03 | Remove. |
| Cole National Group | 909492 | None. | CF-10 |
| Colorado National Bankshares Inc | 021956 | CF-03 | Remove. |
| Columbia Hospital Corp | 860730 | CF-10 | CF-01 |
| Change to Columbia Healthcare Corp | 860730 | CF-10 | CF-01 |
| Commonwealth Electric Co | 071222 | CF-09 | CF-02 |
| Commonwealth Gas Co | 022620 | CF-04 | CF-02 |
| Conrail Inc | 897732 | None. | CF-02 |
| Continental Airlines Inc/DE/ | 319687 | CF-03 | CF-06 |
| Continental Holdings Inc | 752198 | CF-02 | Remove. |
| CS Primo Corp | 792157 | CF-09 | CF-09 |
| Change to Dynasty Travel Group Inc | 792157 | CF-09 | CF-09 |
| Cullum Companies Inc | 026114 | CF-03 | Remove. |
| Damson Energy Co LP | 764865 | CF-04 | Remove. |
| Damson Oil Corp | 026771 | CF-05 | Remove. |
| Dekalb Energy Co | 111001 | CF-03 | CF-04 |
| Dial Corp /DE | 884219 | None. | CF-02 |
| Dial Corp/Old | 043959 | CF-02 | Remove. |
| Dreyfus Corp | 030163 | CF-03 | CF-02 |
| Duracell Holdings Corp | 873482 | CF-10 | CF-10 |
| Change to Duracell International Inc | 873482 | CF-10 | CF-10 |
| Eastern Air Lines Inc | 031089 | CF-02 | CF-09 |
| Edgcomb Corporation | 802898 | CF-03 | Remove. |
| Edgcomb Metals Company | 791904 | CF-03 | Remove. |
| Elizabethtown Water Co /NJ/ | 032379 | CF-04 | CF-03 |
| El Paso Electric Co /TX/ | 031978 | CF-02 | CF-09 |
| Entergy Corp | 065984 | CF-02 | CF-01 |
| Envoy Corp | 356826 | None. | CF-10 |
| EPIC Healthcare Group Inc | 841940 | CF-03 | CF-10 |
| FFCA Investor Services Corp 85-B | 811520 | CF-10 | CF-09 |
| Finevest Foods Inc | 830141 | CF-04 | CF-04 |
| Change to GEV Corp | 830141 | CF-04 | CF-04 |
| First Bancorp of Kansas | 705025 | CF-04 | CF-04 |
| Change to Intrust Financial Corp | 705025 | CF-04 | CF-04 |
| First Capital Holdings Corp | 719520 | CF-02 | CF-09 |
| First Chesapeake Financial | 889164 | None. | CF-10 |
| First National Financial Corp | 779575 | CF-03 | CF-04 |
| Florida Power & Light Co | 037634 | CF-09 | CF-03 |
| Ford Credit 1993 A Grantor Trust | 896328 | CF-10 | CF-02 |
| Ford Credit 1993 B Grantor Trust | 908603 | None. | CF-02 |
| Ford Credit Auto Loan Master Trust | 882135 | None. | CF-02 |
| Ford Credit Auto Receivables Corp | 872471 | CF-10 | CF-02 |
| Foundation Realty Fund LTD II | 833197 | CF-09 | Remove. |
| Franchise Finance Corp of America | 908527 | None. | CF-06 |
| Future Medical Products Inc /NY/ | 839087 | CF-08 | CF-03 |
| Gould Investors LP | 779335 | CF-04 | Remove. |
| Grace Energy Corp | 852551 | CF-03 | Remove. |
| Gray Communications Systems Inc | 043196 | None. | CF-10 |
| Great Atlantic & Pacific Tea Co Inc | 043300 | CF-02 | CF-03 |
| Green Tree Financial Corp | 890175 | CF-10 | CF-03 |

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE #33-6977 (FEBRUARY 23, 1993)—Continued

| Company name | CIK No. | Former group | New group |
|---|---|---|---|
| Greyhound Dial Corp /AZ/ | 734716 | CF-02 | CF-02 |
| Change to Dial Corp /AZ/ | 734716 | CF-02 | CF-02 |
| GTECH Corp | 719702 | CF-03 | Remove. |
| GTECH Holdings Corp | 857323 | None. | CF-10 |
| Hadson Europe Inc | 350091 | CF-07 | CF-07 |
| Change to Midwest Energy Companies Inc | 350091 | CF-07 | CF-07 |
| Hana Biologic Inc | 791925 | CF-06 | CF-06 |
| Change to Somatix Therapy Corp | 791925 | CF-06 | CF-06 |
| Hardees Lease Partners 1980 | 318225 | CF-06 | CF-09 |
| Heathvest | 792337 | CF-03 | CF-05 |
| Hickory Furniture Co | 047312 | CF-04 | CF-05 |
| Highland Superstores Inc | 766003 | CF-03 | CF-09 |
| Hillsborough Holding Corp | 837173 | CF-02 | Remove. |
| Hills Department Stores Inc /DE/ | 786877 | CF-03 | CF-04 |
| Horsehead Industries Inc | 847326 | CF-03 | Remove. |
| Hydraulic Co | 049423 | CF-04 | CF-04 |
| Change to Aquarion Co | 049423 | CF-04 | CF-04 |
| IBC Holdings Corp | 829499 | CF-08 | CF-03 |
| Change to Interstate Bakeries Corp | 829499 | CF-08 | CF-03 |
| ICF International Inc | 856200 | CF-04 | CF-04 |
| Change to ICF Kaiser International Inc | 856200 | CF-04 | CF-04 |
| IMRS Inc | 878594 | CF-02 | CF-03 |
| Insured Income Properties 1981 | 318844 | CF-07 | CF-09 |
| Insured Income Properties 1982 | 353392 | CF-06 | CF-09 |
| Insured Income Properties 1983 | 710870 | CF-05 | CF-09 |
| Insured Income Properties 1984 | 730988 | CF-05 | CF-09 |
| Insured Income Properties 1985 | 754758 | CF-04 | CF-09 |
| Insured Income Properties 1986 LP | 778435 | CF-04 | CF-09 |
| Insured Income Properties 1988 LP | 808029 | CF-05 | CF-09 |
| Insured Pension Investors 1983 | 709947 | CF-06 | CF-09 |
| Insured Pension Investors 1984 | 747549 | CF-05 | CF-09 |
| Insured Pension Investors 1985 | 756896 | CF-05 | CF-09 |
| Integrated Resources Inc | 050857 | CF-02 | CF-09 |
| Intercontinental Bank Miami Fla | 008126 | CF-04 | Remove. |
| Interprovincial Pipe Line System Inc | 895728 | None. | CF-10 |
| Interstate Brands Corp | 865484 | CF-03 | Remove. |
| Iowa Power Inc | 052499 | CF-08 | Remove. |
| Iowa Public Service Co /IA/ | 052502 | CF-09 | Remove. |
| Jamesway Corp | 053134 | CF-03 | CF-09 |
| Jorgensen Earle M Co /DE/ | 054003 | CF-04 | CF-09 |
| Joy Technologies Inc | 812944 | None. | CF-10 |
| Kendall International Inc | 851961 | None. | CF-10 |
| Landstar System Inc | 853816 | None. | CF-10 |
| Levi Strauss Associates Inc | 778977 | CF-02 | CF-03 |
| Louisiana Power & Light Co /LA/ | 060527 | CF-02 | CF-01 |
| LPL Technologies | 799315 | CF-03 | Remove. |
| MAI Basic Four Inc | 760436 | CF-03 | CF-09 |
| Change to MAI Systems Corporation | 760436 | CF-03 | CF-09 |
| Manhattan National Corp | 081952 | CF-04 | Remove. |
| Marrow Tech Inc | 829549 | CF-07 | CF-07 |
| Change to Advanced Tissue Sciences Inc | 829549 | CF-07 | CF-07 |
| McCrory Corp | 063801 | CF-03 | CF-09 |
| McCrory Parent Corp | 055211 | CF-03 | CF-09 |
| McDermott Inc | 225615 | CF-07 | CF-02 |
| Meridian Point Realty Trust 82 | 315138 | CF-07 | CF-05 |
| Meridian Point Realty Trust VII | 774653 | CF-04 | CF-05 |
| Metro Goldwyn Mayer | 778706 | CF-02 | CF-09 |
| Midwest Energy Co | 740072 | CF-02 | Remove. |
| Mississippi Power & Light Co | 066901 | CF-02 | CF-01 |
| MNC Financial Inc /MD/ | 062973 | CF-02 | CF-04 |
| National Gypsum Co | 070174 | CF-02 | CF-09 |
| Networth Inc | 869983 | None. | CF-10 |
| Neurex Corp | 884065 | None. | CF-10 |
| Newfio Corp | 888740 | None. | CF-10 |
| Newmont Gold Co | 793308 | CF-03 | CF-02 |
| New Orleans Public Service Inc | 071508 | CF-03 | CF-01 |
| Nordstrom Credit Inc | 757439 | CF-08 | CF-02 |
| North American Vaccine Inc | 856573 | None. | CF-10 |
| North Atlantic Energy Corp /NH | 880416 | CF-10 | CF-02 |
| North Shore Gas Co /IL/ | 110101 | CF-08 | CF-02 |

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE #33-6977 (FEBRUARY 23, 1993)—Continued

| Company name | CIK No. | Former group | New group |
|---|---|---|---|
| NVR LP | 792972 | CF-02 | CF-09 |
| Pactel Corp | 904255 | None. | CF-03 |
| PA Holdings Corp | 835763 | CF-02 | Remove. |
| Pegasus Gold Inc | 746961 | None. | CF-10 |
| Permian Partners LP | 812023 | CF-03 | Remove. |
| Playtex Beauty Care Inc | 817217 | CF-03 | CF-09 |
| Playtex FP Group Inc | 842699 | CF-10 | CF-09 |
| Playtex International Corp | 880821 | CF-10 | CF-09 |
| Playtex Investment Corp | 880820 | CF-10 | CF-09 |
| Premier Bancrop Inc | 761332 | CF-03 | CF-09 |
| Preston Corp | 716741 | CF-03 | Remove. |
| Primark Corp | 356064 | CF-04 | CF-09 |
| Primerica Corp /New/ | 831001 | CF-02 | CF-03 |
| Prospect Group Inc | 739169 | CF-02 | CF-09 |
| Protective Life Insurance Company | 310826 | None. | CF-04 |
| Quantum Chemical Corp | 070047 | CF-02 | CF-04 |
| Quanex Corp | 276889 | None. | CF-10 |
| Realmark Property Investors LP I | 312982 | CF-07 | CF-06 |
| Realmark Property Investors LP II | 704165 | CF-07 | CF-06 |
| Realmark Property Investors LP VI B | 822784 | CF-08 | CF-06 |
| Reliance Financial Services Corp | 083047 | CF-03 | CF-04 |
| Reliance Group Holdings Inc | 356395 | CF-03 | CF-04 |
| Reliance Group Inc/New/ | 700756 | CF-02 | CF-04 |
| Reliance Insurance Co | 083053 | CF-03 | CF-04 |
| Rockwell International Corp | 084636 | CF-02 | CF-01 |
| Ryder System Inc | 085961 | CF-02 | CF-03 |
| Sahara Resorts | 704435 | CF-01 | CF-04 |
| SCI Holdings Inc | 772973 | CF-02 | Remove. |
| Sears Credit Account Master Trust I | 869391 | None. | CF-02 |
| Sears Credit Account Trust 1990 A | 859257 | None. | CF-02 |
| Sears Credit Account Trust 1990 B | 860004 | None. | CF-02 |
| Sears Credit Account Trust 1990 C | 865227 | None. | CF-02 |
| Sears Credit Account Trust 1990 D | 868482 | None. | CF-02 |
| Sears Credit Account Trust 1990 E /New/ | 869844 | CF-10 | CF-02 |
| Sears Credit Account Trust 1991-A | 873084 | CF-10 | CF-02 |
| Sears Credit Account Trust 1991-B | 874783 | CF-10 | CF-02 |
| Sears Credit Account Trust 1991-C | 876858 | CF-10 | CF-02 |
| Sears Credit Account Trust 1991-D | 879209 | CF-10 | CF-02 |
| Shearson Lehman Brothers Holdings Inc | 806085 | CF-02 | CF-03 |
| Shearson Lehman Brothers Inc | 728586 | CF-02 | CF-03 |
| Sierra Capital Realty Trust VIII Co | 828957 | CF-09 | CF-05 |
| Silgan Holdings Inc | 849869 | CF-10 | CF-03 |
| Southmark Corp | 701996 | CF-03 | CF-09 |
| South Pointe Enterprises Inc | 838803 | None. | CF-10 |
| Specialty Retailers Inc /De/ | 846723 | CF-03 | CF-08 |
| Spelling Entertainment Inc | 845568 | CF-10 | CF-03 |
| Sprague Technologies Inc | 814564 | CF-03 | CF-03 |
| Change to American Annuity Group Inc | 894651 | CF-03 | CF-03 |
| Storer Communications Inc | 094679 | None. | CF-10 |
| Sunbeam Corp/De/ | 095370 | CF-03 | Remove. |
| Sunbeam Oster Company Inc/De/ | 003662 | None. | CF-10 |
| Sunwest Financial Services Inc | 036758 | CF-03 | Remove. |
| System Energy Resources Inc | 202584 | CF-02 | CF-01 |
| Tampa Electric Co | 096271 | CF-09 | CF-02 |
| Taylor Ann Holdings Inc | 850098 | CF-03 | Remove. |
| Taylor Ann Inc | 850090 | CF-10 | CF-10 |
| Change to Ann Taylor Inc | 850090 | CF-10 | CF-10 |
| Teppco Partners LP | 857644 | None. | CF-10 |
| Texaco Capital Inc | 708490 | CF-10 | CF-02 |
| Texaco Capital LLC | 913049 | None. | CF-03 |
| TLC Beatrice International Holdings | 835589 | CF-03 | Remove. |
| Tomkins Industries | ..... | CF-03 | Remove. |
| Transam Capital Corp | 851943 | CF-10 | CF-10 |
| Change to Pacific Animated Imaging Corp | 851943 | CF-01 | CF-10 |
| Transcapital Financial Corp | 099321 | CF-03 | CF-09 |
| Transco Energy Co | 099231 | None. | CF-02 |
| Transworld Airlines Inc | 278327 | CF-02 | CF-09 |
| UDC Homes Inc | 890326 | None. | CF-10 |
| UDC Universal Development LP | 769624 | CF-03 | Remove. |
| U Haul International Inc | 004458 | CF-09 | CF-03 |

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE #33-6977 (FEBRUARY 23, 1993)—Continued

| Company name | CIK No. | Former group | New group |
|---|---|---|---|
| Unicorp American Corp/De/New/ | 202172 | CF-02 | CF-05 |
| Change to Lincorp Holdings Inc | 202172 | CF-02 | CF-05 |
| Uniroyal Technology Corp | 890096 | None. | CF-10 |
| United Investors Management Co | 791262 | CF-03 | Remove. |
| United Shoppers of America Inc | 808715 | CF-08 | CF-08 |
| Change to MPTV Inc | 808715 | CF-08 | CF-08 |
| USAIR Inc/New/ | 714560 | CF-08 | CF-02 |
| Valley Bancorporation | 102661 | CF-03 | CF-07 |
| Wang Laboratories Inc | 104519 | CF-02 | CF-06 |
| Weirton Steel Corp | 849979 | CF-03 | CF-02 |
| Western Union Corporation | 106367 | CF-03 | CF-09 |
| Change to New Valley Corporation | 106367 | CF-03 | CF-09 |
| Zale Corp | 109156 | CF-02 | CF-05 |
| Z Axis | 723928 | None. | CF-10 |
| Total Number of Companies: 237 | | | |

Dated: October 21, 1993.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 93-26442 Filed 10-26-93; 8:45 am]

BILLING CODE 8010-01-P

**[Release No. 34-33081; File No. SR-NASD-93-36]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment to the Code of Arbitration Procedure To Facilitate the Pre-Hearing Settlement of Cases

October 20, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Section 41 of the NASD Code of Arbitration Procedure ("Code"). Below is the text of the proposed rule change. Proposed new language is in italics.

*Section 41(i)*

*(1) At any time more than 60 days after the answer is filed or more than 15 days before the arbitration hearing begins, any party may serve upon the adverse party an Offer of Award to be taken against the adverse party for money or property or to the effect specified in the Offer, with a statement of the costs and attorneys fees then accrued and a statement of the pertinent documents and facts supporting the amount of the Offer. A copy of the Offer and Award shall be filed with the Director of Arbitration in a sealed envelope and marked confidential.*

*(2) The Offer shall be deemed if the adverse party serves written notice of acceptance upon the offeror either within 30 days after service of the Offer or on the day prior to the commencement of the hearing, whichever is earlier. An Offer not accepted in said manner shall be deemed withdrawn and evidence thereof is not admissible except in a post arbitration hearing proceeding seeking recovery of attorneys fees and costs incurred after the date of the Offer of Award; and the jurisdiction of the arbitration panel shall extend to post hearing proceedings seeking recovery of such attorneys fees and costs. The fact that an Offer is made but not accepted does not preclude a subsequent offer. If an Offer and subsequent Offer are accepted on the same date, the Offer dated last shall be the one deemed to be accepted.*

*(3) If an Offer of Award is accepted, settlement shall be effected within 30 days of the notice of acceptance. In the event the settlement is not effected within 30 days, either party may then file the Offer and notice of acceptance with the NASD Arbitration Department which shall have issued an arbitrators' award for the terms of the accepted Offer.*

*(4) If the award obtained upon hearing of the case is not favorable to the offeree than the last Offer not accepted, then the offeree shall be obligated to pay the reasonable costs (including expert witness fees), and reasonable attorneys fees which were incurred by the offeror after the date of the Offer of Award, to the extent determined by the arbitration panel.*

*(5) Prior to post hearing proceedings, all parties are prohibited from disclosing the terms of an Offer of Award to the arbitration panel or otherwise using any Offer of Award to prejudice or taint the arbitration proceeding. Should a party disclose the terms of an Offer of Award made by an adverse party, the case shall be dismissed without prejudice upon the demand of the adverse party who made the Offer.*

*(6) Section 41(i) shall only be available in matters where the Statement of Claim seeks $250,000 or more in total damages. In any case where the Statement of Claim is unclear as to the amount of the damages being sought, the Director of Arbitration shall obtain clarification from the claimant which clarification shall then be provided to all parties.*

*(7) Section 41(i) shall expire two years after the effective date of this amendment.*

### II. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in

Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) The National Arbitration Committee and the NASD Board of Governors have recognized the concerns expressed by many members that claimants' attorneys refuse to engage in reasonable settlement discussions in connection with arbitration proceedings. Similar concerns have also been expressed that respondents' attorneys periodically refuse to address settlement in a reasonable and timely fashion. The refusal of claimants' and respondents' attorneys to engage in settlement discussions can unnecessarily increase the time and expense of resolving disputes. The NASD believes it would be beneficial to respond to these concerns by adding a rule to the Code which would encourage all parties to evaluate and resolve cases in a timely and reasonable manner.

The NASD is, therefore, proposing to adopt new subsection (i) to Section 41 of the Code to provide a procedure that would permit either party to an arbitration proceeding to make an Offer of Award to settle the case. However, the NASD recognizes that the concept of an offer of award provision is new to arbitration and that the concept may not be appropriate in small cases. The NASD is requesting, therefore, that the proposed rule change expire two years from the date of effectiveness in order to permit the NASD to reconsider the issue after gaining some experience with the new rule. Proposed Subsection (7) to Section 41(i) would implement the two-year provision. In addition, NASD is proposing that the terms of the proposed rule change provide that the rule will only be applicable to case where the amount in controversy is at least $250,000. Proposed Subsection (6) to Section 41(i) would implement this restriction. Approximately 30% of the ready cases as of March 31, 1993 meet this threshold test. The subsection further provides that in any case where the Statement of Claim is unclear as to the amount of damages being sought, the Director of Arbitration is authorized to obtain clarification from the claimant and shall provide the clarification to all parties to the aribration.

Subsection (1) of new Section 41(i) would permit an Offer of Award to be made any time 60 days after the answer is filed but more than 15 days before the arbitration hearing begins. The Offer of Award may be served by any party to an arbitration proceeding against an adverse party and may specify an award of money, property or another "effect specified in the Offer * * *." Thus, the Offer of Award may or may not specifically address the disposition of the fees required under Section 44 of the Code. The Offer of Award must be accompanied by a statement of the costs and attorneys fees accrued to date by the offeror and a statement of the pertinent documents and facts supporting the amount of the offer. A copy of the Offer of Award must be filed with the Director of Arbitration in a sealed envelope that is marked confidential.

The 60-day period generally would fall within 90 to 120 days after the filing of the claim. The NASD believes that the 60-day time period strikes the appropriate balance providing sufficient time for the respondent's attorney to weigh the value of the case and providing an opportunity to achieve settlement earlier in a case before substantial attorney fees have been accrued in preparation of the hearing. It is the understanding of the NASD that the costs of trial preparation incurred in the 15 days prior to the hearing form a significant amount of the attorneys fees associated with an arbitration proceeding. The NASD believes that the statement of costs and attorneys fees and the statement of pertinent documents and facts supporting the amount of the offer will significantly assist the offeree in determining the value of the case and whether to accept or reject an Offer of Award.

Pursuant to proposed Subsection (2) to Section 41(i), the Offer would be deemed accepted if the adverse party serves written notice of acceptance upon the offeror within 30 days after service of the Offer or on the day prior to the commencement of the hearing, whichever is earlier. During the 30-day time period during which the offeree can consider the Offer of Award, the offeree may request documents to assist in making an informed decision and a single arbitrator will review any such requests which are objected to by the offeror. The fact that an Offer of Award is made but not accepted would not preclude a subsequent Offer of Award with new or different terms. In order to avoid any conflicts if more than one Offer is outstanding, if an Offer and a subsequent Offer are accepted on the same date, the Offer dated last shall be the one deemed accepted.

The NASD is proposing that Subsection (3) to new Section 41(i) provide that if an Offer of Award is accepted, settlement shall be effected within 30 days of the notice of acceptance. The 30-day period was chosen because the NASD has found in the past that 30 days has been the time period necessary to issue checks and complete the settlement process. In the event that settlement in accordance with the Offer of Settlement is not effected within 30 days, either party may file the Offer and notice of acceptance with the NASD Arbitration Department. In this event, the Arbitration Department will request the previously-chosen panel of arbitrators (or, if necessary, will convene a panel) to issue a stipulated arbitration award for the terms of the accepted Offer. At that point, the arbitration award would be enforced by the NASD in the same manner as any other arbitration award.

Pursuant to proposed Subsection (2), if an offer is not accepted, it will be treated as if withdrawn. In the event the award obtained upon hearing of the case is not more favorable to the offeree than the last Offer not accepted, Subsection (4) would require that the offeree pay the reasonable costs, expert witness fees and reasonable attorneys fees which were incurred by the offeror after the date of the Offer of Award as determined by the arbitration panel. Subsection (2) further provides that evidence of the Offer of Award would not be admissible in the arbitration proceeding, but would be admissible in the post-hearing arbitration proceeding requested by the offeror regarding the recovery of attorneys fees and costs incurred after the date of the Offer of Award. If such a post-hearing arbitration proceeding is held at the request of an offeror, the jurisdiction of the arbitration panel is extended to the post-hearing proceedings to determine the recovery of attorneys fees and costs.

Further, if an offer is not accepted, proposed Subsection (5) to Section 41(i) would prohibit all parties from disclosing the terms of the rejected Offer of Award to the arbitration panel or otherwise using any Offer of Award to prejudice or taint the arbitration proceeding. In the event that a party discloses to the arbitration panel the terms of an Offer of Award, the case may be dismissed without prejudice upon demand of the adverse party. The NASD believes that it is appropriate that the party who is potentially prejudiced by the disclosure be the sole determiner as to whether to seek the sanction of dismissal of the case and that the disclosing adverse party be required to recommence its case before a new panel in order to cure the taint. In this event, a third party to the proceeding would not be permitted to object to the decision of the party who had been prejudiced by the disclosure.

As indicated above, the proposed rule change would, by its terms, expire within two years of the date of effectiveness unless the NASD files a rule change under Rule 19b–4 to amend the proposed rule change to extend its period of effectiveness or eliminate the expiration date. The NASD is proposing that the rule change only be applicable to and available to parties to arbitration cases filed on or after the effective date of the proposed rule change. Further, with respect to arbitration cases that commenced on or after the effective date of the proposed rule change, the NASD is proposing that the rule change remain applicable to and available to parties to arbitration cases that are pending at the time of the expiration of the proposed rule change. The NASD has requested that the proposed rule change be effective on a date that is within 30 days of SEC approval.

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)[1] of the Act in that the proposed rule change will facilitate the arbitration process in the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

The NASD's proposed rule change raises important issues regarding the conduct of arbitration proceedings. To evaluate both the statutory and procedural issues raised by the NASD's proposed rule change, the Commission requests that, in addition to any general comments concerning whether the proposed rule change is consistent with section 15A(b)(6) of the Act, which requires that the NASD's rules "promote just and equitable principles of trade, * * * and, in general, protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers," commentators address the following:

1. Given the reliance that arbitration rules place upon fact finding at the hearing itself, in place of extensive discovery proceedings, are parties, as a general matter, adequately able to assess an Offer of Award prior to the hearing?

a. Will the "statement of the pertinent documents and facts supporting the amount of the offer" required to be included in an Offer of Award allow parties to assess adequately an Offer prior to a hearing?

b. Could the risk of being assessed costs and attorneys fees under the proposed rule change produce an unreasonable burden on parties, particularly investors or associated persons of broker-dealers, to accept an Offer of Award?

c. Could the proposed rule change pressure investors or associated persons of broker-dealers to accept an Offer of Award for an amount less than one that the investor or associated person believes to be fair for such claim?

d. Do investors or associated persons have adequate access to alternate dispute resolution fora, other than the NASD arbitration forum, if they are concerned about the risks of paying opponents' attorney's fees associated with the Offer of Award procedure set out in the proposed rule change?

2. Given the broad latitude accorded arbitrators in resolving disputes, what is the degree of certainty with which either party can predict the amount of an award, and accordingly, the merits of an Offer of Award in relation to an arbitration award?

3. Are claimants, particularly investors and associated persons of broker-dealers, and respondents, particularly broker-dealers, equally able to bear the costs and attorney's fees of the other party?

a. Is the opportunity provided in the proposed rule change for a party to shift the cost of pursuing the arbitration to the opposing side, one that benefits claimants and respondents equally?

b. In settlement negotiations, do claimants ordinarily wait for respondents to initiate a settlement offer in response to the claim? Are claimants realistically in a position to make Offers of Award?

4. Should the proposed rule change establish a standard other than "reasonableness" to limit the amount of costs (including expert witness fees) and attorney's fees that must be paid by an offeree who had rejected an Offer of Award?

a. It is clear under the proposed rule change how arbitrators will exercise their discretion to reject or modify a schedule of attorney's fees or costs submitted by a party, either because the arbitrators believe these fees and costs to be unreasonable or based on some other standard?

b. Should payment be limited by the amount by which the Offer of Award exceeds the amount awarded, by some percentage of that amount, or by some percentage of the amount claimed, or by some percentage of the amount awarded?

5. Are attorney's fees based on in-house counsel, contingency fee arrangements and hourly charges likely to produce predictable and equitable litigation risks for parties when assessing an Offer of Award?

6. Are the significant variables in attorney's fees and other costs that the different categories of parties in an NASD arbitration reasonably incur likely to produce confusion for the parties or additional training requirements for arbitrators?

7. Should the proposed rule change explicitly exclude *pro se* parties, given that the proposed rule presupposes the presence of counsel?

8. Should the proposed rule change maintain the existing dollar threshold? Should the threshold be raised or lowered?

9. Should the proposed rule change include the requirement that parties pay attorney's fees and expert witness fees or should it be restricted to forum costs?

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

[1] 15 U.S.C. 78o–3.

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-26421 Filed 10-26-93; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-19809; 812-8498]

## The American Life Insurance Co. of New York, et al.; Application for Order

October 21, 1993.

**AGENCY:** Securities and Exchange Commission (the "Commission" or the "SEC").

**ACTION:** Notice of application for an order of exemption under the Investment Company Act of 1940 (the "1940 Act").

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**APPLICANTS:** The American Life Insurance Company of New York (the "Company"), Separate Account No. 2 of The American Life Insurance Company of New York ("Separate Account Two") and Mutual of America Life Insurance Company (the "Distributor", collectively with the Company and Separate Account Two, the "Applicants").

**RELEVANT 1940 ACT SECTIONS;** Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(c) and 27(c)(2) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction of distribution and mortality and expense risk charges from the assets of Separate Account Two in connection with the issuance and sale of certain variable annuity contracts (the "Contracts").

**FILING DATES:** The application was filed on July 23, 1993 and amended on October 1, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 666 Fifth Avenue, New York, New York 10103.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Bisset, Senior Attorney, at (202) 272-2058 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. The Company is an indirect, wholly-owned subsidiary of the Distributor that was organized as a stock life insurance company under the laws of the State of New York in 1955. The Company currently is authorized to transact business in all 50 states, the District of Columbia and the United States Virgin Islands. The Company engages in the sale of individual and group life insurance, annuities and pension plans. As of December 31, 1992, the Company had total assets of approximately $1.0 billion.

2. Separate Account Two is a separate account of the Company which is registered with the Commission as a unit investment trust. Separate Account Two is divided into twelve distinct subaccounts ("Separate Account Funds"), corresponding to the investment portfolios in which the Separate Account Funds' assets are invested (the "Investment Alternatives"), namely seven portfolios of Mutual of America Investment Corporation (the "Series Fund"); three portfolios of the Scudder Variable Life Investment Fund; the TCI Growth Fund of TCI Portfolios, Inc. and the Calvert Socially Responsible Series of Acacia Capital Corporation. The assets of Separate Account Two are the property of the Company. The Separate Account assets attributable to the Contracts and to other annuity contracts funded by Separate Account Two are not chargeable with liabilities arising out of any other business the Company may conduct. The income, capital gains and capital losses of each Separate Account Fund are credited to or charged against the net assets held in that Separate Account Fund, without regard to the income, capital gains and capital losses arising out of the business conducted by any of the other Separate Account Funds or out of any other business that the Company may conduct.

3. The Distributor is a mutual life insurance company organized under the laws of the State of New York in 1945. The Distributor is authorized to transact business in all 50 states and the District of Columbia. The Distributor engages in the sale of pension, retirement and related benefits on both a group and an individual basis for employees of not-for-profit, social welfare, charitable, religious, educational and government organizations. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940. The Distributor is the investment adviser of the Series Fund and the principal underwriter of variable annuity contracts issued by Separate Account Two.

4. The Contracts are individual variable accumulation annuity contracts designed to aid in retirement and long-term financial planning. The Contracts provide for the accumulation of payments on a completely variable basis, a completely fixed basis or a combination variable and fixed basis. Annuity payments under the contracts will be made on a fixed basis only.

5. In general, payments may be made in whatever amounts and at whatever frequency desired by Contract owners and permitted under applicable Internal Revenue Code provisions, subject to certain minimum amounts for initial payments. The Company may terminate a Contract and return amounts accumulated if no payments have been made for three consecutive years, the Contract owner's account value is less than $500 and the Contract owner has attained at least the age of 59½.

6. The Distributor will administer the Contracts on an at-cost basis. The Distributor will receive the proceeds of a daily charge of 0.65% on an annual basis for administrative expenses for account values allocated to any Fund other than the TCI Growth Fund, for which the administrative expenses are 0.45% on an annual basis (because TCI reimburses the Company at an annual rate of up to 0.20% for administrative expenses). In addition, the Distributor will receive the proceeds of a monthly deduction for administrative expenses of the lesser of $2.00 or 1/12 of 1% of account value. The revenues from the daily and monthly administrative charges are not expected to exceed the

costs of administering the Contracts. The Company may increase or decrease the daily and monthly administrative charges during the life of the Contract, but those charges may not be raised to a rate that would cause revenues from them to exceed the accumulated costs of administering the Contracts. The daily and monthly administrative charges will be deducted in reliance upon, and in compliance with the terms of Rule 26a–1 under the 1940 Act. These administrative charges will be deducted only during the Contracts' accumulation period.

7. The Company will deduct a daily charge of 0.50% of Separate Account Two's assets on an annual basis for mortality and expense risks assumed by the Company under the Contracts, of which 0.35% is for mortality risks and 0.15% for expense risks. The mortality risk charge may be decreased, but can never be greater than 0.35%. The expense risk charge may be decreased or increased. Applicants acknowledge that an increase of the expense risk charge to more than 0.15% would, under current law, require additional exemptive relief to that provided by an order granting this application.

8. The mortality risks assumed by the Company in connection with the Contracts arise from the Company's guarantees that it will make annuity payments in accordance with annuity tables provided in the Contracts, regardless of how long a Contract owner lives and regardless of any improvement in life expectancy generally. Thus, the Company assumes the risk that Contract owners, as a class, may live longer than has been estimated by its actuaries, so that payments will continue for longer than had been anticipated.

9. The expense risks assumed by the Company in connection with the Contracts arise primarily from the Company's guarantees in the Contracts to make annuity payments in certain instances in accordance with annuity tables provided in the Contracts, regardless of whether its estimates of the expenses it expects to incur over the lengthy period that annuity payments may be made will turn out to be correct. A second type of expense risk is assumed because, in order to determine that costs have risen sufficiently to justify raising its daily or monthly administrative charges, the Company would likely first have sustained losses (during a period when administrative costs exceeded revenues from administrative charges). Because the increased charges would be based upon expected future administrative costs, they would not be designed to recoup prior losses and the Company would bear the risk of such losses.

10. The Company will deduct a daily charge of 0.35% of Separate Account Two's assets on an annual basis for distribution and sales expenses related to sales of the Contracts. No front-end sales load is deducted from payments for the Contract and no deferred sales load is deducted from the proceeds of partial or complete withdrawals. The Contracts will be distributed and sold by salaried employees of the Distributor, who will not be paid commissions for sales.

11. Pursuant to a Distribution and Administration Agreement between the Company and the Distributor, revenues from the distribution charge will be paid to the Distributor and the Distributor, in return, will perform all distribution and sales functions for the Contracts. The Company will bear all distribution and sales expenses of the Contracts, including the payment of that portion of the salaries, pension and welfare benefits of registered representatives that are attributable to the sale and distribution of Contracts, as well as expenses for preparation of sales literature and other promotional activities. This charge is based upon the Company's current estimates of the distribution costs attributable to the Contracts over the lifetime of the Contracts, and is not designed or expected to generate a profit. If the charge is insufficient to cover the actual distribution costs, then the Company will bear the loss. Conversely, if the charge proves more than sufficient, then the excess will be profit to the company and will be available for any proper corporate purpose. Although the Contracts permit the distribution charge to be increased or decreased, Applicants acknowledge that, under current law, any order granting the relief requested in this application would permit no more than 0.35% distribution charge and that an increase that would make the charge higher than 0.35% could only be effected after obtaining additional exemptive relief.

12. The Company will monitor Separate Account Two to ensure that aggregate deductions for distribution do not exceed 9% of aggregate payments for any Contract owner.

13. Currently, no deductions from premiums or charges against the assets of any Separate Account Fund are made for transfers or for the Company's federal income taxes attributable to that Fund's operations or to premiums received. However, the Contracts permit the Company to add those or other charges in the future. Any such additional charge would apply only during the accumulation period and would be imposed only if and to the extent permitted under the 1940 Act or under the terms of an exemptive rule or order.

**Applicants' Legal Analysis**

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the 1940 Act or any rule or regulation thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, as here pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants seek an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the issuance and sale of the Contracts providing for the mortality and expense risks and distribution charges. Applicants represent that the .50% per annum mortality and expenses risks charge is within the range of industry practice for comparable variable annuity products. This representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as current levels of charges, annuity purchase rate guarantees, any contractual right to increase charges above current levels, the existence of other charges, the number of transfers permitted without charge and the ability to make free withdrawals. The Company will maintain at its home office available to the Commission, memoranda setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

4. Applicants acknowledge that it is possible that the Company's revenues from the distribution charge could be

less than its costs of distributing the Contracts. In that case, the excess distribution costs would have to be paid out of the Company's general assets, including the profits, if any, from the mortality and expense risks charges. In those circumstances, a portion of the mortality and expense risks charge might be viewed as providing for a portion of the costs relating to the distribution of the Contracts. Notwithstanding, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Separate Account Two and the Contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Company at its service office and will be available to the Commission.

5. The Company represents that Separate Account Two will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have that plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of that fund within the meaning of Section 2(a)(19) of the 1940 Act.

6. The Contracts are sold by salaried employees of the Distributor with no front-end or deferred sales charges. Because the Company will ensure that aggregate deductions will never exceed 9% of aggregate payments under any Contract, the difference between the proposed distribution arrangement and a 9% front-end sales load is that the payments for distribution will either be smaller, later, or both smaller and later than such a front-end load. Accordingly, at any level of investment performance, the proposed distribution charge would be more favorable to Contract owners than a front-end sales load of 9%.

## Conclusion

For the reasons set forth, Applicants represent that the exemptions requested in this application are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–26420 Filed 10–26–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19906; 812–8416]

## The Latin America Investment Fund, Inc., et al.; Application for Exemption

October 21, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** The Latin America Investment Fund, Inc., The Latin America Equity Fund, Inc., The Chile Fund, Inc., The Brazilian Equity Fund, Inc., The Emerging Markets Telecommunications Fund, Inc., The Indonesia Fund, Inc., The First Israel Fund, Inc., The Portugal Fund, Inc., and Strategic Global Income Fund, Inc. (the "Closed-End Funds"), Emerging Markets Debt Fund, and The RBB Fund, Inc. (the "Open-End Funds"), and any investment funds formed in the future for which BEA Associates serves as investment adviser (together the "Funds"); and BEA Associates (the "Adviser").

**RELEVANT ACT SECTIONS:** Order requested under sections 6(c) and 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants seek an amended order to permit the Funds to co-invest, with one another and certain unregistered investment vehicles advised by the Adviser, in securities acquired through privately-negotiated transactions (the "Co-Investments").

**FILING DATE:** The application was filed on June 2, 1993 and amended on August 19, 1993. By letter dated October 15, 1993, applicants have agreed to file an amendment during the notice period, the substance of which is incorporated herein.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o BEA Associates, One Citicorp Center, 153 East 53rd Street, 58th floor, New York, New York 10022–4669.

**FOR FURTHER INFORMATION CONTACT:** Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. Each Closed-End Fund is a closed-end, non-diversified, management investment company registered under the Act. Each Open-End Fund is an open-end, non-diversified management investment company registered under the Act. The shares of each Fund are registered under the Securities Act of 1933, and the shares of each Closed-End Fund are listed for trading on the New York Stock Exchange.

2. The Adviser serves as the investment adviser to each of the Funds. The Adviser, a general partnership organized under New York state law, is registered under the Investment Advisers Act of 1940. The Adviser has sole investment discretion for each Fund and makes all decisions affecting assets in the Funds' portfolios under the supervision of each Fund's Board of Directors or Board of Trustees (each a "Board") and in accordance with each Fund's stated policies, except that (a) Salomon Brothers Asset Management, Inc., acts as investment adviser to The Latin America Investment Fund, Inc. with respect to sovereign debt investments, and (b) Mitchell Hutchins Assets Management Inc. ("Mitchell Hutchins") acts as the investment adviser to the Strategic Global Income Fund, Inc. while the Adviser serves as that Fund's Latin America debt adviser pursuant to a contract between Mitchell Hutchins and the Adviser.

3. In 1992, applicants received an order (the "Prior Order") [1] from the SEC to permit any one or more Funds to make Co-Investments concurrently with one or more other Funds and/or one or more Unregistered Funds (as defined below), subject to certain conditions. The present application, which adds certain additional Funds, seeks two

[1] Investment Company Act Release Nos. 18557 (July 21, 1992) (notice), and 18609 (Aug. 18, 1992) (order). The order sought by this application will, if issued, supersede the Prior Order.

changes to the Prior Order: (a) To remove any geographic limitation on the activities of the Funds participating in a Co-Investment or on the situs of operations or jurisdiction of organization of portfolio companies; and (b) to provide that the unregistered investment vehicles with which the Funds may co-invest may include both domestic and offshore funds.

4. In addition to serving as adviser to the Funds, the Adviser also serves as investment adviser to 13 investment funds that are not required to be registered under the Act. These funds: (a) Are exempt from registration under the Act pursuant to section 3(c)(1) because their outstanding securities are beneficially owned by less than 100 persons; or (b) are not subject to registration pursuant to section 7(d) because they are not organized or otherwise created under the laws of the United States or any state, have not made use of the mails or any means or instrumentality of interstate commerce in connection with any public offering of their securities, and their outstanding securities are beneficially owned by less than 100 United States persons. These funds, along with any similar entity advised by the Adviser in the future, are included in the term "Unregistered Funds."

5. Applicants submit that participation by the domestic Unregistered Funds in the Co-Investments will not result in their being required to register as investment companies under the Act. It is contemplated that each domestic Unregistered Fund would have a distinct investment focus, such as a particular country, geographic region or industry, and consequently would have substantially different investment portfolios. This situation is different from a situation where an adviser provides an investment management service to clients on a nonindividualized basis. The Funds and the Unregistered Funds are not a group of advisory accounts managed on a nonindividualized basis. Rather, each Fund and each Unregistered Fund will be given individual treatment based on the Adviser's awareness of each entity's investment goals. Consequently, the entering into Co-Investments from time to time among one or more Funds and Unregistered Funds should not cause the exemption from the definition of investment company in section 3(c)(1) to be unavailable to domestic Unregistered Funds.

6. The ability to participate in Co-Investments will benefit the Funds by increasing favorable investment opportunities available to them. Co-Investments may permit the Funds to participate in investment opportunities from which they would otherwise be precluded by their size, permit the Funds to increase the diversification of their portfolio holdings, and make large amounts of capital available to portfolio companies, perhaps enabling the Funds to invest on more favorable terms. Because each Fund and each Unregistered Fund may invest in some of the same investment opportunities, in the absence of the relief sought hereby, a Fund would be denied an investment opportunity in a company each time another Fund or an Unregistered Fund proposed to invest in that company concurrently otherwise than on a securities exchange or an over-the-counter market. This would adversely affect the Fund, particularly in countries where investment opportunities in sound companies are more limited than in the United States.

7. The SEC's Division of Investment Management has recommended exempting joint transactions from section 17(d) where the investment company and its affiliates participate on the same terms, except for the amount of their participation.[2] Nevertheless, applicants agree that any securities acquired as Co-Investments pursuant to the terms of either the Prior Order or the proposed order (including the exercise of any warrants) will comply with the terms of the orders, notwithstanding the subsequent adoption of any rule under section 17(d) that provides broader relief than that permitted by the orders, unless applicants receive no-action assurances from the staff of the Division of Investment Management.[3]

## Applicants' Legal Conclusions

1. Section 17(d) of the Act and rule 17d–1 thereunder, in the absence of an exemption granted by the SEC, preclude an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company, or a company controlled by such registered investment company, is a participant. Under section 2(a)(3) of the Act, an affiliated person of another person includes any person directly or indirectly controlling, controlled by, or under common control with such other person. Where two investment companies have in common an investment adviser, directors, and/or officers, the companies may be considered to be under common control and, therefore, affiliated persons of each other.

2. The terms of the proposed arrangements will not be less advantageous to any Fund or Unregistered Fund than they are to any other Fund or Unregistered Fund. The proposed Co-Investments will be consistent with the provisions, policies, and purposes of the Act since each Fund will be offered the opportunity to participate in the transactions with each other participating Fund or Unregistered Fund on an identical basis. For these reasons, applicants assert that the Co-Investments meet the standards for granting exemptive relief under section 17(d) and rule 17d–1.

## Applicants' Conditions

Applicants agree that any amended order of the Commission permitting the Co-Investments will be subject to the following conditions:

1. No Co-Investments (except for follow-on investments made pursuant to condition 8 below) will be made with respect to portfolio companies ("Portfolio Companies") in which the Adviser, any Fund or Unregistered Fund, or any affiliated person thereof has previously acquired an interest.

2. The Boards of each Fund will be comprised of a majority of non-interested board members. The Board of each Fund participating in a Co-Investment, including a majority of the non-interested board members, will approve Co-Investments in advance. To facilitate each Board's determinations, the Adviser will provide the Board of a Fund with periodic information listing all investments made by the other Funds and the Unregistered Funds that would be suitable for investment by a Fund, other than those effected on an exchange or in an over-the-counter market.[4]

[2] See Protecting Investors: A Half Century of Investment Company Regulation, pp. 494–495 (May 1992).

[3] The conditions to the application include detailed procedures regarding the disposition of securities and follow-on investments. To allow the staff of the Division of Investment Management to consider whether existing Co-Investments should be subject to the conditions after adoption of any rule under section 17(d), applicants have agreed to comply with these procedures with regard to existing Co-Investments unless they receive no-action assurances.

[4] Although over-the-counter market transactions may be broadly defined to include every transaction other than those actually occurring on a securities exchange, for purposes of this application, the term means an organized market of broker-dealers regularly buying and selling securities through a communications network. It specifically excludes isolated purchase and sale transactions (referred to herein as "privately-negotiated transactions"), the terms of which are individually negotiated between

Continued

3. (a) Before a Co-Investment, the Adviser will make a preliminary determination as to whether each particular Co-Investment opportunity meets an individual Fund's applicable investment objective, policies and restrictions. A particular Co-Investment will be deemed eligible for investment by all Funds for which the Adviser makes a favorable determination ("eligible Funds"). Co-Investment opportunities will be offered to eligible Funds in amounts proportionate to total assets. The Adviser will maintain written records of the factors considered in any preliminary determination.

(b) Following the making of the determination referred to in paragraph (a), information concerning the proposed Co-Investment will be distributed to the Board of each eligible Fund. Such information will be presented in written form and will include the name of each eligible Fund and the maximum amount offered each eligible Fund.

(c) Information regarding the Adviser's preliminary determinations referred to in paragraph (a) will be reviewed by the Board of each eligible Fund, including the non-interested board members. Each Board, including a majority of the non-interested board members, will make an independent decision as to whether to participate and the extent of participation in a Co-Investment based on such factors as are deemed appropriate under the circumstances. If a majority of the non-interested board members of a Fund determines that the amount proposed to be invested by the Fund is not sufficient to obtain an investment position that they consider appropriate under the circumstances, the Fund will not participate in the Co-Investment. Similarly, a Fund will not participate in a Co-Investment if a majority of the non-interested board members of the Fund determines that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate under the circumstances, although the non-interested board members of a Fund may make a determination that the Fund take other than their allotted portion of an investment, pursuant to condition 5 below. A Fund will only make a Co-Investment if a majority of the non-interested board members of the Fund prior to making the Co-Investment conclude, after consideration of all information deemed relevant, that the investments by any other participant Fund or participant Unregistered Fund would not disadvantage the Fund in the making of such investment, in maintaining its investment position or in disposing of such investment, and that participation by the Fund would not be on a basis different from or less advantageous than that of any other participant Fund or participant Unregistered Fund. The non-interested board members of a Fund will maintain at the Fund's office written records of the factors considered in any decision regarding the proposed Co-Investment.

(d) The non-interested board members of a Fund will, for purposes of reviewing each recommendation of the Adviser, request such additional information from the Adviser as they deem necessary for the exercise of their reasonable business judgment, and they also will employ such experts, including lawyers and accountants, as they deem appropriate for the reasonable exercise of this oversight function.

4. The Board of a Fund, including a majority of the non-interested board members, will make their own decision and have the right to decide not to participate in a particular Co-Investment. There will be no consideration paid to the Adviser or any affiliated person of BEA, directly or indirectly, including without limitation any type of brokerage commission, in connection with a Co-Investment. However, the Adviser and affiliated persons of BEA will continue to receive advisory and other fees from the Funds and the Unregistered Funds and may participate indirectly in a Co-Investment through their existing interests in a Fund or an Unregistered Fund.

5. Each Fund and each Unregistered Fund will be entitled to purchase a portion of each Co-Investment equal to the ratio of a participating Fund's or Unregistered Fund's, as the case may be, total assets to the total assets of each other Co-Investment participant. Any Co-Investment participant may determine not to take its full allocation, as long as, in the case of a Fund, a majority of the non-interested board members determines that not doing so would be in the best interest of the Fund. All follow-on investments (as defined in condition 8 below), including the exercise of warrants or other rights to purchase securities of the issuer, will be allocated in the same manner as initial Co-Investments. If a Fund or an Unregistered Fund decides to participate in a Co-Investment opportunity to a lesser extent than its full allocation, that entity's portion may be allocated to the other Co-Investment participants based on their respective total assets. If one or more Funds decline to participate in a Co-Investment opportunity, the remaining Funds and the Unregistered Funds shall have the right to pursue such investment independently. Similarly, if one or more Unregistered Funds decline to participate in a Co-Investment opportunity, the remaining Unregistered Funds and the Funds shall have the right to pursue such investment independently.

6. Co-Investments in securities by a Fund with any other fund or Unregistered Fund will consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, purchased at the same unit consideration, and the approval of such transactions, including the determination of the terms of the transactions, by the Fund's non-interested board members will be made in the same time period.

7. Except as described below, the Funds and the Unregistered Funds will participate in the disposition of securities held by them as Co-Investments on a proportionate basis at the same time and on the same terms and conditions (a "lock-step" disposition). For this purpose, a distribution of securities to the partners or shareholders of an Unregistered Fund upon dissolution shall not be deemed a "disposition" of securities. (However, to the extent that an Unregistered Fund distributes securities in dissolution to partners or shareholders who are affiliated persons of the Funds, such partners of shareholders will be bound by the lock-step disposition procedures established herein.) If a Fund or an Unregistered Fund elects to dispose of a security purchased in a Co-Investment with one or more Funds or Unregistered Funds, notice of the proposed sale will be given to the non-interested board members of the relevant Fund(s) and the relevant Unregistered Fund(s) at the earliest practical time. The Funds and the Unregistered Funds will participate in the disposition of such security on a lock-step basis, unless the non-interested board members of a Fund determine that the Fund should not participate in such sale or not participate on a lock-step basis. A Fund need not participate on a lock-step basis in the disposition of securities sold by any other Fund or an Unregistered Fund if the non-interested board members of the Fund find that the retention or sale, as the case may be, of the securities is

an issuer and an investor or small group of investors or between investors directly without the involvement of a broker or dealer and the use of an organized trading facility. Since transactions on an exchange or over-the-counter market can be effected at a price available to all market participants at any time, disclosure about these types of transactions would not provide any benefit to the Funds in evaluating compliance with the conditions contained in the application.

fair to the Fund and that the Fund's participation or choice not to participate in the sale on a lock-step basis is not the result of overreaching by and other Fund or Unregistered Fund. If such a finding is not made, then the relevant Fund must participate in such sale on the basis of a lock-step disposition. Like a Fund, an Unregistered Fund may elect not to participate in a sale of securities held as Co-Investments or not to participate on a lock-step basis. If at any time the result of a proposed disposition of any portfolio security held by a Fund or an Unregistered Fund would alter the proportionate holdings of each class of securities held by the other Funds and Unregistered Funds holding the Co-Investment, then the non-interested board members of the Fund or Funds involved must determine that such a result is fair to the relevant Fund(s) and is not the result of overreaching by any other Fund or Unregistered Fund. The non-interested board members will record in the records of the Funds the basis for their decisions as to whether to participate in such sale.

8. If a Fund of an Unregistered Fund determines that it should make a "follow-on" investment (i.e., an additional investment in a Portfolio Company in which a Co-Investment has been made pursuant to the order requested hereby) in a particular Portfolio Company whose securities are held by it and one or more Funds or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to such other Fund(s), including its or their non-interested board members at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by a Fund in a follow-on investment and provide the recommendation to the non-interested board members of the Fund along with notice of the total amount of the follow-on investment. Each Fund's non-interested board members will make their own determination with respect to follow-on investments. Follow-on investments will be entered into on the same basis as initial Co-Investments and will be subject to the same approval procedure as those required for initial Co-Investments. Assuming that the amount of a follow-on investment available to a Fund is not based on the amount of the Fund's initial Co-Investment, the relative amount of investment by each Fund participating in a follow-on investment will be based on a ratio derived by comparing the total current assets of each participating Fund and Unregistered Fund with the total amount of the available follow-on investment. Each Fund will participate in such investment if a majority of its non-interested board members determines that such action is in the best interest of the Fund. The non-interested board members of each Fund will record in their records the recommendation of the Adviser and their decision as to whether to engage in a follow-on transaction with respect to that portfolio company, as well as the basis for such decision.

9. A decision by the Board of a Fund (i) not to participate in a Co-investment, (ii) to take less or more than the Fund's full *pro rata* allocation or (iii) not to sell, exchange or otherwise dispose of a Co-Investment in the same manner and at the same time as another Fund or an Unregistered Fund shall include a finding that such decision is fair and reasonable to the Fund and not the result of overreaching of the Fund or its stockholders by the Unregistered Funds. The non-interested board members of each Fund will be provided quarterly for review all information concerning Co-Investments made by the Funds and the Unregistered Funds, including Co-Investments in which the Fund declined to participate, so they may determine whether all Co-Investments made during the preceding quarter, including those Co-Investments they declined, complied with the conditions set forth above. In addition, the non-interested board members of each Fund will make and approve changes to the standards established for Co-Investments by the Fund as the non-interested board members deem necessary; provided, however, that such changes conform to these conditions.

10. No non-interested board member of a Fund will be an affiliated person of any Unregistered Fund or have had, at any time since the beginning of the last two completed fiscal years of any Unregistered Fund, a material business or professional relationship with any Unregistered Fund.

11. Each Fund and each Unregistered Fund will each bear its own expenses associated with the disposition of portfolio securities. The expenses, if any, of distributing and registering securities under the Securities Act of 1933 Act sold by one or more Funds and/or Unregistered Funds at the same time will be shared by selling Fund(s) and Unregistered Fund(s) in proportion to the relative amounts they are selling.

12. Neither the Adviser nor any affiliated person of BEA (other than the Unregistered Funds pursuant to any order issued on this application) nor any director or trustee of a Fund (other than indirectly as a beneficial owner of an interest in the Fund on whose board such director or trustee serves) will participate in a Co-Investment with one or more Funds unless a separate exemptive order with respect to such Co-Investment has been obtained. For this purpose, the term "participate" shall not include either the existing interests of the Adviser or affiliated persons of BEA in, or their management fee and expense reimbursement arrangements with, Unregistered Funds.

13. Each Fund will maintain all records required of it by the Act, and all records referred to or required under these conditions will be available for inspection by the Commission. The Funds will also maintain the records required by section 57(f)(3) of the Act as if each of the Funds were a business development company and the Co-Investments were approved by the non-interested directors under section 57(f).

14. With respect to a Fund for which the Adviser does not have authority to make investment decisions with respect to all of the assets of the Fund, the relief sought hereby shall apply only to Co-Investments made using Fund assets over which the Adviser has investment discretion.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-26419 Filed 10-26-93; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-19807; 812-8564]**

## Massachusetts Investors Trust, et al.; Application for Exemption

October 21, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Massachusetts Investors Trust, MFS Series Trust I, MFS Managed Sectors Fund, MFS Series Trust II, MFS Emerging Growth Fund, MFS Lifetime High Income Fund, MFS Series Trust III, MFS Series Trust IV, MFS Series Trust V, MFS Series Trust VI, MFS Series Trust VII, MFS Series Trust VIII, MFS Fixed Income Trust, MFS Municipal Series Trust, MFS Growth Opportunities Fund, MFS Government Mortgage Fund, MFS Government Securities Fund, Massachusetts Investors Growth Stock Fund, MFS Government Limited Maturity Fund, MFS Institutional Trust (collectively, the above are the

"Trusts"), Massachusetts Financial Services Company ("MFS"), Lifetime Advisers, Inc. ("Lifetime"), and MFS Financial Services Inc. ("FSI").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) to amend a previous order granting relief from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order that would amend a prior order that permitted the issuance of multiple classes of shares and the imposition, and under certain circumstances the waiver, of a contingent deferred sales charge ("CDSC"). The amended order would permit applicants to waive the CDSC for two additional types of redemptions: (a) Where the redemption proceeds are reinvested in a bank collective investment fund ("CIF"); and (b) where the amount invested represents redemption proceeds from a CIF.

**FILING DATE:** The application was filed on September 10, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 500 Boylston Street, Boston, Massachusetts 02116.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. The Trusts are organized as open-end management investment companies and some are also organized as series companies. In addition to the Trusts, applicants request that the relief be extended to (a) any future open-end management investment company (including all series thereof) for which MFS, Lifetime, or any majority-owned subsidiary of MFS is the investment adviser or for which FSI or any majority-owned subsidiary of MFS is the principal underwriter, and (b) any existing open-end management investment company (and all existing and future series thereof) not currently advised by MFS, Lifetime, or a majority-owned subsidiary of MFS or distributed by FSI or a majority-owned subsidiary of MFS for which MFS, Lifetime, or any majority-owned subsidiary of MFS may in the future serve as investment adviser or for which FSI or any majority-owned subsidiary of MFS may in the future serve as principal underwriter (collectively, with the Trusts, the "Funds").

2. MFS acts as each Trusts' investment adviser, except for MFS Lifetime High Income Fund for which Lifetime acts as investment adviser. FSI acts as the distributor of all the Trusts, except for MFS Institutional Trust.

3. Applicants previously sought a conditional order under section 6(c) of the Act to permit the assessment and, under certain circumstances, waiver of a CDSC on redemptions of shares (the "Existing Order").[1] Most of the Trusts currently offer or intend to offer two classes of shares to investors at either (a) net asset value plus a front-end sales load (or subject to a CDSC in case of certain large volume purchases), or (b) net asset value plus a CDSC of up to 6%.

4. Applicants request an amendment of the Existing Order to permit applicants to waive or reduce the CDSC in two additional circumstances: (a) in connection with redemptions of shares of a Fund and the reinvestment of the proceeds in a bank collective investment fund (a "CIF"), and (b) in connection with redemptions of shares of a Fund where the amount invested in the Fund represents redemption proceeds from a CIF. A CIF is a collective trust maintained by a bank. CIFs generally have multiple investment portfolios and are available exclusively for investment by certain qualified corporate or governmental employee benefit plans.

5. FSI currently intends to distribute a CIF as an additional investment option for qualified retirement plans utilizing MFS investment products. This CIF (the "MFS CIF") will be established as a separate fund within the BT Pyramid GIC Fund (the "GIC"). The BT GIC invests in various types of fixed-income securities, and is established within the General Employee Benefit Trust by Bankers Trust Company as trustee of the trust. The MFS CIF will invest exclusively in the BT GIC. As bank collective investment funds, both the MFS CIF and the BT GIC are exempt from registration under the Act pursuant to sections 3(c)(3) or 3(c)(11). Units of the MFS CIF and BT GIC are exempt from registration under the Securities Act of 1933 pursuant to section 3(a)(2) but are regulated by state or federal banking laws or regulations.

### Applicants' Legal Analysis

1. Applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to waive or reduce the CDSC as described above. Applicants submit that the requested exemption, as required by the standards for an exemption under section 6(c) of the Act, is in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

### Applicants' Condition

Applicants agree that the order of the Commission granting the requested relief will be subject to the following condition:

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, (see Investment Company Act Release No. 16619 (Nov. 2 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–26418 Filed 10–26–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release Nos. 19527 (June 18, 1993) (notice) and 19572 (July 14, 1993) (order). The Existing Order also permits the issuance and sales of an unlimited number of classes of securities by the Funds.

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying

the public that the agency has made such a submission.

**DATES:** Comments should be submitted on or before November 26, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*Agency clearance officer:* Cleo Verbillis, Small Business Administration, 409 Third Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

*OMB reviewer:* Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

*Title:* Counselor's Case Report

*Form No.:* SBA Form 641A

*Frequency:* On Occasion

*Description of Respondents:* SBI and SCORE Counselors

*Annual Responses:* 450,000

*Annual Burden:* 90,000

Dated: October 21, 1993.

**Cleo Verbillis,**

*Chief, Administrative Information Branch.*

[FR Doc. 93–26436 Filed 10–26–93; 8:45 am]

BILLING CODE 8025–01–M

## Delegation of Authority No. 12–D, Revision 3, Redelegation of Disaster Assistance

Delegation of Authority No. 12–D (Revision 2) is hereby superseded by Delegation of Authority No. 12–D (Revision 3). Delegation of Authority No. 12–D sets forth the authority delegated by the Administrator to the Assistant Administrator for Disaster Assistance for the purpose of administering SBA's Disaster Assistance program. Further, this delegation delineates the authority which has been redeveloped to subordinate positions. This document amends that delegation to reflect an increase in the aggregate amount of disaster assistance available to a single borrower, from $500,000 to $1,500,000, for disasters occurring on or before April 1, 1993. This statutory change is set forth in the Emergency Supplemental Appropriations for Flood Relief, Public Law 103–75, 107 Stat. 739. Furthermore, this document amends the delegation to clarify the duties of certain officials within the SBA Office of Disaster Assistance. Delegation of Authority 12–D (Revision 3) reads as follows:

I. The following authority relating to disaster assistance activities is hereby delegated to the specific positions as indicated herein:

A. To the Assistant Administrator for Disaster Assistance as follows:

1. To declare a disaster loan area in instances where the President has determined, pursuant to Public Law 100–707, as amended, that a "major disaster" has occurred, or to declare a disaster loan area for Economic Injury Disaster loans upon notification that the Secretary of Agriculture has declared a natural disaster for that area.

2. To amend declarations made under authority of paragraph A.1 above.

3. To authorize the acceptance of disaster loan applications after expiration of the original disaster period or extension thereof.

4. To approve or decline applications for home or business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans, including waiving the limit of $1,500,000 for major sources of employment as permitted by section 7(c)(3) of the Small Business Act, 15 U.S.C. 636(c)(3).

5. To cancel, reinstate, modify, and amend authorizations for disaster loans.

6. To extend disbursement periods without limitation for disaster loans.

7. To determine eligibility and make size determinations of disaster loan applicants.

8. To close, disburse, and service approved disaster loans.

9. To establish disaster field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

10. To appoint any lender in the processing area as a processing representative.

11. To hire, reassign, and terminate disaster permanent, cadre, and temporary employees, as necessary.

12. To take necessary actions with respect to personnel, financial management, and administrative activities.

13. To contract for supplies, materials, and equipment, printing (Government sources only), transportation, communications, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to limitations contained in section 257 (a) and (b) of that chapter.

14. To amend, suspend, or revoke authority delegated to any position listed below.

15. The authority delegated herein may be redelegated, except for the authority provided in paragraphs A.1 and A.2 above.

16. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in such position.

II. Pursuant to the authority delegated to the Assistant Administrator for Disaster Assistance, authority relating to disaster assistance activities is hereby redelegated as follows:

A. To the Area Director (Disaster) as follows:

1. To approve, up to $1,000,000, or decline applications for home and business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for disaster loans.

3. To authorize the acceptance of disaster loan applications after expiration of the original disaster period or extension thereof.

4. To determine eligibility and make size determinations of disaster loan applicants.

5. To extend disbursement periods, without limitations, for disaster loans.

6. To close, disburse, and service approved disaster loans, except loans which the delegatee previously approved or recommended approval.

7. To establish disaster field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

8. To appoint any lender in the disaster area as a processing representative.

9. To hire, reassign, and terminate disaster permanent, cadre, and temporary employees, as necessary.

10. To take necessary actions with respect to personnel, financial management, and administrative activities.

11.To contract for supplies, materials, and equipment, printing (Government sources only), transportation, communications, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to

limitations contained in section 257 (a) and (b) of that chapter.

12. To amend, suspend, or revoke authority delegated to any position listed below.

13. The authority delegated herein may not be redelegated.

14. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

B. To the Assistant Area Director for Loan Processing as follows:

1. To approve, up to $1,000,000, or decline applications for home and business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for disaster loans.

3. To authorize the acceptance of disaster loan applications after expiration of the original disaster period or extension thereof.

4. To determine eligibility of disaster loan applicants.

5. To extend disbursement periods without limitation for disaster loans.

6. To close, disburse, and service approved unsecured disaster loans, except loans which the delegatee previously approved or recommended approval.

7. The authority delegated herein may not be redelegated.

8. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

C. To the Disaster Branch Manager as follows:

1. To establish disaster branch field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

2. To authorize the acceptance of disaster loan applications after expiration of the original disaster period or extension thereof.

3. To hire, reassign, and terminate disaster temporary employees as necessary, and reassign permanent and cadre employees as necessary.

4. To take necessary actions with respect to personnel, financial management, and administrative activities.

5. To contract for supplies, materials, and equipment, printing (Government sources only), transportation, communications, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to the limitations contained in section 257(a) and (b) of that chapter.

6. The authority delegated herein may not be redelegated.

7. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

D. To the Supervisory Loan Officer (Disaster) as follows:

1. To approve, up to $750,000, or decline applications for home and business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for disaster loans.

3. To determine eligibility of disaster loan applicants.

4. To extend disbursement periods for disaster loans up to 6 months cumulative (on fully undisbursed loans only).

5. To extend disbursement periods for partially disbursed disaster loans for up to 6 months per extension, without cumulative limitation.

6. To close, disburse, and service approved unsecured disaster loans, except loans which the delegatee previously approved or recommended approval.

7. The authority delegated herein may not be redelegated.

E. To the Area Counsel (Disaster) as follows:

1. To close, disburse, and service approved disaster loans. This authority may not be redelegated.

2. To extend initial disbursement period for up to 90 days for disaster loans when there is no impact on credit, financial or repayment considerations. This authority may be redelegated to the Attorney, Area Office (Disaster).

3. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

F. To the Attorney, Area Office (Disaster) as follows:

1. To close, disburse, and service approved disaster loans.

2. The authority delegated herein may not be redelegated.

3. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

Dated: October 20, 1993.

**Erskine B. Bowles,**

*Administrator.*

[FR Doc. 93-26431 Filed 10-26-93; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CDG 93-068]**

### Towing Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** 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 of a meeting of the Towing Safety Advisory Committee (TSAC) and workgroups. Preliminary meetings of the TSAC workgroups will be held on Thursday, November 18, 1993, in room 2415 of U.S. Coast Guard Headquarters. These meetings are scheduled to run from 8:30 a.m. to 4 p.m. Attendance is open to the public. The Committee meeting will be held on Friday, November 19, 1993, from 8:30 a.m. to 12 noon in the same room. This meeting is also open to the public. The agenda for the Committee meeting follows:

1. Workgroup Reports
   a. Model Company Concept
   b. Training Standards for Entry-Level
   c. Improve Timeliness and Effectiveness of Regulation Input
2. Other Topics of Discussion

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Executive Director no later than the day before the meeting.

Written statements or materials may be submitted for presentation to the Committee at any time; however to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Executive Director by November 14, 1993.

**FOR FURTHER INFORMATION CONTACT:** LCDR Roger M. Dent, Towing Safety Advisory Committee, room 1300, U.S. Coast Guard Headquarters (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-2206.

Dated: October 14, 1993.

**R.C. North,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 93-26467 Filed 10-26-93; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

### FAA To Sponsor National Aviation Weather Users' Forum

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a joint government/industry forum, the National Aviation Weather Users' Forum. The purpose of the forum is to develop a federal/industry consensus on industry service needs, service priorities, and on federal-versus-private sector responsibilities for provision of services.

**DATES:** The forum is scheduled for Tuesday, November 30, through Thursday, December 2, 1993.

**ADDRESSES:** The National Aviation Weather Users' Forum will be held at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 22091.

**FOR FURTHER INFORMATION CONTACT:**

Call Systems Resource Management, Inc. at (301) 949–7477, or send facsimile inquiries to (301) 949–5154 to the attention of Ms. Bernadette Macias.

**SUPPLEMENTARY INFORMATION:** The National Aviation Weather Users' Forum is a follow-on step to the National Aviation Weather Program Plan completed last autumn. The results of the forum will complement the recently completed assessment by the FAA Air Traffic Weather Requirements Team of air traffic operational weather needs for weather information.

Weather forum participants will have access to vendors and exhibits, laboratory demonstrations, presentations, and working groups to generate recommendations to the FAA and the National Weather Service (NWS). These near and long term recommendations will be reported during the plenary session on the final afternoon to a panel selected from senior executives from the FAA, the NWS, and associations.

A pre-conference document will be mailed to all registrants upon receipt of their completed registration form and $65.00 fee. All interested parties are encouraged to attend.

**E.T. Harris,**

*Director, Office of System Capacity and Requirements.*

[FR Doc. 93–26472 Filed 10–26–93; 8:45 am]

BILLING CODE 4910–13–M

**[Summary Notice No. PE–93–46]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before November 16, 1993.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 22, 1993.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

#### Petitions for Exemption

*Docket No.:* 27465
*Petitioner:* Mr. Douglas A. Klybert
*Sections of the FAR Affected:* 14 CFR 121.383(c)
*Description of Relief Sought/ Disposition:* To permit the petitioner to fly in Part 121 air carrier operations after his 60th birthday.

*Docket No.:* 27468
*Petitioner:* Mr. Monty K. Blatt
*Sections of the FAR Affected:* 14 CFR 121.383(c)
*Description of Relief Sought/ Disposition:* To permit the petitioner to fly in Part 121 air carrier operations after his 60th birthday.

#### Dispostions of Petitions

*Docket No.:* 117CE
*Petitioner:* Cessna Aircraft Co.
*Sections of the FAR Affected:* 14 CFR 23.181(b)
*Description of Relief Sought/ Disposition:* To permit Cessna Aircraft Co. to amend the Model 525 type certificate utilizing the directional stability damping criterion of § 25.181 in lieu of the damping criterion of § 23.181(b)
*Grant, October 1, 1993, Exemption No. 5759*

*Docket No.:* 27293
*Petitioner:* Darby Aviation
*Sections of the FAR Affected:* 14 CFR 43.3(g)
*Description of Relief Sought/ Disposition:* To amend Exemption No. 5726 to include the installation and removal of stretchers during cabin configuration changes for ambulance service.
*Grant, October 14, 1993, Exemption No. 5726A*

*Docket No.:* 27419
*Petitioner:* Mr. John H. Young, Jr.
*Sections of the FAR Affected:* 14 CFR 61.39
*Description of Relief Sought:* To be eligible for a flight test even though more than 24 months have elapsed since you passed the required written examination.
*Denial, October 14, 1993, Exemption No. 5764*

[FR Doc. 93–26470 Filed 10–26–93; 8:45 am]

BILLING CODE 4910–13–M

### Aviation Rulemaking Advisory Committee Meeting on General Aviation Operations Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

**DATES:** The meeting will be held on November 10, 1993, at 10 a.m.

**ADDRESSES:** The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, in room 302.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Myres, Assistant Executive Director for General Aviation Operations, Flight Standards Service (AFS–850), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8150; FAX: (202) 267–5230.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues to be held on November 10, 1993, at 10 a.m., at the FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, in room 302. The agenda for this meeting will include progress reports from the IFR Fuel Reserve and Part 103 (Ultralight Vehicles) Working Groups. In addition, the Operations Over the High Seas Working Group will present its recommendation to the ARAC.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contracting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Because of increased security in Federal Buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on October 20, 1993.

**Ron Myres,**

*Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.*

[FR Doc. 93–26471 Filed 10–26–93; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### Application for Recordation of Trade Name: "California Silk Collection"

**ACTION:** Notice of application for recordation of trade name.

**SUMMARY:** Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "CALIFORNIA SILK COLLECTION," used by California Silk Collection, a corporation organized under the laws of the State of California, located at 4829 S. Eastern Avenue, Bell, California.

The application states that the trade name is used in connection with men and ladies garments made with silk and other nature fabric textile.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

**DATES:** Comments must be received on or before December 27, 1993.

**ADDRESSES:** Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue NW., (Franklin Court), Washington DC 20229 (202–482–6960).

**FOR FURTHER INFORMATION CONTACT:** Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, DC 20229 (202–482–6960).

Dated: October 18, 1993.

**John F. Atwood,**

*Chief, Intellectual Property Rights Branch.*

[FR Doc. 93–26369 Filed 10–26–93; 8:45 am]

BILLING CODE 4820–02–P

### Application for Recordation of Trade Name: "Superior Seedless Grape Co."

**ACTION:** Notice of application for recordation of trade name.

**SUMMARY:** Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "SUPERIOR SEEDLESS GRAPE CO.," used by Sun World, Inc., a corporation organized under the laws of the State of Delaware, located at P.O. Box 1028, 53–990 Enterprise Way, Coachella, California 92236.

The application states that the trade name is used in connection with table grapes.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

**DATES:** Comments must be received on or before December 27, 1993.

**ADDRESSES:** Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, DC 20229 (202–482–6960).

Dated: October 18, 1993.

**John F. Atwood,**

*Chief, Intellectual Property Rights Branch.*

[FR Doc. 93–26368 Filed 10–26–93; 8:45 am]

BILLING CODE 4820–02–P

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 206
Wednesday, October 27, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 11:00 a.m., Monday, November 1, 1993.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 22, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-26518 Filed 10-25-93; 12:38 pm]

BILLING CODE 6210-01-P

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE-93-33]

**TIME AND DATE:** November 16, 1993 at 10:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436.

**STATUS:** Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-638 (Final) (Stainless Steel Wire Rod from India)—briefing and vote.
5. FY 1994 Expenditure Plan, FY 1994 Staffing Plan and FY 1995 Appropriation Request.
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: October 22, 1993.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93-26551 Filed 10-25-93; 12:39 pm]

BILLING CODE 7020-02-P

federal register

Wednesday
October 27, 1993

Part II

# Environmental Protection Agency

40 CFR Parts 9 and 63
National Emission Standards for Hazardous Air Pollutants for Source Categories and for Coke Oven Batteries; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 63**

**[AD-FRL-4793-6]**

**RIN 2060-AD67**

## National Emission Standards for Hazardous Air Pollutants for Source Categories and for Coke Oven Batteries

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On December 4, 1992 (57 FR 57534), the EPA proposed national emission standards for the control of emissions from new and existing coke oven batteries. This action promulgates the national emission standards and Methods 303 and 303A for the determination of visible emissions from by-product and nonrecovery coke oven batteries. These standards implement section 112 of the Clean Air Act (Act), which requires the Administrator to regulate emissions of hazardous air pollutants listed in section 112(b) of the Act, one of which is coke oven emissions. The final standards also implement section 112(d)(8) of the Act, which contains provisions specific to the regulation of coke oven emissions.

**DATES:** *Effective Date:* October 27, 1993.

See **SUPPLEMENTARY INFORMATION** section concerning Judicial Review.

**ADDRESSES:** *Docket.* A docket, number A-79-15, containing information considered during development of the promulgated standards, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section (LE-131), Waterside Mall, Room M1500, 1st Floor, Gallery 1, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Amanda Agnew, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5268.

**SUPPLEMENTARY INFORMATION:**

### I. The Standards

#### *A. Background*

The 1990 Amendments to the Clean Air Act establish specific requirements for the development of regulations governing coke oven emissions. Under section 112(d)(8), the EPA must promulgate standards based on maximum achievable control technology (MACT) for coke oven batteries by December 31, 1992. The MACT standards for existing sources can be no less stringent than the best performing 12 percent of existing sources, and standards for new sources cannot be less stringent than the limit achieved in practice by the best controlled existing source. In addition, the MACT standards for coke oven batteries must require, at a minimum, that coke oven emissions from each battery not exceed the following short-term limits: 8 percent leaking doors, 1 percent leaking topside port lids, 5 percent leaking offtake system(s), and 16 seconds of visible emissions per charge (with no exclusion for emissions during the period after the closing of self-sealing oven doors). In establishing the standards, the EPA must evaluate the use of luting compounds to prevent door leaks. (See section 112(d)(8)(A)(i).) The EPA also must evaluate use of Thompson nonrecovery coke oven batteries and other nonrecovery technologies as the basis of standards for new batteries. (See section 112(d)(8)(A)(ii).) The EPA is also to promulgate work practice regulations for new and existing coke oven batteries. These regulations are to require, as appropriate:

> The use of sodium silicate (or equivalent) luting compounds if EPA determines that the use of sodium silicate is an effective means of emissions control and is achievable, taking into account costs and reasonable commercial warranties for doors and related equipment * * * and jamb cleaning practices. (See sections 112(d)(8)(B)(i) and 112(d)(8)(B)(ii).)

In addition to these technology-based standards, the EPA is required to promulgate standards to address the risk remaining after technology-based standards are imposed. The EPA is to issue these standards for coke oven batteries within 8 years of promulgation of the MACT standards. (See section 112(f)(2)(C).) This technology-based rulemaking does not depend on the risk analysis of the Regulatory Impact Analysis (RIA), and that analysis will be revisited before any risk-based standard rulemaking for coke oven emissions.

Existing coke oven batteries must comply with the MACT standards by December 31, 1995. (See section 112(d)(8)(A).) The compliance date for meeting residual risk standards is within 90 days of promulgation, which may be extended up to 2 years under certain circumstances. (See sections 112(f)(3)-(4).) However, the Act provides an extension of the residual risk standards for coke oven batteries until January 1, 2020, provided the owner or operator of a coke oven battery complies with technology-based standards on an accelerated basis and that these technology-based standards become more stringent over time.

Under the extension track, to receive the deferral of the compliance date until the year 2020, the owner or operator must achieve the following short-term emission limitations by November 15, 1993: (1) 16 seconds of visible emissions per charge, (2) 8 percent leaking coke oven doors, (3) 1 percent leaking topside port lids, and (4) 5 percent leaking offtake systems. In addition, by January 1, 1998, the battery must meet an emission limitation that reflects the lowest achievable emission rate (LAER), as defined in section 171 of the Act. The LAER regulations may be no less stringent than the following short-term limits: 3 percent leaking doors on batteries with doors less than 6 m in height (i.e., a "short" coke oven battery) and 5 percent leaking doors on batteries with doors 6 m or more in height (i.e., a "tall" coke oven battery), 1 percent leaking topside port lids, 4 percent leaking offtake systems, and 16 seconds of visible emissions per charge. (The Administrator may consider an exclusion for emissions from doors during the period after the closing of self-sealing doors or the total mass emissions equivalent.)

In the LAER rulemaking, the EPA must establish an appropriate measurement methodology for determining compliance for coke oven doors. The measurement methodology must consider alternative methods that reflect the best technology and practices actually applied in the affected industries and must ensure that the final test methods are consistent with the performance of such best technologies and practices. Section 112(i)(8) requires that, if the LAER standard is not promulgated by January 1, 1998, the following short-term limits must be achieved: (1) 3 percent leaking doors (for short coke oven batteries), (2) 5 percent leaking doors (for tall coke oven batteries), (3) 1 percent leaking topside port lids, (4) 4 percent leaking offtake system(s), and (5) 16 seconds of visible emissions per charge, or the total mass emissions equivalent, with no exclusions for emissions during the period after the closing of self-sealing doors. (See section 112(i)(8)(B)(ii).)

The EPA must review and revise the LAER standard, as necessary, by January 1, 2007. (See section 112(i)(8)(C).) To continue to qualify for the deferral of the compliance date for the residual risk standards, the owner or operator must meet any revised LAER limits by the year 2010. (See section 112(i)(8)(C).) The owner or operator also must make

available to the surrounding community by January 1, 2000, the results of any risk assessment performed by the EPA to determine the appropriate level of a residual risk standard. (See section 112(i)(8)(E).)

Section 112(i)(8)(D) of the Act provides that, at any time prior to January 1, 1998, an owner or operator may elect to comply with residual risk standards under section 112(f) by the required date rather than comply with the LAER and revised LAER standards and compliance dates. Thus, coke oven batteries can opt out of the extension track. However, the owner or operator would be legally bound to comply with the 1995 MACT standards and the residual risk standards as of January 1, 2003. If EPA has not promulgated industry-wide residual risk standards by that time, the EPA must promulgate residual risk standards for those batteries that choose to meet residual risk standards by 2003.

*B. Judicial Review*

Under section 307(b)(1) of the Act, judicial review of national emission standards for a hazardous air pollutant (NESHAP) is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

*C. Summary of Final Rule*

*Applicability.* The final standards apply to all existing coke oven batteries, including by-product and nonrecovery coke oven batteries, and to all new coke oven batteries constructed on or after December 4, 1992. A "by-product coke oven battery" is defined as a source consisting of a group of ovens connected by common walls, where coal undergoes destructive distillation under positive pressure to produce coke and coke oven gas from which by-products are recovered. In a "nonrecovery coke oven battery," the coal undergoes destructive distillation under negative pressure to produce coke; the coke oven gas is combusted and by-products are not recovered. The list of operating coke oven batteries as of April 1, 1992, in appendix A to the rule, will be used to resolve any disputes that may arise concerning whether particular groups of ovens should be regarded as a single battery under these regulations.

*Emission standards.* The emission limitations included in the final rule for existing by-product coke oven batteries are shown in Table 1.

TABLE 1.—EMISSION LIMITS FOR EXISTING BY-PRODUCT BATTERIES[1]

| Emission points | MACT track limits | | LAER extension track limits | | |
|---|---|---|---|---|---|
| | 12/31/95 | 01/01/03 | 11/15/93 | 01/01/98 | 01/01/10 |
| Tall doors, PLD | 6.0 | 5.5 | 7.0 | 4.3 | 4.0 |
| Foundry doors, PLD | 5.5 | 5.0 | 7.0 | 4.3 | 4.0 |
| All other doors, PLD | 5.5 | 5.0 | 7.0 | 3.8 | 3.3 |
| Lids, PLL | 0.6 | 0.6 | 0.83 | 0.4 | 0.4 |
| Offtakes, PLO | 3.0 | 3.0 | 4.2 | 2.5 | 2.5 |
| Charging, s/charge | 12 | 12 | 12 | 12 | 12 |

PLD = Percent leaking doors; PLL = Percent leaking lids;
PLO = Percent leaking offtakes.
[1] The 11/15/93 numbers are the 30-run limits that are equivalent to the November 1993 extension track limits given in the Act, which are 3-run limits. The dates that are given in the table are the compliance dates for existing batteries.

The final standards require that, by December 31, 1995, coke oven emissions from each existing by-product coke oven battery not exceed: (1) 5.5 percent leaking doors for short batteries and 6.0 percent leaking doors for tall batteries, (2) 0.6 percent leaking topside port lids, (3) 3.0 percent leaking offtake system(s), and (4) 12 seconds of visible emissions per charge. On and after January 1, 2003, leaking doors for tall by-product coke oven batteries are limited to 5.5 percent, and emissions from short batteries must decrease to 5.0 percent leaking doors. These 2003 standards are applicable unless more stringent residual risk-based standards are promulgated under section 112(f). Unless otherwise noted, compliance with visible emission standards is determined on a 30-observation rolling average basis.

Visible emission limitations for a new by-product coke oven battery constructed at a new coke plant ("greenfield" construction) and for a new battery constructed at an existing coke plant if it results in an increase in the plant's coke capacity, are based on the emission control performance achieved by nonrecovery coke oven batteries, which are 0.0 percent leaking doors, topside port lids, and offtake system(s) and 34 seconds of visible emissions per charge.

The final standards also address by-product recovery batteries that may use a new technology in the future, such as larger ovens, operation under negative pressure, or a process with emission points different from those identified in this rule. After December 4, 1992, an owner or operator who constructs a new by-product coke oven battery or reconstructs a by-product coke oven battery and uses a new by-product recovery technology must apply for a case-by-case determination of applicable emission limitations. These case-by-case limits must be more stringent than 4.0 percent leaking doors for tall batteries, 3.3 percent leaking doors for short batteries, 0.4 percent leaking lids, 2.5 percent leaking offtakes, and 12 seconds per charge, or less than the equivalent level of mass emissions associated with these visible emission limits.

For door emissions from new and existing nonrecovery coke oven batteries, the NESHAP provides an option of either: (1) Meeting and recording an emission limitation of 0.0 percent leaking doors, or (2) monitoring and recording the pressure in each oven or common battery tunnel at least once each day to ensure that the ovens are operated under negative pressure. For charging on existing nonrecovery batteries, the owner or operator must implement specific work practices. New nonrecovery batteries must install, operate, and maintain an emission control system for the capture and control of charging emissions. If new nonrecovery batteries are constructed with lids or offtake systems, these batteries must meet limits of 0 percent leaking topside port lids and 0 percent leaking offtake system(s).

*Standards for extension of compliance.* As provided under section 112(i)(8) of the Act, the owner or operator of an existing coke oven battery

may choose to comply with alternative emission standards to qualify for an extension of the compliance date for residual risk standards. By November 15, 1993, coke oven emissions from existing by-product coke oven batteries are not to exceed 7.0 percent leaking doors, 0.83 percent leaking topside port lids, 4.2 percent leaking offtake system(s), and 12 seconds of visible emissions per charge. For nonrecovery batteries seeking an extension of the compliance date for residual risk, the owner or operator must meet the MACT standards for nonrecovery batteries by November 15, 1993. No additional requirements are included in the rule for LAER for nonrecovery batteries.

The final standards incorporate a tiered approach for LAER for door leaks at existing by-product coke oven batteries on this compliance track and one set of limits for LAER for the other emission points. By January 1, 1998, emissions are to be limited to: (1) 4.3 percent leaking doors for tall batteries and batteries owned or operated by foundry coke producers, (2) 3.8 percent leaking doors for all other by-product coke oven batteries, (3) 0.4 percent leaking topside port lids, (4) 2.5 percent leaking offtakes, and (5) 12 seconds of visible emissions per charge. By January 1, 2010, emissions are to be reduced to 4.0 percent leaking doors for tall batteries and batteries owned or operated by foundry coke producers, and to 3.3 percent leaking doors for all other by-product coke oven batteries, unless the Administrator has established a more stringent emission limitation under section 112(i)(8)(C). As an alternative to the LAER limits for percent leaking doors, the owner or operator of a coke oven battery with fewer than 30 ovens may comply with a 30-run average of two or fewer leaking coke oven doors per battery in lieu of the emission limitations to be achieved by 1998 and 2010.

The construction of a new battery at an existing plant without an increase in the plant's design capacity for coke production is termed a "brownfield" battery, and the complete reconstruction of a battery from the existing pad, without an increase in the plant's design capacity for coke, is called a "padup rebuild." Visible emissions from all brownfield or padup rebuild by-product coke oven batteries (except specific grandfathered batteries noted below) are limited to 3.3 percent leaking doors for short batteries, 4.0 percent leaking doors for tall batteries, 0.4 percent leaking topside port lids, 2.5 percent leaking offtake system(s), and 12 seconds of visible emissions per charge. If these grandfathered batteries do not commence construction by July 1, 1996, or 1 year after obtaining a construction permit (whichever is earlier), then they are subject to the more stringent LAER limits; otherwise, they are subject to the January 1, 1998, LAER limits. The batteries eligible to be rebuilt under this grandfather provision are Bethlehem Steel's Burns Harbor No. 2 battery, National Steel's Great Lakes No. 4 battery, and Koppers' Woodward No. 3 battery.

Under customary industry practice, a "padup rebuild" occurs when the existing brickwork of a battery is removed and a replacement battery is constructed on the old pad. Under the final rule, a "padup rebuild" includes any rebuilding project that effectively constitutes a replacement of the battery above the pad, even if some portion of the brickwork above the pad is retained (e.g., an end wall or several courses of bricks above the pad). Thus, a different test is applied than the traditional "reconstruction" test, which focuses on whether the source is substantially rebuilt. In other words, the term "padup rebuild" is not synonymous with the traditional term "reconstruction." However, any attempt to circumvent inappropriately the more stringent door leak requirement applicable to padup rebuilds will be found to constitute a padup rebuild. Accordingly, the rule provides the Administrator (or delegated State or local agency) the authority to determine whether a project is a "padup rebuild."

Batteries that were shut down but not dismantled ("cold-idle batteries") on or after November 15, 1990, can qualify for the extension track. Upon restarting, these batteries must meet the LAER limits for existing batteries and, if they are brownfield or padup rebuild batteries, they must meet the more stringent LAER requirements for these types of batteries. Batteries that were placed on cold idle prior to November 15, 1990, may also qualify for the extension track up to a total design capacity for coke of 2.7 million Mg/yr, which is based on 10 percent of the total coke capacity at the end of 1990. The EPA will process applications on a "first come-first served basis." The procedures include provisions under which an approval will lapse where a serious intention to use the capacity has not been demonstrated. If an approval lapses, the capacity of the battery is not included in the 2.7 million Mg/yr limit. After approval, the battery must meet the emission limits described above for other cold-idle batteries.

The rules also provide alternative door leak standards, to be developed on a case-by-case basis, for coke oven batteries equipped with sheds. (Sheds are enclosures attached to the side of a battery that capture emissions and route them to control devices.) Using the procedure described in the rule, the owner or operator may use an alternative emission limitation for door leaks from a new or existing coke oven battery equipped with a shed and emission control device. The alternative is expressed as the allowable percent leaking doors for doors that are controlled by the shed, an opacity limit for the control device, requirements to ensure that the structural integrity of the shed is maintained, and requirements to ensure that the shed's evacuation rate is maintained. An alternative emission limit will be approved if it is shown that the alternative achieves a reduction in coke oven emissions from the doors equal to or greater than the emission reduction that would be achieved by door leak emission controls installed to meet the emission limitations in the final standards. The determination of equivalency is based on maintaining an equivalent or lower mass emission rate for coke oven emissions emitted from the shed's control device. Inspections for door leaks under the shed are to be performed by the applicable enforcement agency on a specified schedule (weekly or monthly).

*Test methods and inspections.* Each of the visible emission limitations is based on a 30-run average. To determine compliance, a daily (once a day for 7 days) performance test is to be conducted for each coke oven battery using Method 303, "Determination of Visible Emissions from By-product Coke Oven Batteries," or Method 303A, "Determination of Visible Emissions from Nonrecovery Coke Oven Batteries."

The procedures described in Method 303 require the observer to walk the topside center line of by-product coke oven batteries and count the number of topside port lids and offtake systems from which any visible emissions are observed. To record leaks in the collecting main, the observer is required to walk along the topside edge closest to the main and on the catwalk over the main. Methods 303 and 303A require the observer to count leaking coke oven doors on by-product and nonrecovery ovens as the observer traverses the coke oven battery at ground level.

Various situations may arise that prevent the observer from viewing a door or a series of doors. Prior to the door inspection, the owner or operator may temporarily suspend charging operations for the duration of the inspection so that all of the doors can be viewed by the inspector. Two options

are included in the method for dealing with obstructions to view: (1) Stop the stopwatch and wait for the equipment to move or for the fugitive emissions to dissipate before completing the traverse, or (2) stop the stopwatch, skip the affected ovens, and move to a position to continue the traverse. If using the second option, the observer must return and inspect the affected ovens after completion of the traverse. If the equipment or fugitive emissions are still preventing the observer from viewing the doors, then the affected doors may be counted as not observed. If option 2 is used because of doors blocked by machines during charging operations, then, of the affected doors, the observer must exclude the door from the most recently charged oven from the inspection. The rule prohibits the owner or operator from deliberately blocking doors for the purpose of concealing door leaks during an inspection.

For each daily test, the observer must monitor and record five consecutive charges from each battery and conduct one valid and complete inspection of all doors, topside port lids, and offtake systems on each coke oven battery. The daily test results and the calculated 30-run average are provided to the owner or operator and the implementing agency by the observer. If the observer missed an observation for a day, no compliance determination is made for that day; calculation of the rolling 30-run average proceeds with the next valid observation made by the observer.

The inspection requirements for the alternative standard for sheds are different in that inspections are to be conducted once a week for safety reasons. If compliance with the alternative standard is achieved for 12 consecutive weeks, the inspection frequency decreases to monthly observations. If the limit is exceeded in any monthly inspection, the monitoring frequency increases to once a week. Because of the reduced inspection frequency, the alternative standard is not to be exceeded for any single observation and is not based on a 30-run rolling average.

Each performance test is to be conducted by a visible emission observer, certified according to the requirements of the test method and provided by the applicable enforcement agency at the company's expense. (The formula for payment of expenses included in the standard may be revised after a specified period to adjust the workload assumption, based on the enforcement agency's experience.) State agencies will be delegated authority to ensure that the inspections are conducted as required under the rule.

If a State is not delegated implementation authority or if a State is delegated implementation authority and the delegation has been revoked or withdrawn, or if the EPA has reassumed implementation authority under § 63.313(b), the regulation provides that the EPA will be the enforcement agency and the owner or operator will become responsible for contracting the required emissions inspections. A provision has been inserted in the regulation that requires the owner or operator of a battery for which the EPA is the enforcement agency to enter into a contract providing for the required inspections to be performed by a certified observer, at the expense of the owner or operator. This requirement would substitute for the requirement to pay the inspection fee. Such a contract must be in place within thirty (30) days of receipt by the owner or operator of notice from the Administrator that the EPA is the enforcement agency for the battery. The owner or operator may consult with the Agency concerning the terms of the contract and how it satisfies the requirements of the regulation. Language has also been inserted in the regulation providing that the inspection fee is to be paid on a quarterly basis, to provide an owner or operator some protection against having to enter into a subsequent inspection contract for a period of time for which an inspection fee has already been paid. While it is prudent to provide for the possibility of the EPA having to assume enforcement agency responsibilities, the Agency expects that it will rarely be required to do so. Agency policy is to delegate enforcement responsibilities under this regulation to the States; it fully expects that the States uniformly will undertake these enforcement responsibilities, and discharge them fully and adequately.

The certification requirements of Method 303 include a requirement to attend the lecture portion of the Method 9 training course, followed by classroom training, field inspections, and demonstration of proficiency in Method 303. Attendees of the course must certify that they have satisfied a 12 hour field observation requirement prior to attending the Method 303 certification course. A videotape explaining Method 303 will be made available to interested parties. This Method 303 training course will be conducted by or under the sanction of the EPA, and the field training will include instruction from experienced observers.

Observer proficiency will be demonstrated during actual visible emission tests to the satisfaction of a panel of three experienced and certified observers. However, until November 15, 1994, the EPA may waive the certification requirement (but not the experience requirement) for panel members. The panel members will be EPA, State, or local agency personnel who are designated by the EPA as certified and qualified panel members or private contractors approved by the Administrator. If the Administrator deems it necessary, the EPA will publish a list of qualified panel members in a separate notice.

*Work practices.* The work practice standards require the owner or operator of an existing or new coke oven battery to develop a written plan describing emission control work practices to be implemented for each battery. The plan, required by November 15, 1993, must include provisions for training and procedures for controlling emissions from coke oven doors, charging operations, topside port lids, and offtake system(s) on by-product coke oven batteries. Similar requirements are included for work practices at nonrecovery batteries for door leaks and charging emissions. Under specified conditions, the EPA may require revisions to the plan or the inclusion of additional work practices or requirements. The EPA expects work practice plans prepared for this rule and for OSHA requirements to be compatible and that the affected facility will comply with both requirements.

For coke oven batteries subject to visible emission limitations under the NESHAP on November 15, 1993 (i.e., extension track batteries), the work practice requirements become applicable following the second independent exceedance of the visible emission limitation for a particular emission point in any consecutive 6-month period. The second exceedance is independent if it is separated from the first by at least 30 days or if the 29-run average, calculated after deleting the highest observation in the 30-day period, still exceeds the applicable emission limit. A similar procedure is used to calculate independence in the case of charging emissions, under which the rolling logarithmic average is recomputed, excluding the daily set of observations with the highest daily arithmetic average. The owner or operator is required to implement the work practice requirements applicable to the emission point by no later than 3 days after written notification of the exceedance. The rule requires that the work practices be implemented each day until the visible emission limitation for the emission point is achieved for 90 consecutive days.

The owner or operator of a coke oven battery not subject to visible emission

limitations under the NESHAP until December 31, 1995 (i.e., a battery not on the extension track), is required to implement the provisions of the work practice plan for a particular emission point subject to visible emission limitations under these NESHAP (i.e., coke oven doors, topside port lids, offtake system(s), and charging operations) following the second exceedance of a federally enforceable State or local ordinance, regulation, order, or agreement for that emission point. The standards require that the work practice provisions be implemented within 3 days of receipt of written notification from the applicable enforcement agency and continued until compliance with the visible emission limitation is achieved for 90 days from the last exceedance.

For coke oven batteries with an approved alternative standard for sheds, work practices for doors under the shed must be implemented based on exceedances of the alternative standard for percent leaking doors under the shed. If one side of the coke oven battery does not have a shed, work practices for coke oven doors must be implemented based on exceedances of the applicable emission limitation for that side of the battery.

The Administrator may require revisions to the work practice plan for a particular emission point if there are two independent exceedances in the 6-month period starting 30 days after the work practices are required to be implemented. The owner or operator must notify the Administrator of any finding that the work practices are not related to the cause or the solution of the problem within 10 days of receiving a notification from the enforcement agency concerning the second independent exceedance. The Administrator may disapprove a revision or a statement that a revision is not needed. No more than two revisions per year may be requested; however, a revision in response to a disapproval of a revision, voluntary revisions, and statements that a revision is not needed do not count toward this limit.

*Flares.* The standards also require the installation, operation, and maintenance of a flare system (or equivalently effective alternative control device or system) by March 31, 1994, for the bypass/bleeder stacks of each existing by-product coke oven battery in operation as of December 31, 1995, that is capable of combusting 120 percent of the normal gas flow generated by the battery. New batteries must meet the flare requirements when production operations start.

The flare system must be designed to meet the EPA flare specifications in 40 CFR 60.18 (New Source Performance Standards), with certain modifications to take into account the special characteristics of the gas stream. For example, the specification for net heating values in 40 CFR 60.18(c)(3) is revised under the rule to establish a design specification for the net heating value of coke oven emissions for steam-assisted or air-assisted flares of 8.9 MJ/scm (240 Btu/scf) or greater. Installation of the flare will not constitute a physical or operational change for the purposes of determining the applicability of new source review requirements. To qualify for an exemption from the flare installation requirement, the owner or operator must submit a formal commitment to permanent closure of the battery by no later than 2 weeks from today's publication of the final rule. In no case may a battery for which the owner or operator has submitted such a closure notification operate past December 31, 1995.

Questions arose after proposal about the intent of the provision in § 63.307(b)(3)(ii) of the rule, which requires that ignition units be designed failsafe with respect to the flame detection thermocouples. A clarifying sentence was added to the rule to explain the intent of this provision. The intent was that the flame detection thermocouples are used only to indicate the presence of a flame and are not interlocked with the ignition units. Consequently, the flame detection thermocouples do not affect the operation of the ignition unit. In the event that the thermocouples fail and indicate the presence of a flame when one does not exist, the ignition unit is not deactivated and would continue to ignite any bypassed gas.

*Collecting main.* The collecting main is to be inspected for leaks at least once daily under the final standards. Any leaks detected must be temporarily sealed within 4 hours; a permanent repair must be initiated within 5 calendar days of detection and completed within 15 calendar days of detection unless extended by the Administrator. The time and date of collecting main leaks, temporary sealing, and repair also must be recorded.

*Startups, shutdowns, and malfunctions.* These provisions require the owner or operator to develop a written startup, shutdown, and malfunction plan that provides for the operation of the source in accordance with good air pollution control practices for minimizing emissions, and for procedures for correcting the malfunction as quickly as practicable. Associated reporting and recordkeeping provisions also are included.

*Reporting and recordkeeping requirements.* The regulation would require that certain records be maintained and the following reports be submitted: compliance certifications, notifications, and reports of uncontrolled venting episodes and certain startups, shutdowns, and malfunctions.

For each 6-month period following today's publication of the rule, the owner or operator is required to submit a semiannual compliance certification attesting that: (1) No coke oven gas was vented through the bypass/bleeder stack; (2) coke oven gas was vented through the bypass/bleeder flare system, which operated properly; or (3) a venting report was submitted because of problems with the bypass/bleeder flare system. Semiannual compliance certifications are also required to attest that: (1) No startup, shutdown, or malfunction event occurred, or such an event did occur and a report was provided as required; and (2) work practices were implemented according to the work practice provisions, if applicable.

The notification provisions include requirements for owners or operators to notify the Administrator of the compliance track election that has been made for each battery. In general, these provisions allow batteries to "straddle" (i.e., elect both tracks) up until 1998, when a binding commitment to one compliance track or the other must be made.

The recordkeeping provisions require owners or operators to keep specified records and make them accessible to the Administrator. These include certain monitoring records, records reflecting the implementation of work practice plan provisions, and records related to a startup, shutdown, or malfunction. Records also are to be maintained of data for the alternative emission standard for doors, including opacity data for the shed's control device, parameters that indicate that the evacuation rate is maintained, records of visual inspections, and operation/maintenance records for a continuous opacity monitoring system. For nonrecovery batteries, records are required of daily pressure monitoring and work practices for charging or, for new nonrecovery batteries, of design information for the charging emission control system. In addition, design information for flares or approved alternative control devices or systems must be maintained.

Provisions are also included requiring the owner or operator to make records or reports required to be maintained or required to be submitted to the enforcement agency available to the authorized collective bargaining representative for inspection and copying. The owner or operator must respond to a request within a reasonable period of time. Except for emission data as defined in 40 CFR part 2, documents (or parts of documents) containing trade secrets or confidential business information do not have to be produced, and the inspection or copying of documents will not affect any intellectual property rights of the owner or operator in the documents.

Relationship to existing regulations and requirements. Provisions also are included in the NESHAP that require the owner or operator to comply with all applicable State implementation plan (SIP) emission limitations (or subject to any expiration date, federally enforceable emission limitations contained in an order, decree, permit or settlement agreement) for the control of emissions from charging operations, topside port lids, offtake system(s), and coke oven doors in effect on September 15, 1992. Any change to these existing regulations must ensure that the applicable emission limitations and format in effect on September 15, 1992, will continue in effect; that the change includes a more stringent monitoring method and that no emission increase will occur; or that such modification makes the emission limitations more stringent while holding the format unchanged, makes the format more stringent while holding the emission limitations unchanged, or makes both more stringent. A provision also is included that addresses the relationship of the coke oven NESHAP to section 112(g) and that concludes that section 112(g) requirements will not apply to sources subject to the coke oven NESHAP.

## II. Summary of Environmental, Cost, and Economic Impacts

No comments were received regarding the environmental, cost, and economic impact analyses presented for the proposed NESHAP, and no changes to the analyses have been made for the final rule. However, the list of operating batteries in appendix A to the rule has been revised to include the nonrecovery batteries. Additional information on the estimated environmental, cost, and economic impacts is included in the notice of proposed rulemaking (57 FR 57556, December 4, 1992) and the docket.

Implementation of the MACT standard is expected to reduce nationwide coke oven emissions from charging and leaks by the end of 1995 by about 80 percent to 160 Mg/yr, and emissions from bypass/bleeder stacks will be reduced by at least 98 percent to no more than 17 Mg/yr. Implementation of the LAER standard is expected to reduce nationwide coke oven emissions by the beginning of 1998 by 90 percent to about 80 Mg/yr. After the implementation of LAER and the installation of flares on bypass/bleeder stacks, the overall reduction in coke oven emissions is estimated at 94 percent. Because the control techniques focus on pollution prevention and containment within the by-product collection system, similar reductions in emissions are expected for both organic particulate matter and for the volatile organic compounds and other pollutants contained in coke oven emissions for the sources controlled under these standards.

The MACT standards for existing batteries are expected to be achieved without rebuilding the battery using improved equipment and increased maintenance, training, and inspections. The total nationwide capital cost of MACT for existing batteries is estimated at $66 million with a total annual cost of $25 million per year. Many batteries are currently achieving the MACT levels and would not incur any significant increase in costs. The MACT standard is expected to increase the price of furnace coke by 0.2 percent and the price of foundry coke by 1.1 percent. Coke production is projected to decrease by 0.7 percent for furnace coke and 1.1 percent for foundry coke. No coke batteries are projected to close as a result of the MACT standard.

The LAER standards may require the installation of new doors and jambs or the rebuilding of some of the older batteries. Assuming that all batteries will elect to meet the LAER standards, the total nationwide capital cost is estimated to be $510 million with a total annualized cost of $84 million. Both of these costs are cumulative in that they include the costs associated with MACT. The proposed LAER standard is projected to increase the price of furnace coke by 0.7 percent and foundry coke by 2.5 percent. Furnace coke production is estimated to decrease by 2.1 percent and foundry coke production to decrease by 2.6 percent. Two coke oven batteries producing furnace coke are projected to close and one coke oven battery producing foundry coke may close as a result of the LAER standard.

## III. Public Participation

The EPA recognized the need for Federal regulation of coke oven emissions and the many issues and challenges posed in developing, proposing, and promulgating standards to meet the requirements of the Act. During the spring and summer of 1991, the EPA met with representatives of the industry, labor unions, States, and environmental groups to discuss available data to be used as the basis of the new regulations. A workshop format was used to explore and clarify the varying viewpoints. Following these informal discussions, the EPA announced its intention to establish a committee to negotiate a new approach for the control of coke oven emissions (57 FR 1730, January 15, 1992) and conducted formal meetings and informal workshops over the next several months to identify and resolve the many issues associated with the regulation of coke oven emissions (57 FR 4025, February 3, 1992; 57 FR 5267, February 13, 1992; 57 FR 6830, February 28, 1992; 57 FR 19295, May 5, 1992). The Committee members are listed in Table 2.

TABLE 2.—COKE OVEN BATTERIES ADVISORY COMMITTEE MEMBERSHIP

| Members | Affiliation |
|---|---|
| David Anderson | Bethlehem Steel Corporation. |
| William Becker | State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials. |
| Larry Davis | Hoosier Environmental Council. |
| David Doniger | Natural Resources Defense Council. |
| Charles Drevna | Sun Coal Company. |
| Martin Dusel | Citizens Gas & Coke Utility. |
| Charles Goetz | Allegheny County Health Department. |
| Ralph Hall/Steve Lang. | Maryland Department of the Environment. |
| Philip Harter | Facilitator. |
| Bruce Jordan | Environmental Protection Agency. |
| Ward Kelsey | Pennsylvania Department of Environmental Resources. |
| Charles Knauss | Swidler & Berlin (representing the American Iron and Steel Institute). |
| Phillip Mascianonio. | USS, A Division of USX Corporation. |
| Robert McNelis | Citizens Organized to Keep Employment. |
| David Menotti | Perkins Coie (representing the American Coke and Coal Chemicals Institute). |

TABLE 2.—COKE OVEN BATTERIES ADVISORY COMMITTEE MEMBERSHIP—Continued

| Members | Affiliation |
|---|---|
| Tom Rarick | Indiana Department of Environmental Management. |
| John Seitz | Environmental Protection Agency. |
| Michael Shapiro | Environmental Protection Agency. |
| John Sheehan | United Steelworkers of America. |
| Bruce Steiner | American Iron and Steel Institute. |
| John Stinson | National Steel Corporation. |
| Shirley Virostek | Group Against Smog and Pollution. |
| Michael Wright | United Steelworkers of America. |

Using various forums, the Committee discussed many challenging issues, including the emission data to be used to select a standard, potential regulatory formats and numerical emission limits, visible emission monitoring methods, costs and economics, other emission sources, and work practices. Associated issues such as enforcement and implementation needs, legal aspects, future research, and integration of the proposed rule with EPA's new permitting system also were identified and discussed.

Several of the Committee meetings were attended by representatives of local citizens groups and members of unions representing the workers at several coke plants. The union representatives made useful presentations to the Committee on several issues.

At the final negotiating session, the major issues were resolved conceptually. Thereafter, the Committee reviewed drafts of the regulatory language and the preamble, resolved remaining issues, and signed a formal agreement on October 28, 1992. The Committee members have agreed to support the standard as long as EPA promulgates a regulation and preamble with the same substance and effect of the regulation and preamble that were the subject of the final agreement.

It is important to note that the parties to the negotiation concurred with the regulation and preamble when considered as a whole. The parties did not attempt to agree on the accuracy or conclusions reached in various docket items (e.g., Regulatory Impacts Analysis). However, some of these documents served as background information to assist the parties in achieving a consensus. Inevitably in any negotiation, this means that some parties may have made concessions in one area in exchange for concessions from other parties in other areas.

Interested parties also were advised by public notice in the **Federal Register** (57 FR 46854, October 13, 1992) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the status of the NESHAP recommended for proposal. (See Docket Item VIII–J–7.) This meeting was held on November 18, 1992. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The standards were proposed in the **Federal Register** on December 4, 1992 (57 FR 57534). Public comments were solicited at the time of proposal, and copies of the proposed rule were distributed to interested parties. (See Docket Item X–C–1.)

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on January 15, 1993, in Philadelphia, Pennsylvania. A total of 11 interested parties testified at the public hearing concerning issues relative to the proposed national emission standards for coke oven batteries. This hearing was open to the public, and each attendee was given an opportunity to comment on the proposed standards. (See Docket Item X–G–1.)

The public comment period was from December 10, 1992 to January 22, 1993. The record was held open for an additional 30 days to receive additional comments in support of, or in rebuttal to, the testimony presented at the hearing.

## IV. Response to Public Comments

A total of 62 comment letters were received regarding the proposed standards. Commenters included one engineering firm, one trade association, one Federal agency, one State health agency, representatives of environmental groups in Pennsylvania, and Pennsylvania citizens who reside near the Clairton Works, the Nation's largest coke plant. A copy of each comment received is included in the rulemaking docket. A list of commenters, their affiliations, and the EPA docket number assigned to their correspondence is given in Table 3.

TABLE 3.—LIST OF COMMENTERS ON PROPOSED NATIONAL EMISSION STANDARDS FOR COKE OVEN BATTERIES

| Docket item number[1] | Commenter and affiliation |
|---|---|
| X–D–1 | Jonathan P. Deason, Director, Office of Environmental Affairs, U.S. Department of the Interior, Washington, DC 20240. |
| X–D–2 | Shirley Virostek, 1444 Washington Boulevard, Port Vue, PA 15133. |
| X–D–3 | Janet Strahosky, Ohio River Basin Environmental Council, Post Office Box 41135, Pittsburgh, PA 15202. |
| X–D–4 | Rosemary K. Coffey, 916 Bellefonte Street, Pittsburgh, PA 15232–2204. |
| X–D–5 | Phillip J. Molé, Sun Eco Systems, Inc., 7949 West Country Club Lane, Elmwood Park, IL 60635. |
| X–D–6 | Nancy F. Parks, Sierra Club, Pennsylvania Chapter, 201 West Aaron Square, Post Office Box 120, Aaronsburg, PA 16820–0120. |
| X–D–7 | Marilyn Skolnick, Sierra Club—The Allegheny Group, 109 South Ridge Drive, Monroeville, PA 15146. |
| X–D–8 | Robert P. DeTorre, 1500 Monongahela Boulevard, White Oak, PA 15131. |
| X–D–9 | Marilyn Skolnick, Sierra Club—The Allegheny Group, 109 South Ridge Drive, Monroeville, PA 15146. |
| X–D–10 | Richard Lawson, President, National Coal Association, 1130 17th Street, NW, Washington, DC 20036–4677. |
| X–D–11 | Marie Kocoshis, Group Against Smog and Pollution, Post Office Box 5165, Pittsburgh, PA 15206. |
| X–D–12 | Butch Allen, Jefferson County Department of Health, Birmingham, AL 35233. |
| X–D–13 | Shirley Schultz, 111 Camino Court, Jefferson Borough, Clairton, PA 15025. |
| X–D–14 | Hugh D. Young, 5746 Aylesboro Avenue, Pittsburgh, PA 15217. |
| X–D–15 | Milton Deaner, American Iron and Steel Institute.<br>Mark T. Engle, American Coke and Coal Chemicals Institute.<br>David Doniger, Natural Resources Defense Council.<br>S. William Becker, State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials.<br>John J. Sheehan, United Steel Workers of America. |
| X–D–16 | Marie Kocoshis, President, Group Against Smog and Pollution, Post Office Box 5165, Pittsburgh, PA 15206. |
| X–D–17 | Barbara D. Hays,1421 Wightman Street, Pittsburgh, PA 15217. |

TABLE 3.—LIST OF COMMENTERS ON PROPOSED NATIONAL EMISSION STANDARDS FOR COKE OVEN BATTERIES—Continued

| Docket item number[1] | Commenter and affiliation |
|---|---|
| X–D–18 | Lawrence Stavish, 120 Bronx Avenue, Pittsburgh, PA 15229. |
| X–D–19 | Judith Stack, 6408 Kentucky Avenue, Pittsburgh, PA 15206. |
| X–D–20 | Gail Gregory. |
| X–D–21 | Nicholas Kyriazi, 517 Avery Street, Pittsburgh, PA 15212. |
| X–D–22 | Diane Doyle, President, League of Women Voters—Allegheny County Council, Community Information Center, YWCA Fourth and Wood Street, Pittsburgh, PA 15222. |
| X–D–23 | Elissa M. Weiss, MD, 134 Dennis Drive, Glenshaw, PA 15116. |
| X–D–24 | Suzanne M. Broughton, Director, North Area Environmental Council, 2377 Jenkinson Drive, Pittsburgh, PA 15237. |
| X–D–25 | Mary Edmonds, 1116 Herberton Street, Pittsburgh, PA 15206. |
| X–D–26 | Marvin L. Bellin, MD, Clinical Assistant Professor of Psychiatry, University of Pittsburgh Medical Center, 3811 O'Hara Street, Pittsburgh, PA 15213–2593. |
| X–D–27 | Barbara Adler, 6019 Wellesley Avenue, Pittsburgh, PA 15206. |
| X–D–28 | Linda Innocenti. |
| X–D–29 | Louis B. Freeman, 388 Cavan Drive, Pittsburgh, PA 15236. |
| X–D–30 | Matthew R. Brunner. |
| X–D–31 | John Hummel, Upper Allegheny Preservation Association, Post Office Box 207, Kennerdell, PA 16374. |
| X–D–32 | Timothy L. Climo, 5135 Dearborn Street, Pittsburgh, PA 15224–2432. |
| X–D–33 | Terri Polesky. |
| X–D–34 | Harry Colgure, GWC Building, Apartment 712, Clairton, PA 15025–1754. |
| X–D–35 | Samuel Hays, Chair, Conservation Committee, Sierra Club, Allegheny Group, 1421 Wightman Street, Pittsburgh, PA 15217. |
| X–D–36 | Robert DeTorre, Group Against Smog and Pollution, 1500 Monongahela Boulevard, White Oak, PA 15131. |
| X–D–37 | Shirley Virostek, Group Against Smog and Pollution, 1444 Washington Boulevard, Port Vue, PA 15133. |
| X–D–38 | Janet Strahosky, Ohio River Basin Environmental Council, Post Office Box 41135, Pittsburgh, PA 15202. |
| X–D–39 | Dennis Winters, Sierra Club, Eastern Pennsylvania Group, 619 Catharine Street, 3rd Floor, Philadelphia, PA 19147. |
| X–D–40 | Sam Spofforth, Clean Water Action, 35 North 8th Street, Allentown, PA 18102. |
| X–D–41 | Sara Nichols, Staff Attorney, Delaware Valley Citizen's Council for Clean Air, 311 Juniper Street, Room 603, Philadelphia, PA 19107. |
| X–D–42 | Marie Kocoshis, President, Group Against Smog and Pollution, Post Office Box 5165, Pittsburgh, PA 15206. |
| X–D–43 | Butch Allen, Jefferson County Department of Health, Birmingham, AL 35233. |
| X–D–44 | Elenore Seidenberg, 220 North Dithridge Street, Number 301, Pittsburgh, PA 15213. |
| X–D–45 | Donna Foiltone, 307 Burlington Road, Pittsburgh, PA 15221. |
| X–D–46 | Professor W. W. Mullins, Department of Metallurgical Engineering and Materials Science, Carnegie-Mellon University, 8309 Wean Hall, Pittsburgh, PA 15213. |
| X–D–47 | Ms. Jonni Kay Plelin, 121 Kollar Drive, McKeesport, PA 15133. |
| X–D–48 | Joanne R. Denworth, President, Pennsylvania Environmental Council, Benedum Trees Building, 223 4th Avenue, Suite 503, Pittsburgh, PA 15222. |
| X–D–49 | David Jasnow, 5649 Marlborough Road, Pittsburgh, PA 15217. |
| X–D–50 | Betsy Ensminger, 4118 Wintersburn Avenue, Pittsburgh, PA 15207. |
| X–D–51 | Maryann Hodzic, 2421 Pin Oak Place, Pittsburgh, PA 15220. |
| X–D–52 | Suzanne Bailey, 1112 Greenfield Avenue, Pittsburgh, PA 15217. |
| X–D–53 | Patricia B. Pelkofer, 252 South Winebiddle Street, Pittsburgh, PA 15224. |
| X–D–54 | Peggy Allen Hledish, 531 Allenby Avenue, Pittsburgh, PA 15218. |
| X–D–55 | Jim Lampl, 607 Cherokee Street, Irwin, PA 15642. |
| X–D–56 | R. Joseph Weinzapfel, 5–G Jenny Lynn Court, Pittsburgh, PA 15239. |
| X–D–57 | Mary Burlando, 241 Silver Oak Drive, Pittsburgh, PA 15220. |
| X–D–58 | Mary S. Kostalos, Chatham College, Woodland Road, Pittsburgh, PA 15232–2826. |
| X–D–59 | Mr. and Mrs. Louis E. Eback, Kingston Apartments, Number 609, Pittsburgh, PA 15202. |
| X–D–60 | Dr. Maryann Donovan-Peluso, 643 East End Avenue, Pittsburgh, PA 15221. |
| X–D–61 | Cindy J. Corbett, 5703 Jackson Street, Number 2, Pittsburgh, PA 15206. |
| X–D–63 | Nancy F. Parks, Sierra Club, Pennsylvania Chapter, 201 West Aaron Square, Post Office Box 120, Aaronsburg, PA 16820–0120. |

[1] The docket number for this rulemaking is A–79–15. Dockets are on file at the EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460.

Most of the comment letters contained multiple comments, which have been organized and addressed under the following general topics: General, Test Methods and Monitoring, Reporting and Recordkeeping, and Miscellaneous. These comments have been carefully considered, and, where determined to be appropriate by the Administrator, changes have been made in the final standards. A summary of the comments and the Agency's responses is given below.

*A. General*

*Comment:* A total of 57 environmental groups and local citizens comment that the proposed standards are too weak; 35 of these commenters specifically argue that the rule does not provide any incentive for improvement from the 19 batteries in Allegheny County, Pennsylvania, where stronger regulatory controls are already in practice (commenters X–D–2, X–D–3, X–D–4, X–D–9, X–D–13, X–D–14, X–D–16, X–D–17, X–D–18, X–D–19, X–D–20, X–D–21, X–D–22, X–D–23, X–D–25, X–D–27, X–D–28, X–D–29, X–D–31, X–D–32, X–D–33, X–D–40, X–D–41, X–D–42, X–D–44, X–D–45, X–D–46, X–D–47, X–D–49, X–D–50, X–D–52, X–D–58, X–D–60, X–D–61, and X–D–63).

*Response:* The EPA agrees that some of the batteries in Allegheny County have achieved exemplary levels of emission control performance, especially five batteries that are either new or recently rebuilt and are subject to some of the most stringent emission limits in the Nation. Performance data that were collected as a part of Allegheny County's regulatory program played a major role in the development of the emission limits in the rule. In addition, coke oven batteries in Allegheny County pioneered the widespread installation of controls for emissions from bypass/bleeder stacks,

for which controls have been included as a provision in the rule.

Consequently, other coke oven batteries in the United States will obtain significant emission reductions as they achieve the control levels demonstrated by the best performing batteries in Allegheny County. However, the EPA does not agree that the NESHAP will not result in additional improvement in emission control for the Allegheny County batteries. The format of the rule requires step-wise improvements in emission control over time (e.g., compliance with the most stringent limits for batteries on the extension track is required by January 1, 2010). Although the November 1993 limits, which were specified in the Clean Air Act for batteries on the extension track, will result in only a marginal improvement in control for batteries in Allegheny County, the step-wise increase in stringency will require all of the coke oven batteries in the County to improve their performance to comply with the LAER emission limits. As the standards increase in stringency over time, the emission control performance of most of the batteries in the County must improve to maintain compliance. For example, 12 of the 19 batteries must improve door leak control to meet the 2003 MACT limits for percent leaking doors (based on 1990 data). To meet the extension track limits in 2010, a total of 18 of the 19 batteries must improve door leak control.

The EPA examined emission control performance data for the USS-Clairton batteries separately and for all of the Allegheny County batteries collectively when they were operating at normal capacity in 1989 and 1990. The data for percent leaking doors, percent leaking topside port lids, percent leaking offtake system(s), and seconds of visible emissions per charge showed that if the 12 USS-Clairton batteries were placed on the extension track, emissions at their current level of performance would be reduced by 65 percent by 1998 and 70 percent by 2010. If these batteries are placed on the MACT track, current emissions would be reduced by 40 percent by 1995. If all 19 batteries at the 3 coke plants in Allegheny County are considered, emissions at their current level of performance would be reduced on the extension track by 70 percent in 1998 and by 75 percent in 2010. If these batteries are placed on the MACT track, emissions would be reduced by 50 percent in 1995. (See Docket Item X–B–1.)

As a consequence of the staged reduction in coke oven emissions, the exposure of residents to these emissions will also decrease. In addition, the 1990 Amendments to the Act specifically address citizen exposure by requiring the EPA to address the risk remaining after technology-based standards are imposed. The EPA is to issue these standards within 8 years of promulgation of the MACT standards.

*Comment:* Two commenters (X–D–2 and X–D–49) fear that coke plants in Allegheny County will "backslide" from existing control requirements (i.e., that the NESHAP may replace or "water down" regulatory controls already in practice). In support, one commenter submits that the long-term average performance at Clairton Coke of 4.3 percent leaking doors compared to the statutory long-term average performance of 5.8 percent leaking doors will result in relaxation of local standards.

*Response:* Provisions are included in the rule to prevent this situation. As discussed in the preamble at 57 FR 57544 (and stated in § 63.312 of the regulation), a SIP cannot be revised to be less stringent than it was prior to September 15, 1992. The coke oven batteries in Allegheny County will remain subject to any applicable State or local regulations in addition to this rule. Thus, the final standards will supplement and not weaken any regulatory controls now in place. The specific example of a long-term average of 5.8 percent leaking doors refers to the November 1993 limits specified in the Act and not to the more stringent emission limits developed by the Coke Oven Battery Advisory Committee that must be met at staged intervals (starting in December 1995 for MACT and extending through January 2010 for LAER). The emission limits developed by the Committee will require long-term performance levels below 5.8 percent leaking doors.

*Comment:* Local environmental groups and citizens residing near the Clairton facility do not agree with the scope of control under the proposed rule. According to commenters X–D–3, X–D–8, and X–D–42, controls are warranted for quenching, combustion stacks, pushing, and decarbonization. Combustion stacks, pushing, and decarbonization operations are also substantial sources of particulate matter warranting control, particularly in a PM–10 (particulate matter less than 10 microns in diameter) nonattainment area (commenters X–D–2, X–D–3, X–D–39, X–D–41, X–D–42, and X–D–53). Emissions of PM–10 are of great concern to the commenters because these aerosols can be contaminated with toxins and inhaled into the lungs.

*Response:* The EPA believes that the emission points subject to the rule are the major sources of the listed hazardous air pollutant "coke oven emissions" associated with a well-maintained and properly operated coke oven battery. The controls and work practice requirements included in the rule will provide concurrent control of many air toxics and hazardous pollutants included in the coke oven emissions from batteries or bypass/bleeder stacks. As discussed in the preamble, toxic or hazardous air pollutants (organics, metals, and particulate matter) can also be emitted from other sources such as quenching, pushing, combustion stacks, and decarbonization operations. In many cases, these emission points are subject to existing State or local regulations and consent decrees. New Federal regulations affecting air emissions from other emission sources in the plant also are now being implemented (e.g., NESHAP for by-product plants and benzene waste operations), which will result in emission reductions for benzene (and other hazardous pollutants) and volatile organic compounds. In addition, the EPA plans to collect information on emissions and emission control technologies for air emission sources associated with ferrous manufacturing and will develop MACT standards for them prior to the year 2000. The ferrous manufacturing source categories will include: (1) Review of the existing NESHAP for coke by-product recovery plants; (2) pushing, quenching, and battery stacks; (3) ferroalloys production; (4) integrated iron and steel manufacturing; (5) nonstainless steel manufacturing; (6) stainless steel manufacturing; (6) iron foundries; (7) steel foundries; and (8) steel pickling—HCl process. (See Docket Items VIII–J–6 and X–I–1.) Although the EPA understands and sympathizes with the commenters' desire for immediate further regulation of all emission points at these facilities, Congress did not mandate immediate controls for the emission points mentioned in their comments, and the EPA is not precluded from adopting regulations one step at a time.

*Comment:* Local environmental groups and citizens point to the high levels of unregulated toxic and hazardous pollutants emitted from the coke plants in Allegheny County. According to Commenter X–D–42, State legislation will not allow more stringent controls on coke ovens than those required under the 1990 Amendments. In addition, coke plants in the Pittsburgh area are located in heavily industrialized river valleys that are prone to air inversions (commenters X–D–3, X–D–38, X–D–47, X–D–48, X–D–

49, X–D–55, X–D–57, X–D–60, and X–D–63). The commenters ask that additional consideration be given to Allegheny County, which has the largest coke plant in the country, the largest concentration of coke oven batteries, and possibly the highest level of citizen exposure. They ask for the development of special standards specific to Allegheny County, a special health study, or for national standards that are geared to local communities where pollution exposure is particularly bad due to meteorology, clusters of facilities, local terrain, size of the facility, and/or total emissions from the facility (commenters X–D–35, X–D–36, X–D–38, X–D–41, X–D–42, X–D–53, X–D–58, X–D–61, and X–D–63). Commenter X–D–18 also suggested innovative approaches such as: (1) Fostering pollution prevention by including incentives for plants to invest in technology to reduce the volume of pollutants generated during the production process, (2) providing tax incentives for pollution reduction or research and development, (3) using money from fines to fund research and development of new technologies and methods, and (4) performing an international study on coke oven pollution control so new developments can be incorporated in the plant.

*Response:* The provisions in the Act with respect to coke ovens require the development of a technology-based standard to be followed by the development of a residual risk standard at a later date. The EPA certainly has acted reasonably in developing rules consistent with this approach. The opportunity for special provisions for Allegheny County, or any other location that may have high exposure levels and high risk, will be available under the risk standard. The final standards are technology-based and are applied uniformly to all coke plants in the United States. These coke plants all use the same cokemaking process and the same emission control technology applies to each of them; consequently, there was no basis for a special subcategorization for batteries in Allegheny County. However, the risk standard to be developed must address the site-specific nature of any high levels of residual risk that might remain after today's final standards are implemented.

The EPA is also interested in innovative approaches, and there are continuing and emerging efforts in this area. The EPA has identified and investigated the merits of new technology (including form cokemaking and, more recently, the Jewell nonrecovery process) and attempts to stay informed of any new foreign developments, especially by coke oven batteries in Great Britain, Germany, and Japan. Studies of new technologies are planned in an effort administered jointly by the U.S. Department of Energy and the EPA as required under the Act. (See Docket Item VIII–I–1.) Consequently, many of the commenter's suggestions are now being evaluated through funding of research and development programs to improve coke oven emission control technology.

*Comment:* A total of 42 commenters, consisting of local environmental groups and Allegheny County residents, argue that the standards are not adequate to protect public health (commenters X–D–2, X–D–3, X–D–4, X–D–13, X–D–14, X–D–16, X–D–17, X–D–18, X–D–20, X–D–21, X–D–22, X–D–23, X–D–26, X–D–27, X–D–29, X–D–30, X–D–33, X–D–34, X–D–35, X–D–36, X–D–37, X–D–39, X–D–41, X–D–42, X–D–44, X–D–45, X–D–46, X–D–47, X–D–48, X–D–49, X–D–50, X–D–51, X–D–52, X–D–53, X–D–54, X–D–56, X–D–57, X–D–58, X–D–59, X–D–60, X–D–61, and X–D–63). In support, commenters cite various cancer risk estimates of 1 in 55 over 70 years (commenters X–D–4, X–D–33, X–D–39, and X–D–41); 1 in 100 over 70 years (commenters X–D–52 and X–D–54); 1 in 300 over 70 years (commenter X–D–53); a range of 1 in 55 to 1 in 300; and 1 in 800 after control for benzo(a)pyrene (commenter X–D–58). Commenter X–D–42 states that recent benzo(a)pyrene readings from an ambient monitor atop a local school equate to a cancer risk of 1 in 240. Commenter X–D–39 compares the risk level after control to the 1 in 1,000,000 benchmark used in Clean Water Act regulations. Many of the commenters also point out that these risk estimates do not include risks other than lung cancer or chronic effects, the effects of other toxic and hazardous polluants, emissions from other sources and facilities in the area, or special impacts on the elderly or children. In support, commenter X–D–60 cites a recent journal article ("Molecular and Genetic Damage in Humans from Environmental Pollution in Poland," Perera et al., *Nature*, 360:256–258) regarding the health effects of exposure to polycyclic aromatic hydrocarbons from industrial and residential burning of coal. Many of the commenters state that this risk is not acceptable and ask that the proposal be revised or withdrawn. Commenter X–D–35 also states that the Federal Register notice is insufficient because information as to the relative risk to surrounding communities is not presented.

*Response:* The proposed emission limits were developed under the 1990 Amendments to the Act and are based on available emission control technology and the performance levels that are achievable by the technology. The Act specifically defers immediate implementation of residual risk standards. Estimates of risk to the surrounding community simply do not play a role in the development of MACT standards. (See sections 112(d)(8) (a) and (c).) However, the EPA is required under the Act to develop residual risk standards within the next 8 years. Provisions within the Act will allow certain batteries to defer meeting this risk standard until the year 2020. To defer the risk standard, these batteries must meet the more stringent LAER emission limits.

*Comment:* Commenters X–D–2, X–D–16, X–D–35, X–D–37, X–D–42, and X–D–63 believe the regulatory negotiation process was unfair, exclusive, and tilted in favor of the industry over the interests of the citizens of Clairton.

*Response:* In any negotiation process, it is sometimes difficult to understand that some parties may have accepted certain provisions in exchange for others in order to reach consensus on the regulation as a whole. No one group or individual involved in the negotiations agreed with all the requirements or obtained all desired provisions. Many new precedents were set in this regulation (e.g., independent daily monitoring paid for by the industry), emission controls were included for one major emission point (bypass/bleeder stacks) beyond the battery proper, and strong work practice requirements were included. The emission reductions achieved by the rule will bring improvement to the community of Clairton as well as to other communities in the country where coke oven batteries are located. When viewed as a whole, the rule was accepted by many different parties with diverse interests.

The commenters speak of exclusion from the process. The EPA actively solicited public participation in this rulemaking process, and responding to these comments on the proposal is a continuing part of that effort. For practical reasons, not all citizens can participate in a regulatory negotiation; however, an effort was made to ensure that citizens and citizen groups, such as the Group Against Smog and Pollution, were represented on the Advisory Committee. In addition, there have been several opportunities for direct involvement by individuals, including NAPCTAC meetings, a 1987 public hearing in Clairton, Pennsylvania, and a

recent public hearing in Philadelphia, Pennsylvania. Several opportunities have also been given for the submission of written comments, all of which have been considered.

The EPA also believes it is productive for local citizens and environmental groups to continue to work with the industry, States, and local agencies to address site-specific problems and develop solutions. Local citizens have been effective in obtaining improved emission control of coke oven batteries, and the benefits of their efforts are now being applied to coke batteries nationwide under these NESHAP.

*Comment:* Commenter X–D–37 suggests that the language in the regulation be clarified to require an igniter for each bypass/bleeder stack as opposed to an igniter for each battery. No alternative method or allowance standard should be permitted. According to the commenter, the EPA also should update the preamble to state that 13 venting incidents had occurred over a 4-year period (1987 through 1990) rather than 12 incidents over a 3-year period (1987 through 1989). Commenter X–D–47 believes the EPA erred in requiring bleeder stack flares only for automatically operated stacks and that manually operated stacks would still be allowed to vent raw gas.

*Response:* The standards do not require an igniter for each bypass/bleeder stack; instead, a bypass/bleeder stack flare system must be installed that is capable of controlling 120 percent of the normal gas flow generated by the battery. This approach will provide the desired level of control, without imposing on battery operators the unnecessary additional costs that would be associated with a requirement to install flares on each bleeder stack, or a requirement to dismantle bleeder stacks that are not themselves individually igniter-equipped. The regulation prohibits venting other than through the flare system (or approved alternative control device), which provides an adequate safeguard against venting raw coke oven gas to the atmosphere. The EPA anticipates that most owners or operators will comply with these requirements by installing flares on one or more bypass/bleeder stacks. Coke oven gas would be routed to these flares (e.g., through the collecting main). The dampers on any other bypass/bleeder stacks that were not flare-equipped would be closed, which would prevent coke oven gas from being emitted to the atmosphere through these bypass/bleeder stacks. The requirement to install a bypass/bleeder stack flare system applies to both automatically or manually operated stacks. With approval by the Administrator, an equivalent, alternative system with a destruction capability of at least 98 percent can also be used so as not to preclude the use of new or improved technology.

*Comment:* Commenter X–D–2 believes that daily inspections are unworkable in the long run and will not compensate for a 30-day rolling average computation. Other commenters add that the 30-day average smooths out all the spikes and, over time, masks real problems (commenters X–D–4, X–D–9, X–D–13, X–D–14, X–D–16, X–D–21, X–D–22, X–D–25, X–D–27, X–D–29, X–D–31, X–D–33, X–D–38, X–D–41, X–D–42, X–D–47, X–D–52, X–D–53, X–D–56, and X–D–60).

*Response:* This issue was discussed at length by the Advisory Committee, and an agreement was reached that would provide for limits based on a 30-run average for the rule while maintaining single-run limits for SIP's and consent decrees. The format of the rule is a 30-run average to reflect long-term emissions and exposure levels, which are associated with chronic health effects. However, the 30-run average will also limit the frequency and extent of some short-term excursions because a single high excursion can result in exceeding the 30-run limit for that day, and repeated poor performance may result in exceedance of the 30-run limit on additional days. Each daily exceedance of the 30-run limit may be considered a violation. If daily single-run limits were developed that were statistically equivalent to these 30-run limits, the single-run limits would have been significantly higher than the 30-run limits.

In addition, current SIP's and consent decrees are enforced based on exceeding a limit for any single observation. These limits will remain in effect (see the previous discussion of "backsliding") and provide a cap for a short-term excursion from a single high observation. The Committee agreed that the preferred approach would apply a 30-run average for the rule, with inspections by independent observers, and the maintenance of current single-run limits in SIP's.

Another factor that should result in fewer short-term excursions under the rule is that daily inspections are required. Many batteries, including those in Allegheny County, are inspected less frequently by the enforcement agency. In many cases, the data from these daily inspections can be used to improve the enforcement of SIP's and consent decrees.

*Comment:* According to commenter X–D–35, the Federal Register notice of proposal is also deficient because it did not present detailed information on discussion of the relative performance of various coke oven batteries at different levels of technical capability.

*Response:* The EPA does not agree that the notice of proposed rulemaking is deficient. The pace of the negotiations precluded compiling and analyzing the data in the level of detail desired by the commenter. However, all information and data considered by the Committee are in the docket and available for public inspection. These include performance data for individual batteries, data summaries, and a listing of batteries ranked by performance. This information was made available during the negotiation process to all Committee members, including the representatives from the Group Against Smog and Pollution.

*B. Test Methods and Monitoring*

*Comment:* Commenter X–D–12 explains that certain coke plants in Jefferson County, Alabama are performing charging and pushing operations at night when surveillance is not possible. For this reason, only a portion of Method 303 can be enforced.

*Response:* If a facility pushes and charges only at night, then that facility must, at its option, change their schedule and charge during daylight hours or provide adequate lighting so that visible emission inspections can be made at night. "Adequate lighting" will be determined by the enforcement agency.

*Comment:* Commenters X–D–33 and X–D–48, residents of the Pittsburgh area, note that coke oven emissions are higher at night and on weekends and holidays.

*Response:* The standards should eliminate this problem because independent monitoring will be required 7 days a week, including holidays. This type of enhanced monitoring, coupled with the new work practice rules, is expected to aid in improving emissions control.

*Comment:* Commenter X–D–12 asks how to differentiate ovens and the proper emission limits for merchant plants or batteries that produce a percentage of furnace and foundry coke, and if this compounds the required monitoring calculations.

*Response:* The definition of "foundry coke producer" included in the rule does not require differentiating ovens or additional monitoring calculations for daily inspections if the battery changes the type of coke produced during the year. The coke plant is considered to be a foundry producer and subject to numerical limits for foundry coke plants

if the annual design capacity on January 1, 1992, was less than 1.25 million Mg/yr (not including the capacity of the specific batteries identified under § 63.300(d)(2) of the rule or cold-idle batteries included in the design capacity pursuant to § 63.304(b)(6) of the rule) and the plant was not owned or operated by an integrated steel producer as of that date.

*Comment:* Commenter X–D–12 asks who is responsible for the cost of inspections on days when inspections cannot be performed (i.e., in the case of bad weather). Commenter X–D–41 asks what happens if the responsible agency fails to have the inspections done?

*Response:* The fees to be paid by the industry to cover the cost of monitoring and inspections will be provided annually with the expectation that inspections occur each day. The size of the fee is a function of the number of batteries at the plant, and it is not affected by the number of inspections that are made. Provisions are included in the rule to account for data from days on which inspections of one or more emission points cannot be performed; however, the EPA expects that this situation will occur very infrequently. If a State is not enforcing the program as required, the EPA regional office may take over and implement the enforcement program. In addition, the Act contains provisions to ensure that the enforcement agency does fulfill its obligations under the law.

*Comment:* Commenter X–D–12 asks if industry is still responsible for the cost of Method 303 inspections to enforce a SIP or consent decree with more stringent requirements.

*Response:* In the negotiations, the industry agreed to pay for Method 303 inspections. As long as Method 303 is applied, the cost of Method 303 inspections will be borne by the industry and will be based on the formula in the rule. Any data collected by Method 303 that are consistent with the SIP or consent decree inspection method can be used to enforce the SIP or consent decree. If the SIP or consent decree requires additional labor hours beyond those allotted for the Method 303 observer under this rule, the cost of these additional hours is not covered under the rule's formula for inspection cost.

*Comment:* Commenter X–D–43 asks EPA to clarify that emission fees collected under title V of the Act are not to be used to pay for the required inspections. The inspection fees are in addition to the title V fees.

*Response:* In the negotiations, it was understood that the inspection fees required under this rule are in addition to title V fees, so long as the title V fees do not cover the inspections required under this rule. (See § 63.309(a)(4)(iii).)

*Comment:* Commenter X–D–12 asks how many lids count in the calculation of percent leaking lids where there are four lids per oven but only three are ever used for staged charging. The concern is over the total number of lids that should be used in the denominator of the calculation of percent leaking lids.

*Response:* If the fourth lid can be removed and is used for charging or decarbonizing during normal operation, the calculation of percent leaking lids should be based on four lids per oven. If the fourth lid is not used for charging or decarbonizing during normal operation, the calculation should be based on three lids per oven.

*Comment:* Commenter X–D–12 notes that the term "B" in the equation for determining costs for inspections (see 57 FR 57567) is not defined.

*Response:* The "B" in the cost equation is a **Federal Register** typographical error and was not intended as part of the equation.

*C. Reporting and Recordkeeping*

*Comment:* Commenter X–D–12 suggests that the rule require all plants to report their commitment to either the MACT or LAER standard in 1993, with no provision for changing their initial decision to avoid situations where inspectors are hired but not needed because the plant decides to drop from the extension track.

*Response:* The rule allows the plants to "straddle" until a binding declaration is made in 1998. This means the owner or operator of the battery in question has chosen to meet both the MACT and LAER limits, and monitoring would begin in November 1993 rather than 1995. If the owner or operator of a plant changes from LAER to MACT in 1995, the plant will be required to meet MACT standards, which will require daily inspections. A commitment to meet the November 1993 limits is a commitment to pay for the cost of daily inspections annually, starting in November 1993.

*Comment:* Commenters X–D–9 and X–D–41 urge EPA not to implement self-certifying reporting requirements under the standards. (See 57 FR 57539.) Previous Federal and industry experience with self-certification has not worked according to these commenters.

*Response:* The rule includes the innovative provisions for daily inspections by an independent observer who must meet specific training requirements to qualify as a visible emission inspector. Because the independent inspector will make the visible emission observations for compliance determinations, the Agency does not agree that self-certification in the initial or semiannual compliance certifications included in the reporting requirements will, in this case, present the problems implied by the commenters.

*D. Miscellaneous*

*Comment:* Commenters X–D–4, X–D–9, X–D–13, X–D–14, X–D–16, X–D–21, X–D–22, X–D–27, X–D–28, X–D–29, X–D–31, X–D–33, X–D–38, X–D–39, X–D–41, and X–D–53 believe penalties for violations should be included in the rule.

*Response:* The commenters are mistaken that the rule fails to provide for civil and criminal penalties. Penalties for violations are not cited in the rule because enforcement of the rule (and permit requirements) is the responsibility of the EPA or delegated State (i.e., a State with an approved operating permit program). Provisions for maximum penalties (up to $25,000 per day per emission point) are included in the Act. The 30-day rolling average is calculated each day; consequently, a penalty can be assessed each day for any exceedance of the limit for each emission point. However, penalties are assessed at the discretion of the enforcement agency, which may consider many factors (frequency, duration, severity of violation, good faith efforts to correct, etc.) in determining an appropriate penalty. In addition, the Act includes provisions to ensure that the enforcement agency fulfills its responsibilities under the law.

*Comment:* Commenter X–D–12 asks if new operating permits based on Method 303 need to be issued now if the LAER track is followed.

*Response:* Yes, but approval of the State permit program is required before operating permits can be issued. As discussed in the preamble at 57 FR 57555, the EPA intends to delegate authority for implementing the NESHAP to the States as soon as possible after promulgation.

The LAER standards will become effective on November 15, 1993. Under the final rules establishing requirements for State operating permit programs (40 CFR part 70), States must submit proposed permit programs to EPA for approval by November 15, 1993. Sources subject to the permit program must submit complete permit applications within 1 year after a State program is approved (including an interim approval) or, where the State

program is not approved, within 1 year after a program is promulgated by the EPA.

*Comment:* Commenter X–D–37 suggests the rule should include provisions for planned outages. Companies should be required to notify the regulatory agency of work plans at least a week in advance. This, coupled with a followup report, would prevent a plant from hiding emission releases during a planned outage.

*Response:* As discussed in the preamble to the proposed rule (see 57 FR 57548, December 4, 1992), the owner or operator must operate and maintain the battery and its air pollution control technology at all times, including during startups, shutdowns, and malfunctions, in a manner consistent with good air pollution control practices for minimizing emissions to the levels required by the applicable standards. Emissions in excess of the applicable standards occurring during a planned outage would be a violation unless the emissions were the result of an incident determined to constitute a malfunction. (However, it would be difficult to qualify a "planned" outage as a malfunction.) In addition, the provisions included in the rule for independent daily monitoring ensure that an inspector is at the site every day to ensure that proper procedures (e.g., those included in the startup, shutdown, and malfunction plan and the work practice plan) are followed as applicable. The presence of an independent inspector on the site each day should prevent the hidden release of emissions during an outage.

*Comment:* Commenter X–D–10 stresses the significance of the Committee agreement to support the standards as long as the EPA proposes and promulgates a regulation and preamble with the same substance and effect of the final agreement. The organizations that negotiated the agreement also reiterate their support (comment X–D–15).

*Response:* The EPA understands the importance of honoring this successful negotiated agreement and has made no change to the proposed rule or its rationale that would in any way alter the substance and effect of the agreement.

*Comment:* Nineteen commenters requested that the EPA hold a public hearing in Clairton, Pittsburgh, or Allegheny County, Pennsylvania (rather than at EPA facilities in Research Triangle Park, North Carolina) so that affected citizens residing near the Nation's largest coke plant could have an opportunity to express their views on the proposed rule. In subsequent written and oral testimony, commenters reiterated their request for a second hearing in Pittsburgh or Clairton so that more citizens wishing to discuss their concerns would be able to attend (commenters X–D–2; X–D–6, X–D–7, X–D–8, X–D–11, X–D–14, X–D–16, X–D–21, X–D–24, X–D–25, X–D–29, X–D–31, X–D–33, X–D–40, X–D–41, X–D–50, X–D–52, X–D–54, X–D–57, and X–D–63).

*Response:* The EPA agreed to the initial request of these residents and environmental groups and arranged a public hearing at the EPA regional offices in Philadelphia, Pennsylvania. At the request of the commenters, the EPA also delayed the date originally scheduled for the hearing from December 28, 1992, to January 15, 1993, to avoid conflicts with Christmas holidays for citizens wishing to present testimony. The transcript from this hearing is included in the docket. (See Docket Item X–G–1.)

In further discussion of this issue at the hearing, the EPA representatives explained that most public hearings for air standards are held in Research Triangle Park. This is because when national standards are proposed, requests for hearings typically come from all over the country. By holding the hearings in Research Triangle Park, no one person or group is given any unfair advantage. In this case, while a vast majority of the requests did come from the Pittsburgh area, people from other areas in Pennsylvania also wanted to attend. In holding the hearing in Philadelphia, the EPA tried to accommodate commenters from the Pittsburgh area as well as other Pennsylvania residents. The EPA representatives also explained that a public hearing, however important, is an adjunct to the written comment process. This process is fully available to everyone and is not dependent at all on location.

## V. Administrative Requirements

### *A. Docket*

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review. (See section 307(d)(7)(A).)

### *B. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060–0253.

Public reporting burden for this collection of information is estimated to average 2,461 hours per respondent per year, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, 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."

The control numbers assigned to collections of information in certain EPA regulations by the OMB have been consolidated under 40 CFR part 9. The information collection request for this NESHAP was previously subject to public notice and comment prior to OMB approval. As a result, the EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act to amend the applicable table in 40 CFR part 9 to display the OMB control number for this rule without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, the EPA also finds that there is good cause under 5 U.S.C. 553(d)(3). For additional information, see 58 FR 18014, April 7, 1993 and 58 FR 27472, May 10, 1993.

### *C. Executive Order 12291*

Under Executive Order 12291, the EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The EPA has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The total annual costs of the MACT standards range from $25 million to $33 million/year; the total annual cost of the

LAER standards range from $84 million to $95 million/year, including the MACT costs. These impacts are below the $100 million threshold. Only small market changes are projected. Increases in the price of coke would be minimal (less than 1 percent for furnace coke and about 1.1 to 2.5 percent for foundry coke). The decrease in coke production would also be minimal (0.7 percent for furnace coke and 1.1 percent for foundry coke under MACT standards; 2.1 percent for furnace and 2.6 for foundry coke under LAER standards). In addition, the rule will not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. The EPA has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts on small businesses, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities because no substantial number of small entities are affected and no significant impact on these small entities will result.

*E. Miscellaneous*

In accordance with section 112(f)(2)(C) of the Act, the EPA is required to determine whether additional standards are necessary to address the risk remaining after technology-based MACT standards are imposed. The EPA is to make that determination for coke oven batteries and to promulgate standards determined to be necessary by October 27, 2001. Pursuant to section 112(i)(8)(C) of the Act, the EPA also is required to review and revise the LAER standard by January 1, 2007.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Coke oven emissions, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 18, 1993.

**Carol M. Browner,**

*Administrator.*

Parts 9 and 63 of title 40, chapter I, of the Code of Federal Regulations are amended as follows:

## PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *

| 40 CFR citation | OMB control No. |
|---|---|
| * * * * * | |
| National Emission Standards for Hazardous Air Pollutants for Source Categories | |
| * * * * * | |
| 63.302–63.311 | 2060–0253 |
| * * * * * | |

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. The authority citation for part 63 continues to read as follows:

**Authority:** Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7616, 7601).

4. Part 63 is amended by adding Subpart L to read as follows:

**Subpart L—National Emission Standards for Coke Oven Batteries**

Sec.



**Subpart L—National Emission Standards for Coke Oven Batteries**

**§ 63.300 Applicability.**

(a) Unless otherwise specified in §§ 63.306, 63.307, and 63.311, the provisions of this subpart apply to existing by-product coke oven batteries at a coke plant and to existing nonrecovery coke oven batteries at a coke plant on and after the following dates:

(1) December 31, 1995, for existing by-product coke oven batteries subject to emission limitations in § 63.302(a)(1) or existing nonrecovery coke oven batteries subject to emission limitations in § 63.303(a);

(2) January 1, 2003, for existing by-product coke oven batteries subject to emission limitations in § 63.302(a)(2);

(3) November 15, 1993, for existing by-product and nonrecovery coke oven batteries subject to emission limitations in §§ 63.304(b)(1) or 63.304(c);

(4) January 1, 1998, for existing by-product coke oven batteries subject to emission limitations in §§ 63.304(b)(2) or 63.304(b)(7); and

(5) January 1, 2010, for existing by-product coke oven batteries subject to emission limitations in §§ 63.304(b)(3) or 63.304(b)(7).

(b) The provisions for new sources in §§ 63.302(b), 63.302(c), and 63.303(b) apply to each greenfield coke oven battery and to each new or reconstructed coke oven battery at an existing coke plant if the coke oven battery results in an increase in the design capacity of the coke plant as of November 15, 1990, (including any capacity qualifying under § 63.304(b)(6), and the capacity of any coke oven battery subject to a construction permit on November 15, 1990, which commenced operation before October 27, 1993.

(c) The provisions of this subpart apply to each brownfield coke oven battery, each padup rebuild, and each cold-idle coke oven battery that is restarted.

(d) The provisions of §§ 63.304(b)(2)(i)(A) and 63.304(b)(3)(i) apply to each foundry coke producer as follows:

(1) A coke oven battery subject to § 63.304(b)(2)(i)(A) or § 63.304(b)(3)(i)

must be a coke oven battery that on January 1, 1992, was owned or operated by a foundry coke producer; and

(2)(i) A coke oven battery owned or operated by an integrated steel producer on January 1, 1992, and listed in paragraph (d)(2)(ii) of this section, that was sold to a foundry coke producer before November 15, 1993, shall be deemed for the purposes of paragraph (d)(1) of this section to be owned or operated by a foundry coke producer on January 1, 1992.

(ii) The coke oven batteries that may qualify under this provision are the following:

(A) The coke oven batteries at the Bethlehem Steel Corporation's Lackawanna, New York facility; and

(B) The coke oven batteries at the Rouge Steel Company's Dearborn, Michigan facility.

(e) The emission limitations set forth in this subpart shall apply at all times except during a period of startup, shutdown, or malfunction. The startup period shall be determined by the Administrator and shall not exceed 180 days.

(f) After October 28, 1992, rules of general applicability promulgated under section 112 of the Act, including the General Provisions, may apply to coke ovens provided that the topic covered by such a rule is not addressed in this subpart.

**§ 63.301 Definitions.**

Terms used in this subpart are defined in the Act or in this section as follows:

*Administrator* means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this subpart or its designated agent).

*Brownfield coke oven battery* means a new coke oven battery that replaces an existing coke oven battery or batteries with no increase in the design capacity of the coke plant as of November 15, 1990 (including capacity qualifying under § 63.304(b)(6), and the capacity of any coke oven battery subject to a construction permit on November 15, 1990, which commenced operation before October 27, 1993.

*Bypass/bleeder stack* means a stack, duct, or offtake system that is opened to the atmosphere and used to relieve excess pressure by venting raw coke oven gas from the collecting main to the atmosphere from a by-product coke oven battery, usually during emergency conditions.

*By-product coke oven battery* means a source consisting of a group of ovens connected by common walls, where coal undergoes destructive distillation under positive pressure to produce coke and coke oven gas, from which by-products are recovered. Coke oven batteries in operation as of April 1, 1992, are identified in appendix A to this subpart.

*Certified observer* means a visual emission observer, certified under (if applicable) Method 303 and Method 9 (if applicable) and employed by the Administrator, which includes a delegated enforcement agency or its designated agent. For the purpose of notifying an owner or operator of the results obtained by a certified observer, the person does not have to be certified.

*Charge* or *charging period* means, for a by-product coke oven battery, the period of time that commences when coal begins to flow into an oven through a topside port and ends when the last charging port is recapped. For a nonrecovery coke oven battery, *charge or charging period* means the period of time that commences when coal begins to flow into an oven and ends when the push side door is replaced.

*Coke oven battery* means either a by-product or nonrecovery coke oven battery.

*Coke oven door* means each end enclosure on the pusher side and the coking side of an oven. The chuck, or leveler-bar, door is part of the pusher side door. A *coke oven door* includes the entire area on the vertical face of a coke oven between the bench and the top of the battery between two adjacent buckstays.

*Cold-idle coke oven battery* means an existing coke oven battery that has been shut down, but is not dismantled.

*Collecting main* means any apparatus that is connected to one or more offtake systems and that provides a passage for conveying gases under positive pressure from the by-product coke oven battery to the by-product recovery system.

*Collecting main repair* means any measure to stop a collecting main leak on a long-term basis. A repair measure in general is intended to restore the integrity of the collecting main by returning the main to approximately its design specifications or its condition before the leak occurred. A repair measure may include, but is not limited to, replacing a section of the collecting main or welding the source of the leak.

*Consecutive charges* means charges observed successively, excluding any charge during which the observer's view of the charging system or topside ports is obscured.

*Design capacity* means the original design capacity of a coke oven battery, expressed in megagrams per year of furnace coke

*Foundry coke producer* means a coke producer that is not and was not on January 1, 1992, owned or operated by an integrated steel producer and had on January 1, 1992, an annual design capacity of less than 1.25 million megagrams per year (not including any capacity satisfying the requirements of § 63.300(d)(2) or § 63.304(b)(6)).

*Greenfield coke oven battery* means a coke oven battery for which construction is commenced at a plant site (where no coke oven batteries previously existed) after December 4, 1992.

*Integrated steel producer* means a company or corporation that produces coke, uses the coke in a blast furnace to make iron, and uses the iron to produce steel. These operations may be performed at different plant sites within the corporation.

*Malfunction* means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures caused in part by poor maintenance or careless operation are not *malfunctions.*

*New shed* means a shed for which construction commenced after September 15, 1992. The shed at Bethlehem Steel Corporation's Bethlehem plant on Battery A is deemed not to be a *new shed.*

*Nonrecovery coke oven battery* means a source consisting of a group of ovens connected by common walls and operated as a unit, where coal undergoes destructive distillation under negative pressure to produce coke, and which is designed for the combustion of the coke oven gas from which by-products are not recovered.

*Offtake system* means any individual oven apparatus that is stationary and provides a passage for gases from an oven to a coke oven battery collecting main or to another oven. Offtake system components include the standpipe and standpipe caps, goosenecks, stationary jumper pipes, mini-standpipes, and standpipe and gooseneck connections.

*Oven* means a chamber in the coke oven battery in which coal undergoes destructive distillation to produce coke.

*Padup rebuild* means a coke oven battery that is a complete reconstruction of an existing coke oven battery on the same site and pad without an increase in the design capacity of the coke plant as of November 15, 1990 (including any capacity qualifying under § 63.304(b)(6), and the capacity of any coke oven battery subject to a construction permit on November 15, 1990, which commenced operation before October 27, 1993. The Administrator may

determine that a project is a *padup rebuild* if it effectively constitutes a replacement of the battery above the pad, even if some portion of the brickwork above the pad is retained.

*Pushing*, for the purposes of § 63.305, means that coke oven operation that commences when the pushing ram starts into the oven to push out coke that has completed the coking cycle and ends when the quench car is clear of the coke side shed.

*Run* means the observation of visible emissions from topside port lids, offtake systems, coke oven doors, or the charging of a coke oven that is made in accordance with and is valid under Methods 303 or 303A in appendix A to this part.

*Shed* means a structure for capturing coke oven emissions on the coke side or pusher side of the coke oven battery, which routes the emissions to a control device or system.

*Short coke oven battery* means a coke oven battery with ovens less than 6 meters in height.

*Shutdown* means the operation that commences when pushing has occurred on the first oven with the intent of pushing the coke out of all of the ovens in a coke oven battery without adding coal, and ends when all of the ovens of a coke oven battery are empty of coal or coke.

*Standpipe cap* means an apparatus used to cover the opening in the gooseneck of an offtake system.

*Startup* means that operation that commences when the coal begins to be added to the first oven of a coke oven battery that either is being started for the first time or that is being restarted and ends when the doors have been adjusted for maximum leak reduction and the collecting main pressure control has been stabilized. Except for the first startup of a coke oven battery, a startup cannot occur unless a shutdown has occurred.

*Tall coke oven battery* means a coke oven battery with ovens 6 meters or more in height.

*Temporary seal* means any measure, including but not limited to, application of luting or packing material, to stop a collecting main leak until the leak is repaired.

*Topside port lid* means a cover, removed during charging or decarbonizing, that is placed over the opening through which coal can be charged into the oven of a by-product coke oven battery.

**§ 63.302 Standards for by-product coke oven batteries.**

(a) Except as provided in § 63.304 or § 63.305, on and after the dates specified in this paragraph, no owner or operator shall cause to be discharged or allow to be discharged to the atmosphere, coke oven emissions from each affected existing by-product coke oven battery that exceed any of the following emission limitations or requirements:

(1) On and after December 31, 1995;

(i) For coke oven doors;

(A) 6.0 percent leaking coke oven doors for each tall by-product coke oven battery, as determined according to the procedures in § 63.309(d)(1); and

(B) 5.5 percent leaking coke oven doors for each short by-product coke oven battery, as determined according to the procedures in § 63.309(d)(1);

(ii) 0.6 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1);

(iii) 3.0 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1); and

(iv) 12 seconds of visible emissions per charge, as determined by the procedures in § 63.309(d)(2).

(2) On and after January 1, 2003, unless the Administrator promulgates more stringent limits pursuant to section 112(f) of the Act;

(i) 5.5 percent leaking coke oven doors for each tall by-product coke oven battery, as determined by the procedures in § 63.309(d)(1); and

(ii) 5.0 percent leaking coke oven doors for each short by-product coke oven battery, as determined by the procedures in § 63.309(d)(1).

(b) Except as provided in paragraph (c) of this section, no owner or operator shall cause to be discharged or allow to be discharged to the atmosphere, coke oven emissions from a by-product coke oven battery subject to the applicability requirements in § 63.300(b) that exceed any of the following emission limitations:

(1) 0.0 percent leaking coke oven doors, as determined by the procedures in § 63.309(d)(1);

(2) 0.0 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1);

(3) 0.0 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1); and

(4) 34 seconds of visible emissions per charge, as determined by the procedures in § 63.309(d)(2).

(c) The emission limitations in paragraph (b) of this section do not apply to the owner or operator of a by-product coke oven battery that utilizes a new recovery technology, including but not limited to larger size ovens, operation under negative pressure, and processes with emission points different from those regulated under this subpart. An owner or operator constructing a new by-product coke oven battery or reconstructing an existing by-product recovery battery that utilizes a new recovery technology shall:

(1) Notify the Administrator of the intention to do so, as required in § 63.311(c); and

(2) Submit, for the determination under section 112(g)(2)(B) of the Act, and as part of the application for permission to construct or reconstruct, all information and data requested by the Administrator for the determination of applicable emission limitations and requirements for that by-product coke oven battery.

(d) Emission limitations and requirements applied to each coke oven battery utilizing a new recovery technology shall be less than the following emission limitations or shall result in an overall annual emissions rate for coke oven emissions for the battery that is lower than that obtained by the following emission limitations:

(1) 4.0 percent leaking coke oven doors on tall by-product coke oven batteries, as determined by the procedures in § 63.309(d)(1);

(2) 3.3 percent leaking coke oven doors on short by-product coke oven batteries, as determined by the procedures in § 63.309(d)(1);

(3) 2.5 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1);

(4) 0.4 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1); and

(5) 12 seconds of visible emissions per charge, as determined by the procedures in § 63.309(d)(2).

**§ 63.303 Standards for nonrecovery coke oven batteries.**

(a) Except as provided in § 63.304, on and after December 31, 1995, no owner or operator shall cause to be discharged or allow to be discharged to the atmosphere coke oven emissions from each affected existing nonrecovery coke oven battery that exceed any of the following emission limitations or requirements:

(1) For coke oven doors;

(i) 0.0 percent leaking coke oven doors, as determined by the procedures in § 63.309(d)(1); or

(ii) The owner or operator shall monitor and record, once per day for each day of operation, the pressure in each oven or in a common battery tunnel to ensure that the ovens are operated under a negative pressure.

(2) For charging operations, the owner or operator shall implement, for each day of operation, the work practices specified in § 63.306(b)(6) and record the performance of the work practices as required in § 63.306(b)(7).

(b) No owner or operator shall cause to be discharged or allow to be discharged to the atmosphere coke oven emissions from each affected new nonrecovery coke oven battery subject to the applicability requirements in § 63.300(b) that exceed any of the following emission limitations or requirements:

(1) For coke oven doors;

(i) 0.0 percent leaking coke oven doors, as determined by the procedures in § 63.309(d)(1); or

(ii) The owner or operator shall monitor and record, once per day for each day of operation, the pressure in each oven or in a common battery tunnel to ensure that the ovens are operated under a negative pressure;

(2) For charging operations, the owner or operator shall install, operate, and maintain an emission control system for the capture and collection of emissions in a manner consistent with good air pollution control practices for minimizing emissions from the charging operation;

(3) 0.0 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1) (if applicable to the new nonrecovery coke oven battery); and

(4) 0.0 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1) (if applicable to the new nonrecovery coke oven battery).

**§ 63.304 Standards for compliance date extension.**

(a) An owner or operator of an existing coke oven battery (including a cold-idle coke oven battery), a padup rebuild, or a brownfield coke oven battery, may elect an extension of the compliance date for emission limits to be promulgated pursuant to section 112(f) of the Act in accordance with section 112(i)(8). To receive an extension of the compliance date from January 1, 2003, until January 1, 2020, the owner or operator shall notify the Administrator as described in § 63.311(c) that the battery will comply with the emission limitations and requirements in this section in lieu of the applicable emission limitations in §§ 63.302 or 63.303.

(b) Except as provided in paragraphs (b)(4), (b)(5), and (b)(7) of this section and in § 63.305, on and after the dates specified in this paragraph, no owner or operator shall cause to be discharged or allow to be discharged to the atmosphere coke oven emissions from a by-product coke oven battery that exceed any of the following emission limitations:

(1) On and after November 15, 1993;

(i) 7.0 percent leaking coke oven doors, as determined by the procedures in § 63.309(d)(1);

(ii) 0.83 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1);

(iii) 4.2 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1); and

(iv) 12 seconds of visible emissions per charge, as determined by the procedures in § 63.309(d)(2).

(2) On and after January 1, 1998;

(i) For coke oven doors:

(A) 4.3 percent leaking coke oven doors for each tall by-product coke oven battery and for each by-product coke oven battery owned or operated by a foundry coke producer, as determined by the procedures in § 63.309(d)(1); and

(B) 3.8 percent leaking coke oven doors on each by-product coke oven battery not subject to the emission limitation in paragraph (b)(2)(i)(A) of this section, as determined by the procedures in § 63.309(d)(1);

(ii) 0.4 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1);

(iii) 2.5 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1); and

(iv) 12 seconds of visible emissions per charge, as determined by the procedures in § 63.309(d)(2).

(3) On and after January 1, 2010, unless the Administrator promulgates more stringent limits pursuant to section 112(i)(8)(C) of the Act;

(i) 4.0 percent leaking coke oven doors on each tall by-product coke oven battery and for each by-product coke oven battery owned or operated by a foundry coke producer, as determined by the procedures in § 63.309(d)(1); and

(ii) 3.3 percent leaking coke oven doors for each by-product coke oven battery not subject to the emission limitation in paragraph (b)(3)(i) of this section, as determined by the procedures in § 63.309(d)(1).

(4) No owner or operator shall cause to be discharged or allow to be discharged to the atmosphere coke oven emissions from a brownfield or padup rebuild by-product coke oven battery, other than those specified in paragraph (b)(4)(v) of this section, that exceed any of the following emission limitations:

(i) For coke oven doors;

(A) 4.0 percent leaking coke oven doors for each tall by-product coke oven battery, as determined by the procedures in § 63.309(d)(1); and

(B) 3.3 percent leaking coke oven doors on each short by-product coke oven battery, as determined by the procedures in § 63.309(d)(1);

(ii) 0.4 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1);

(iii) 2.5 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1); and

(iv) 12 seconds of visible emissions per charge, as determined by the procedures in § 63.309(d)(2).

(v) The requirements of paragraph (b)(4) of this section shall not apply and the requirements of paragraphs (b)(1), (b)(2), and (b)(3) of this section do apply to the following brownfield or padup rebuild coke oven batteries:

(A) Bethlehem Steel-Burns Harbor, Battery No. 2;

(B) National Steel-Great Lakes, Battery No. 4; and

(C) Koppers-Woodward, Battery No. 3.

(vi) To retain the exclusion provided in paragraph (b)(4)(v) of this section, a coke oven battery specified in paragraph (b)(4)(v) of this section shall commence construction not later than July 1, 1996, or 1 year after obtaining a construction permit, whichever is earlier.

(5) The owner or operator of a cold-idle coke oven battery that shut down on or after November 15, 1990, shall comply with the following emission limitations:

(i) For a brownfield coke oven battery or a padup rebuild coke oven battery, coke oven emissions shall not exceed the emission limitations in paragraph (b)(4) of this section; and

(ii) For a cold-idle battery other than a brownfield or padup rebuild coke oven battery, coke oven emissions shall not exceed the emission limitations in paragraphs (b)(1) through (b)(3) of this section.

(6) The owner or operator of a cold-idle coke oven battery that shut down prior to November 15, 1990, shall submit a written request to the Administrator to include the battery in the design capacity of a coke plant as of November 15, 1990. A copy of the request shall also be sent to Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. The Administrator will review and approve or disapprove a request according to the following procedures:

(i) Requests will be reviewed for completeness in the order received. A complete request shall include:

(A) Battery identification;

(B) Design information, including the design capacity and number and size of ovens; and

(C) A brief description of the owner or operator's plans for the cold-idle battery, including a statement whether construction of a padup rebuild or a

brownfield coke oven battery is contemplated.

(ii) A complete request shall be approved if the design capacity of the battery and the design capacity of all previous approvals does not exceed the capacity limit in paragraph (b)(6)(iii) of this section.

(iii) The total nationwide coke capacity of coke oven batteries that receive approval under paragraph (b)(6) of this section shall not exceed 2.7 million Mg/yr.

(iv) If a construction permit is required, an approval shall lapse if a construction permit is not issued within 3 years of the approval date, or if the construction permit lapses.

(v) If a construction permit is not required, an approval will lapse if the battery is not restarted within 2 years of the approval date.

The owner or operator of a by-product coke oven battery with fewer than 30 ovens may elect to comply with an emission limitation of 2 or fewer leaking coke oven doors, as determined by the procedures in § 63.309(d)(4), as an alternative to the emission limitation for coke oven doors in paragraphs (b)(2)(i), (b)(3) (i) through (ii), (b)(4)(i), (b)(5), and (b)(6) of this section.

(c) On and after November 15, 1993, no owner or operator shall cause to be discharged or allow to be discharged to the atmosphere coke oven emissions from an existing nonrecovery coke oven battery that exceed any of the emission limitations or requirements in § 63.303(a).

(d) Each owner or operator of an existing coke oven battery qualifying for a compliance date extension pursuant to this section shall make available, no later than January 1, 2000, to the surrounding communities the results of any risk assessment performed by the Administrator to determine the appropriate level of any emission standard established by the Administrator according to section 112(f) of the Act.

**§ 63.305 Alternative standards for coke oven doors equipped with sheds.**

(a) The owner or operator of a new or existing coke oven battery equipped with a shed for the capture of coke oven emissions from coke oven doors and an emission control device for the collection of the emissions may comply with an alternative to the applicable visible emission limitations for coke oven doors in §§ 63.302 and 63.304 according to the procedures and requirements in this section.

(b) To qualify for approval of an alternative standard, the owner or operator shall submit to the Administrator a test plan for the measurement of emissions. A copy of the request shall also be sent to the Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711. The plan shall describe the procedures to be used for the measurement of particulate matter; the parameters to be measured that affect the shed exhaust rate (e.g., damper settings, fan power) and the procedures for measuring such parameters; and if applicable under paragraph (c)(5)(ii) of this section, the procedures to be used for the measurement of benzene soluble organics, benzene, toluene, and xylene emitted from the control device for the shed. The owner or operator shall notify the Administrator at least 30 days before any performance test is conducted.

(c) A complete test plan is deemed approved if no disapproval is received within 60 days of the submittal to the Administrator. After approval of the test plan, the owner or operator shall;

(1) Determine the efficiency of the control device for removal of particulate matter by conducting measurements at the inlet and the outlet of the emission control device using Method 5 in appendix A to part 60 of this chapter, with the filter box operated at ambient temperature and in a manner to avoid condensation, with a backup filter;

(2) Measure the visible emissions from coke oven doors that escape capture by the shed using Method 22 in appendix A to part 60 of this chapter. For the purpose of approval of an alternative standard, no visible emissions may escape capture from the shed.

(i) Visible emission observations shall be taken during conditions representative of normal operations, except that pushing shall be suspended and pushing emissions shall have cleared the shed; and

(ii) Method 22 observations shall be performed by an observer certified according to the requirements of Method 9 in appendix A to part 60 of this chapter. The observer shall allow pushing emissions to be evacuated (typically 1 to 2 minutes) before making observations;

(3) Measure the opacity of emissions from the control device using Method 9 in appendix A to part 60 of this chapter during conditions representative of normal operations, including pushing; and

(i) If the control device has multiple stacks, the owner or operator shall use an evaluation based on visible emissions and opacity to select the stack with the highest opacity for testing under this section;

(ii) The highest opacity, expressed as a 6-minute average, shall be used as the opacity standard for the control device.

(4) Thoroughly inspect all compartments of each air cleaning device prior to the performance test for proper operation and for changes that signal the potential for malfunction, including the presence of tears, holes, and abrasions in filter bags; damaged seals; and for dust deposits on the clean side of bags; and

(5) Determine the allowable percent leaking doors under the shed using either of the following procedures:

(i) Calculate the allowable percent leaking doors using the following equation:

$$PLD = \left[\frac{1.4(PLD_{std})^{2.5}}{(1.4 - eff/100)}\right]^{0.4} \quad \text{(Eq. 1)}$$

where

PLD=Allowable percent leaking doors for alternative standard.

$PLD_{std}$=Applicable visible emission limitation of percent leaking doors under this subpart that would otherwise apply to the coke oven battery, converted to the single-run limit according to Table 1.

eff=Percent control efficiency for particulate matter for emission control device as determined according to paragraph (c)(1) of this section.

**Table 1.—Conversion to Single-Run Limit**

| 30-run limit | Single-pass limit (98 percent level) |
|---|---|
| 7.0 | 11.0 |
| 6.0 | 9.5 |
| 5.5 | 8.7 |
| 5.0 | 8.1 |
| 4.3 | 7.2 |
| 4.0 | 6.7 |
| 3.8 | 6.4 |
| 3.3 | 5.8 |

or;

(ii) Calculate the allowable percent leaking doors using the following procedures:

(A) Measure the total emission rate of benzene, toluene, and xylene exiting the control device using Method 18 in appendix A to part 60 of this chapter and the emission rate of benzene soluble organics entering the control device as described in the test plan submitted pursuant to paragraph (b) of this section; or

(B) Measure benzene, toluene, xylene, and benzene soluble organics in the gas in the collector main as described in the test plan submitted pursuant to paragraph (b) of this section; and

(C) Calculate the ratio (R) of benzene, toluene, and xylene to benzene soluble organics for the gas in the collector main, or as the sum of the outlet emission rates of benzene, toluene, and xylene, divided by the emission rate of benzene soluble organics as measured at the inlet to the control device; and

(D) Calculate the allowable percent leaking doors limit under the shed using the following equation:

$$PLD = \left[ \frac{(R+1)(PLD_{std})^{2.5}}{(R+1-eff/100)} \right]^{0.4} \quad \text{(Eq. 2)}$$

where

R=Ratio of measured emissions of benzene, toluene, and xylene to measured emissions of benzene soluble organics.

(iii) If the allowable percent leaking coke oven doors is calculated to exceed 15 percent leaking coke oven doors under paragraphs (c)(5)(i) or (c)(5)(ii) of this section, the owner or operator shall use 15 percent leaking coke oven doors for the purposes of this section.

(6) Monitor the parameters that affect the shed exhaust flow rate.

(7) The owner or operator may request alternative sampling procedures to those specified in paragraph (c)(5)(ii) (A) and (B) of this section by submitting details on the procedures and the rationale for their use to the Administrator. Alternative procedures shall not be used without approval from the Administrator.

(8) The owner or operator shall inform the Administrator of the schedule for conducting testing under the approved test plan and give the Administrator the opportunity to observe the tests.

(d) After calculating the alternative standard for allowable percent leaking coke oven doors, the owner or operator shall submit the following information to the Administrator:

(1) Identity of the coke oven battery;

(2) Visible emission limitation(s) for percent leaking doors currently applicable to the coke oven battery under this subpart and known future limitations for percent leaking coke oven doors;

(3) A written report including:

(i) Appropriate measurements and calculations used to derive the allowable percent leaking coke oven doors requested as the alternative standard;

(ii) Appropriate visible emission observations for the shed and opacity observations for the control device for the shed, including an alternative opacity standard, if applicable, as described in paragraph (c)(3) of this section based on the highest 6-minute average; and

(iii) The parameter or parameters (e.g., fan power, damper position, or other) to be monitored and recorded to demonstrate that the exhaust flow rate measured during the test required by paragraph (c)(1) of this section is maintained, and the monitoring plan for such parameter(s).

(iv) If the application is for a new shed, one of the following demonstrations:

(A) A demonstration, using modeling procedures acceptable to the Administrator, that the expected concentrations of particulate emissions (including benzene soluble organics) under the shed at the bench level, when the proposed alternative standard was being met, would not exceed the expected concentrations of particulate emissions (including benzene soluble organics) if the shed were not present, the regulations under this subpart were met, and the battery was in compliance with federally enforceable limitations on pushing emissions; or

(B) A demonstration that the shed (including the evacuation system) has been designed in accordance with generally accepted engineering principles for the effective capture and control of particulate emissions (including benzene soluble organics) as measured at the shed's perimeter, its control device, and at the bench level.

(e) The Administrator will review the information and data submitted according to paragraph (d) of this section and may request additional information and data within 60 days of receipt of a complete request.

(1) Except for applications subject to paragraph (e)(3) of this section, the Administrator shall approve or disapprove an alternative standard as expeditiously as practicable. The Administrator shall approve an alternative standard, unless the Administrator determines that the approved test plan has not been followed, or any required calculations are incorrect, or any demonstration required under paragraph (d)(3)(iv) of this section does not satisfy the applicable criteria under that paragraph. If the alternative standard is disapproved, the Administrator will issue a written notification to the owner or operator within the 60-day period.

(2) The owner or operator shall comply with the applicable visible emission limitation for coke oven doors and all other requirements in this subpart prior to approval of an alternative standard. The owner or operator may apply for an alternative standard at any time after December 4, 1992.

(3) An application for an alternative standard to the standard in § 63.304(b)(1)(i) for any shed that is not a new shed that is filed on or before June 15, 1993, is deemed approved if a notice of disapproval has not been received 60 days after submission of a complete request. An approval under paragraph (e)(3) of this section shall be valid for a period of 1 year.

(4) Notwithstanding the provisions of paragraph (e) of this section, no alternative standard shall be approved that exceeds 15 percent leaking coke oven doors (yard equivalent).

(f) After approval of an alternative standard, the owner or operator shall comply with the following requirements:

(1) The owner or operator shall not discharge or allow to be discharged to the atmosphere coke oven emissions from coke oven doors under sheds that exceed an approved alternative standard for percent leaking coke oven doors under sheds.

(i) All visible emission observations for compliance determinations shall be performed by a certified observer.

(ii) Compliance with the alternative standard for doors shall be determined by a weekly performance test conducted according to the procedures and requirements in § 63.309(d)(5) and Method 303 in appendix A to this part.

(iii) If the visible emission limitation is achieved for 12 consecutive observations, compliance shall be determined by monthly rather than weekly performance tests. If any exceedance occurs during a performance test, weekly performance tests shall be resumed.

(iv) Observations taken at times other than those specified in paragraphs (f)(1)(ii) and (f)(1)(iii) of this section shall be subject to the provisions of § 63.309(f).

(2) The certified observer shall monitor the visible coke oven emissions escaping capture by the shed on a weekly basis. The provision in paragraph (f)(6) of this section is applicable if visible coke oven emissions are observed during periods when pushing emissions have cleared the shed.

(3) The owner or operator shall not discharge or allow to be discharged to the atmosphere any visible emissions from the shed's control device exhibiting more than 0 percent opacity unless an alternative limit has been

approved under paragraph (e) of this section.

(4) The opacity of emissions from the control device for the shed shall be monitored in accordance with the requirements of either paragraph (f)(4)(i) or (f)(4)(ii) of this section, at the election of the owner or operator.

(i) The owner or operator shall install, operate, and maintain a continuous opacity monitor, and record the output of the system, for the measurement of the opacity of emissions discharged from the emission control system.

(A) Each continuous opacity monitoring system shall meet the requirements of Performance Specification 1 in appendix B to part 60 of this chapter; and

(B) Each continuous opacity monitoring system shall be operated, calibrated, and maintained according to the procedures and requirements specified in part 52 of this chapter; or

(ii) A certified observer shall monitor and record at least once each day during daylight hours, opacity observations for the control device for the shed using Method 9 in appendix A to part 60 of this chapter.

(5) The owner or operator shall visually inspect the structural integrity of the shed at least once a quarter for defects, such as deterioration of sheet metal (e.g., holes in the shed), that may allow the escape of visible emissions.

(i) The owner or operator shall record the time and date a defect is first observed, the time and date the defect is corrected or repaired, and a brief description of repairs or corrective actions taken;

(ii) The owner or operator shall temporarily repair the defect as soon as possible, but no later than 5 days after detection of the defect;

(iii) Unless a major repair is required, the owner or operator shall perform a complete repair of the defect within 15 days of detection of the defect. If a major repair is required (e.g., replacement of large sections of the shed), the owner or operator shall submit a repair schedule to the enforcement agency.

(6) If the no visible emission limit for the shed specified in paragraph (f)(2) of this section is exceeded, the Administrator may require another test for the shed according to the approved test plan as specified in paragraph (c) of this section. If the certified observer observes visible coke oven emissions from the shed, except during periods of pushing or when pushing emissions have not cleared the shed, the owner or operator shall check to ensure that the shed and control device are working properly.

(7) The owner or operator shall monitor the parameter(s) affecting shed exhaust flow rate, and record data, in accordance with the approved monitoring plan for these parameters.

(8) The owner or operator shall not operate the exhaust system of the shed at an exhaust flow rate lower than that measured during the test required under paragraph (c)(1) of this section, as indicated by the monitored parameters.

(g) Each side of a battery subject to an alternative standard for doors under this section shall be treated separately for purposes of §§ 63.306(c) (plan implementation) and 63.306(d) (plan revisions) of this subpart. In making determinations under these provisions for the side of the battery subject to an alternative standard, the requirement that exceedances be independent shall not apply. During any period when work practices for doors for both sides of the battery are required to be implemented, § 63.306(a)(3) shall apply in the same manner as if the provisions of a plan for a single emissions point were required to be implemented. Exceedances of the alternative standard for percent leaking doors under a shed is the only provision in this section implicating implementation of work practice requirements.

(h) Multiple exceedances of the visible emission limitation for door leaks and/or the provisions of an alternative standard under this section for door leaks at a battery on a single day shall be considered a single violation.

**§ 63.306 Work practice standards.**

(a) *Work practice plan.* On or before November 15, 1993, each owner or operator shall prepare and submit to the Administrator a written emission control work practice plan for each coke oven battery. The plan shall be designed to achieve compliance with visible emission limitations for coke oven doors, topside port lids, offtake systems, and charging operations under this subpart or, for a coke oven battery not subject to visible emission limitations under this subpart, other federally enforceable visible emission limitations for these emission points.

(1) The work practice plan must address each of the topics specified in paragraph (b) of this section in sufficient detail and with sufficient specificity to allow the Administrator to evaluate the plan for completeness and enforceability.

(2) The Administrator may require revisions to the initial plan only where the Administrator finds either that the plan does not address each subject area listed in paragraph (b) of this section for each emission point subject to a visible emission standard under this subpart, or that the plan is unenforceable because it contains requirements that are unclear.

(3) During any period of time that an owner or operator is required to implement the provisions of a plan for a particular emission point, the failure to implement one or more obligations under the plan and/or any recordkeeping requirement(s) under § 63.311(f)(4) for the emission point during a particular day is a single violation.

(b) *Plan components.* The owner or operator shall organize the work practice plan to indicate clearly which parts of the plan pertain to each emission point subject to visible emission standards under this subpart. Each of the following provisions, at a minimum, shall be addressed in the plan:

(1) An initial and refresher training program for all coke plant operating personnel with responsibilities that impact emissions, including contractors, in job requirements related to emission control and the requirements of this subpart, including work practice requirements. Contractors with responsibilities that impact emission control may be trained by the owner or operator or by qualified contractor personnel; however, the owner or operator shall ensure that the contractor training program complies with the requirements of this section. The training program in the plan must include:

(i) A list, by job title, of all personnel that are required to be trained and the emission point(s) associated with each job title;

(ii) An outline of the subjects to be covered in the initial and refresher training for each group of personnel;

(iii) A description of the training method(s) that will be used (e.g., lecture, video tape);

(iv) A statement of the duration of initial training and the duration and frequency of refresher training;

(v) A description of the methods to be used at the completion of initial or refresher training to demonstrate and document successful completion of the initial and refresher training; and

(vi) A description of the procedure to be used to document performance of plan requirements pertaining to daily operation of the coke oven battery and its emission control equipment, including a copy of the form to be used, if applicable, as required under the plan provisions implementing paragraph (b)(7) of this section.

(2) Procedures for controlling emissions from coke oven doors on by-product coke oven batteries, including:

(i) A program for the inspection, adjustment, repair, and replacement of coke oven doors and jambs, and any other equipment for controlling emissions from coke oven doors, including a defined frequency of inspections, the method to be used to evaluate conformance with operating specifications for each type of equipment, and the method to be used to audit the effectiveness of the inspection and repair program for preventing exceedances;

(ii) Procedures for identifying leaks that indicate a failure of the emissions control equipment to function properly, including a clearly defined chain of command for communicating information on leaks and procedures for corrective action;

(iii) Procedures for cleaning all sealing surfaces of each door and jamb, including identification of the equipment that will be used and a specified schedule or frequency for the cleaning of sealing surfaces;

(iv) For batteries equipped with self-sealing doors, procedures for use of supplemental gasketing and luting materials, if the owner or operator elects to use such procedures as part of the program to prevent exceedances;

(v) For batteries equipped with hand-luted doors, procedures for luting and reluting, as necessary to prevent exceedances;

(vi) Procedures for maintaining an adequate inventory of the number of spare coke oven doors and jambs located onsite; and

(vii) Procedures for monitoring and controlling collecting main back pressure, including corrective action if pressure control problems occur.

(3) Procedures for controlling emissions from charging operations on by-product coke oven batteries, including:

(i) Procedures for equipment inspection, including the frequency of inspections, and replacement or repair of equipment for controlling emissions from charging, the method to be used to evaluate conformance with operating specifications for each type of equipment, and the method to be used to audit the effectiveness of the inspection and repair program for preventing exceedances;

(ii) Procedures for ensuring that the larry car hoppers are filled properly with coal;

(iii) Procedures for the alignment of the larry car over the oven to be charged;

(iv) Procedures for filling the oven (e.g., procedures for staged or sequential charging);

(v) Procedures for ensuring that the coal is leveled properly in the oven; and

(vi) Procedures and schedules for inspection and cleaning of offtake systems (including standpipes, standpipe caps, goosenecks, dampers, and mains), oven roofs, charging holes, topside port lids, the steam supply system, and liquor sprays.

(4) Procedures for controlling emissions from topside port lids on by-product coke oven batteries, including:

(i) Procedures for equipment inspection and replacement or repair of topside port lids and port lid mating and sealing surfaces, including the frequency of inspections, the method to be used to evaluate conformance with operating specifications for each type of equipment, and the method to be used to audit the effectiveness of the inspection and repair program for preventing exceedances; and

(ii) Procedures for sealing topside port lids after charging, for identifying topside port lids that leak, and procedures for resealing.

(5) Procedures for controlling emissions from offtake system(s) on by-product coke oven batteries, including:

(i) Procedures for equipment inspection and replacement or repair of offtake system components, including the frequency of inspections, the method to be used to evaluate conformance with operating specifications for each type of equipment, and the method to be used to audit the effectiveness of the inspection and repair program for preventing exceedances;

(ii) Procedures for identifying offtake system components that leak and procedures for sealing leaks that are detected; and

(iii) Procedures for dampering off ovens prior to a push.

(6) Procedures for controlling emissions from nonrecovery coke oven batteries including:

(i) Procedures for charging coal into the oven, including any special procedures for minimizing air infiltration during charging, maximizing the draft on the oven, and for replacing the door promptly after charging;

(ii) If applicable, procedures for the capture and control of charging emissions;

(iii) Procedures for cleaning coke from the door sill area for both sides of the battery after completing the pushing operation and before replacing the coke oven door;

(iv) Procedures for cleaning coal from the door sill area after charging and before replacing the push side door;

(v) Procedures for filling gaps around the door perimeter with sealant material, if applicable; and

(vi) Procedures for detecting and controlling emissions from smoldering coal.

(7) Procedures for maintaining, for each emission point subject to visible emission limitations under this subpart, a daily record of the performance of plan requirements pertaining to the daily operation of the coke oven battery and its emission control equipment, including:

(i) Procedures for recording the performance of such plan requirements; and

(ii) Procedures for certifying the accuracy of such records by the owner or operator.

(8) Any additional work practices or requirements specified by the Administrator according to paragraph (d) of this section.

(c) *Implementation of work practice plans.* On and after November 15, 1993, the owner or operator of a coke oven battery shall implement the provisions of the coke oven emission control work practice plan according to the following requirements:

(1) The owner or operator of a coke oven battery subject to visible emission limitations under this subpart on and after November 15, 1993, shall:

(i) Implement the provisions of the work practice plan pertaining to a particular emission point following the second independent exceedance of the visible emission limitation for the emission point in any consecutive 6-month period, by no later than 3 days after receipt of written notification of the second such exceedance from the certified observer. For the purpose of this paragraph (c)(1)(i), the second exceedance is "independent" if either of the following criteria is met:

(A) The second exceedance occurs 30 days or more after the first exceedance;

(B) In the case of coke oven doors, topside port lids, and offtake systems, the 29-run average, calculated by excluding the highest value in the 30-day period, exceeds the value of the applicable emission limitation; or

(C) In the case of charging emissions, the 29-day logarithmic average, calculated in accordance with Method 303 in appendix A to this part by excluding the valid daily set of observations in the 30-day period that had the highest arithmetic average, exceeds the value of the applicable emission limitation.

(ii) Continue to implement such plan provisions until the visible emission limitation for the emission point is achieved for 90 consecutive days if work practice requirements are implemented pursuant to paragraph (c)(1)(i) of this section. After the visible emission limitation for a particular emission point is achieved for 90 consecutive days, any exceedances prior to the beginning of the 90 days are not included in making a determination under paragraph (c)(1)(i) of this section.

(2) The owner or operator of a coke oven battery not subject to visible emission limitations under this subpart until December 31, 1995, shall:

(i) Implement the provisions of the work practice plan pertaining to a particular emission point following the second exceedance in any consecutive 6-month period of a federally enforceable emission limitation for that emission point for coke oven doors, topside port lids, offtake systems, or charging operations by no later than 3 days after receipt of written notification from the applicable enforcement agency; and

(ii) Continue to implement such plan provisions for 90 consecutive days after the most recent written notification from the enforcement agency of an exceedance of the visible emission limitation.

(d) *Revisions to plan.* Revisions to the work practice emission control plan will be governed by the provisions in this paragraph (d) and in paragraph (a)(2) of this section.

(1) The Administrator may request the owner or operator to review and revise as needed the work practice emission control plan for a particular emission point if there are 2 exceedances of the applicable visible emission limitation in the 6-month period that starts 30 days after the owner or operator is required to implement work practices under paragraph (c) of this section. In the case of a coke oven battery subject to visual emission limitations under this subpart, the second exceedance must be independent under the criteria in paragraph (c)(1)(i) of this section.

(2) The Administrator may not request the owner or operator to review and revise the plan more than twice in any 12 consecutive month period for any particular emission point unless the Administrator disapproves the plan according to the provisions in paragraph (d)(6) of this section.

(3) If the certified observer calculates that a second exceedance (or, if applicable, a second independent exceedance) has occurred, the certified observer shall notify the owner or operator. No later than 10 days after receipt of such a notification, the owner or operator shall notify the Administrator of any finding of whether work practices are related to the cause or the solution of the problem. This notification is subject to review by the Administrator according to the provisions in paragraph (d)(6) of this section.

(4) The owner or operator shall submit a revised work practice plan within 60 days of notification from the Administrator under paragraph (d)(1) of this section, unless the Administrator grants an extension of time to submit the revised plan.

(5) If the Administrator requires a plan revision, the Administrator may require the plan to address a subject area or areas in addition to those in paragraph (b) of this section, if the Administrator determines that without plan coverage of such an additional subject area, there is a reasonable probability of further exceedances of the visible emission limitation for the emission point for which a plan revision is required.

(6) The Administrator may disapprove a plan revision required under paragraph (d) of this section if the Administrator determines that the revised plan is inadequate to prevent exceedances of the visible emission limitation under this subpart for the emission point for which a plan revision is required or, in the case of a battery not subject to visual emission limitations under this subpart, other federally enforceable emission limitations for such emission point. The Administrator may also disapprove the finding that may be submitted pursuant to paragraph (d)(3) of this section if the Administrator determines that a revised plan is needed to prevent exceedances of the applicable visible emission limitations.

**§ 63.307 Standards for bypass/bleeder stacks.**

(a) (1) Except as otherwise provided in this section, on or before March 31, 1994, the owner or operator of an existing by-product recovery battery for which a notification was not submitted under paragraph (e)(1) of this section shall install a bypass/bleeder stack flare system that is capable of controlling 120 percent of the normal gas flow generated by the battery, which shall thereafter be operated and maintained.

(2) Coke oven emissions shall not be vented to the atmosphere through bypass/bleeder stacks, except through the flare system or the alternative control device as described in paragraph (d) of this section.

(3) The owner or operator of a brownfield coke oven battery or a padup rebuild shall install such a flare system before startup, and shall properly operate and maintain the flare system.

(b) Each flare installed pursuant to this section shall meet the following requirements:

(1) Each flare shall be designed for a net heating value of 8.9 MJ/scm (240 Btu/scf) if a flare is steam-assisted or air-assisted, or a net value of 7.45 MJ/scm (200 Btu/scf) if the flare is non-assisted.

(2) Each flare shall have either a continuously operable pilot flame or an electronic igniter that meets the requirements of paragraphs (b)(3) and (b)(4) of this section.

(3) Each electronic igniter shall meet the following requirements:

(i) Each flare shall be equipped with at least two igniter plugs with redundant igniter transformers;

(ii) The ignition units shall be designed failsafe with respect to flame detection thermocouples (i.e., any flame detection thermocouples are used only to indicate the presence of a flame, are not interlocked with the ignition unit, and cannot deactivate the ignition system); and

(iii) Integral battery backup shall be provided to maintain active ignition operation for a minimum of 15 minutes during a power failure.

(iv) Each electronic igniter shall be operated to initiate ignition when the bleeder valve is not fully closed as indicated by an "OPEN" limit switch.

(4) Each flare installed to meet the requirements of this paragraph (b) that does not have an electronic igniter shall be operated with a pilot flame present at all times as determined by § 63.309(h)(2).

(c) Each flare installed to meet the requirements of this section shall be operated with no visible emissions, as determined by the methods specified in § 63.309(h)(1), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(d) As an alternative to the installation, operation, and maintenance of a flare system as required in paragraph (a) of this section, the owner or operator may petition the Administrator for approval of an alternative control device or system that achieves at least 98 percent destruction or control of coke oven emissions vented to the alternative control device or system.

(e) The owner or operator of a by-product coke oven battery is exempt from the requirements of this section if the owner or operator:

(1) Submits to the Administrator, no later than November 10, 1993, a formal

commitment to close the battery permanently; and

(2) Closes the battery permanently no later than December 31, 1995. In no case may the owner or operator continue to operate a battery for which a closure commitment is submitted, past December 31, 1995.

(f) Any emissions resulting from the installation of flares (or other pollution control devices or systems approved pursuant to paragraph (d) of this section) shall not be used in making new source review determinations under part C and part D of title I of the Act.

**§ 63.308 Standards for collecting mains.**

(a) On and after November 15, 1993, the owner or operator of a by-product coke oven battery shall inspect the collecting main for leaks at least once daily according to the procedures in Method 303 in appendix A to this part.

(b) The owner or operator shall record the time and date a leak is first observed, the time and date the leak is temporarily sealed, and the time and date of repair.

(c) The owner or operator shall temporarily seal any leak in the collecting main as soon as possible after detection, but no later than 4 hours after detection of the leak.

(d) The owner or operator shall initiate a collecting main repair as expeditiously as possible, but no later than 5 calendar days after initial detection of the leak. The repair shall be completed within 15 calendar days after initial detection of the leak unless an alternative schedule is approved by the Administrator.

**§ 63.309 Performance tests and procedures.**

(a) Except as otherwise provided, a daily performance test shall be conducted each day, 7 days per week for each new and existing coke oven battery, the results of which shall be used in accordance with procedures specified in this subpart to determine compliance with each of the applicable visible emission limitations for coke oven doors, topside port lids, offtake systems, and charging operations in this subpart. If a facility pushes and charges only at night, then that facility must, at its option, change their schedule and charge during daylight hours or provide adequate lighting so that visible emission inspections can be made at night. "Adequate lighting" will be determined by the enforcement agency.

(1) Each performance test is to be conducted according to the procedures and requirements in this section and in Method 303 or 303A in appendix A to this part or Methods 9 and 22 in appendix A to part 60 of this chapter (where applicable).

(2) Each performance test is to be conducted by a certified observer.

(3) The certified observer shall complete any reasonable safety training program offered by the owner or operator prior to conducting any performance test at a coke oven battery.

(4) Except as otherwise provided in paragraph (a)(5) of this section, the owner or operator shall pay an inspection fee to the enforcement agency each calendar quarter to defray the costs of the daily performance tests required under paragraph (a) of this section.

(i) The inspection fee shall be determined according to the following formula:

$$F = H \times S \qquad \text{(Eq. 3)}$$

where

F=Fees to be paid by owner or operator.

H=Total person hours for inspections: 4 hours for 1 coke oven battery, 6.25 hours for 2 coke oven batteries, 8.25 hours for 3 coke oven batteries. For more than 3 coke oven batteries, use these hours to calculate the appropriate estimate of person hours.

S=Current average hourly rate for private visible emission inspectors in the relevant market.

(ii) The enforcement agency may revise the value for H in equation 3 within 3 years after October 27, 1993 to reflect the amount of time actually required to conduct the inspections required under paragraph (a) of this section.

(iii) The owner or operator shall not be required to pay an inspection fee (or any part thereof) under paragraph (a)(4) of this section, for any monitoring or inspection services required by paragraph (a) of this section that the owner or operator can demonstrate are covered by other fees collected by the enforcement agency.

(iv) Upon request, the enforcement agency shall provide the owner or operator information concerning the inspection services covered by any other fees collected by the enforcement agency, and any information relied upon under paragraph (a)(4)(ii) of this section.

(5) (i) The EPA shall be the enforcement agency during any period of time that a delegation of enforcement authority is not in effect or a withdrawal of enforcement authority under § 63.313 is in effect, and the Administrator is responsible for performing the inspections required by this section, pursuant to § 63.313(b).

(ii) Within thirty (30) days of receiving notification from the Administrator that the EPA is the enforcement agency for a coke oven battery, the owner or operator shall enter into a contract providing for the inspections and performance tests required under this section to be performed by a Method 303 certified observer. The inspections and performance tests will be conducted at the expense of the owner or operator, during the period that the EPA is the implementing agency.

(b) The enforcement agency shall commence daily performance tests on the applicable date specified in §§ 63.300 (a) or (c).

(c) The certified observer shall conduct each performance test according to the requirements in this paragraph:

(1) The certified observer shall conduct one run each day to observe and record visible emissions from each coke oven door (except for doors covered by an alternative standard under § 63.305), topside port lid, and offtake system on each coke oven battery. The certified observer also shall conduct five runs to observe and record the seconds of visible emissions per charge for five consecutive charges from each coke oven battery. The observer may perform additional runs as needed to obtain and record a visible emissions value (or set of values) for an emission point that is valid under Method 303 or Method 303A in appendix A to this part. Observations from fewer than five consecutive charges shall constitute a valid set of charging observations only in accordance with the procedures and conditions specified in sections 3.8 and 3.9 of Method 303 in appendix A to this part.

(2) If a valid visible emissions value (or set of values) is not obtained for a performance test, there is no compliance determination for that day. Compliance determinations will resume on the next day that a valid visible emissions value (or set of values) is obtained.

(3) After each performance test for a by-product coke oven battery, the certified observer shall check and record the collecting main pressure according to the procedures in section 6.3 of Method 303 in appendix A to this part.

(i) The owner or operator shall demonstrate pursuant to Method 303 in appendix A to this part the accuracy of the pressure measurement device upon request of the certified observer;

(ii) The owner or operator shall not adjust the pressure to a level below the

range of normal operation during or prior to the inspection;

(4) The certified observer shall monitor visible emissions from coke oven doors subject to an alternative standard under § 63.305 on the schedule specified in § 63.305(f).

(5) If applicable, the certified observer shall monitor the opacity of any emissions escaping the control device for a shed covering doors subject to an alternative standard under § 63.305 on the schedule specified in § 63.305(f).

(6) In no case shall the owner or operator knowingly block a coke oven door, or any portion of a door for the purpose of concealing emissions or preventing observations by the certified observer.

(d) Using the observations obtained from each performance test, the enforcement agency shall compute and record, in accordance with the procedures and requirements of Method 303 or 303A in appendix A to this part, for each day of operations on which a valid emissions value (or set of values) is obtained:

(1) The 30-run rolling average of the percent leaking coke oven doors, topside port lids, and offtake systems on each coke oven battery, using the equations in sections 4.5.3.2, 5.6.5.2, and 5.6.6.2 of Method 303 (or section 3.4.3.2 of Method 303A) in appendix A to this part;

(2) For by-product coke oven battery charging operations, the logarithmic 30-day rolling average of the seconds of visible emissions per charge for each battery, using the equation in section 3.9 of Method 303 in appendix A to this part;

(3) For a battery subject to an alternative emission limitation for coke oven doors on by-product coke oven batteries pursuant to § 63.305, the 30-run rolling average of the percent leaking coke oven doors for any side of the battery not subject to such alternative emission limitation;

(4) For a by-product coke oven battery subject to the small battery emission limitation for coke oven doors pursuant to § 63.304(b)(7), the 30-run rolling average of the number of leaking coke oven doors;

(5) For an approved alternative emission limitation for coke oven doors according to § 63.305, the weekly or monthly observation of the percent leaking coke oven doors using Method 303 in appendix A to this part, the percent opacity of visible emissions from the control device for the shed using Method 9 in appendix A to part 60 of this chapter, and visible emissions from the shed using Method 22 in appendix A to part 60 of this chapter;

(e) The certified observer shall make available to the implementing agency as well as to the owner or operator, a copy of the daily inspection results by the end of the day and shall make available the calculated rolling average for each emission point to the owner or operator as soon as practicable following each performance test. The information provided by the certified observer is not a compliance determination. For the purpose of notifying an owner or operator of the results obtained by a certified observer, the person does not have to be certified.

(f) Compliance shall not be determined more often than the schedule provided for performance tests under this section. If additional valid emissions observations are obtained (or in the case of charging, valid sets of emission observations), the arithmetic average of all valid values (or valid sets of values) obtained during the day shall be used in any computations performed to determine compliance under paragraph (d) of this section or determinations under § 63.306.

(g) Compliance with the alternative standards for nonrecovery coke oven batteries in § 63.303; shed inspection, maintenance requirements, and monitoring requirements for parameters affecting the shed exhaust flow rate for batteries subject to alternative standards for coke oven doors under § 63.305; work practice emission control plan requirements in § 63.306; standards for bypass/bleeder stacks in § 63.307; and standards for collecting mains in § 63.308 is to be determined by the enforcement agency based on review of records and inspections.

(h) For a flare installed to meet the requirements of § 63.307(b):

(1) Compliance with the provisions in § 63.307(c) (visible emissions from flares) shall be determined using Method 22 in appendix A to part 60 of this chapter, with an observation period of 2 hours; and

(2) Compliance with the provisions in § 63.307(b)(4) (flare pilot light) shall be determined using a thermocouple or any other equivalent device.

(i) No observations obtained during any program for training or for certifying observers under this subpart shall be used to determine compliance with the requirements of this subpart or any other federally enforceable standard.

**§ 63.310 Requirements for startups, shutdowns, and malfunctions.**

(a) At all times including periods of startup, shutdown, and malfunction, the owner or operator shall operate and maintain the coke oven battery and its pollution control equipment required under this subpart, in a manner consistent with good air pollution control practices for minimizing emissions to the levels required by any applicable performance standards under this subpart. Failure to adhere to the requirement of this paragraph shall not constitute a separate violation if a violation of an applicable performance or work practice standard has also occurred.

(b) Each owner or operator of a coke oven battery shall develop and implement according to paragraph (c) of this section, a written startup, shutdown, and malfunction plan that describes procedures for operating the battery, including associated air pollution control equipment, during a period of a startup, shutdown, or malfunction in a manner consistent with good air pollution control practices for minimizing emissions, and procedures for correcting malfunctioning process and air pollution control equipment as quickly as practicable.

(c) During a period of startup, shutdown, or malfunction:

(1) The owner or operator of a coke oven battery shall operate the battery (including associated air pollution control equipment) in accordance with the procedure specified in the startup, shutdown, and malfunction plan; and

(2) Malfunctions shall be corrected as soon as practicable after their occurrence, in accordance with the plan.

(d) In order for the provisions of paragraph (i) of this section to apply with respect to the observation (or set of observations) for a particular day, notification of a startup, shutdown, or a malfunction shall be made by the owner or operator:

(1) If practicable, to the certified observer if the observer is at the facility during the occurrence; or

(2) To the enforcement agency, in writing, within 24 hours of the occurrence first being documented by a company employee, and if the notification under paragraph (d)(1) of this section was not made, an explanation of why no such notification was made.

(e) Within 14 days of the notification made under paragraph (d) of this section, or after a startup or shutdown, the owner or operator shall submit a written report to the applicable permitting authority that:

(1) Describes the time and circumstances of the startup, shutdown, or malfunction; and

(2) Describes actions taken that might be considered inconsistent with the startup, shutdown, or malfunction plan.

(f) The owner or operator shall maintain a record of internal reports which form the basis of each malfunction notification under paragraph (d) of this section.

(g) To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the standard operating procedures manual for the battery, provided the manual meets all the requirements for this section and is made available for inspection at reasonable times when requested by the Administrator.

(h) The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

(1) Does not address a startup, shutdown, or malfunction event that has occurred;

(2) Fails to provide for the operation of the source (including associated air pollution control equipment) during a startup, shutdown, or malfunction event in a manner consistent with good air pollution control practices for minimizing emissions; or

(3) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable.

(i) If the owner or operator demonstrates to the satisfaction of the Administrator that a startup, shutdown, or malfunction has occurred, then an observation occurring during such startup, shutdown, or malfunction shall not:

(1) Constitute a violation of relevant requirements of this subpart;

(2) Be used in any compliance determination under § 63.309; or

(3) Be considered for purposes of § 63.306, until the Administrator has resolved the claim that a startup, shutdown, or malfunction has occurred. If the Administrator determines that a startup, shutdown, or malfunction has not occurred, such observations may be used for purposes of § 63.306, regardless of whether the owner or operator further contests such determination. The owner's or operator's receipt of written notification from the Administrator that a startup, shutdown, or malfunction has not occurred will serve, where applicable under § 63.306, as written notification from the certified observer that an exceedance has occurred.

**§ 63.311 Reporting and recordkeeping requirements.**

(a) After the effective date of an approved permit in a State under part 70 of this chapter, the owner or operator shall submit all notifications and reports required by this subpart to the State permitting authority. Use of information provided by the certified observer shall be a sufficient basis for notifications required under § 70.5(c)(9) of this chapter and the reasonable inquiry requirement of § 70.5(d) of this chapter.

(b) *Initial compliance certification.* The owner or operator of an existing or new coke oven battery shall provide a written statement(s) to certify compliance to the Administrator within 45 days of the applicable compliance date for the emission limitations or requirements in this subpart. The owner or operator shall include the following information in the initial compliance certification:

(1) Statement, signed by the owner or operator, certifying that a bypass/bleeder stack flare system or an approved alternative control device or system has been installed as required in § 63.307; and

(2) Statement, signed by the owner or operator, certifying that a written startup, shutdown, and malfunction plan has been prepared as required in § 63.310.

(c) *Notifications.* The owner or operator shall provide written notification(s) to the Administrator of:

(1) Intention to construct a new coke oven battery (including reconstruction of an existing coke oven battery and construction of a greenfield coke oven battery), a brownfield coke oven battery, or a padup rebuild coke oven battery, including the anticipated date of startup; and

(2) Election to meet emission limitation(s) in this subpart as follows:

(i) Notification of election to meet the emission limitations in §§ 63.304(b)(1) or 63.304(c) either in lieu of or in addition to the applicable emission limitations in § 63.302(a) or § 63.303(a) must be received by the Administrator on or before November 15, 1993; or

(ii) Notification of election to meet the emission limitations in § 63.302(a)(1) or § 63.303(a), as applicable, must be received by the Administrator on or before December 31, 1995; and

(iii) Notification of election to meet the emission limitations in § 63.304(b)(2) through (4) and § 63.304(c) or election to meet residual risk standards to be developed according to section 112(f) of the Act in lieu of the emission standards in § 63.304 must be received on or before January 1, 1998.

(d) *Semiannual compliance certification.* The owner or operator of a coke oven battery shall include the following information in the semiannual compliance certification:

(1) Certification, signed by the owner or operator, that no coke oven gas was vented, except through the bypass/bleeder stack flare system of a by-product coke oven battery during the reporting period or that a venting report has been submitted according to the requirements in paragraph (e) of this section;

(2) Certification, signed by the owner or operator, that a startup, shutdown, or malfunction event did not occur for a coke oven battery during the reporting period or that a startup, shutdown, and malfunction event did occur and a report was submitted according to the requirements in § 63.310(e); and

(3) Certification, signed by the owner or operator, that work practices were implemented if applicable under § 63.306.

(e) *Report for the venting of coke oven gas other than through a flare system.* The owner or operator shall report any venting of coke oven gas through a bypass/bleeder stack that was not vented through the bypass/bleeder stack flare system to the Administrator as soon as practicable but no later than 24 hours after the beginning of the event. A written report shall be submitted within 30 days of the event and shall include a description of the event and, if applicable, a copy of the notification for a hazardous substance release required pursuant to § 302.6 of this chapter.

(f) *Recordkeeping.* The owner or operator shall maintain files of all required information in a permanent form suitable for inspection at an onsite location for at least 1 year and must thereafter be accessible within 3 working days to the Administrator for the time period specified in § 70.6(a)(3)(ii)(B) of this chapter. Copies of the work practice plan developed under § 63.306 and the startup, shutdown, and malfunction plan developed under § 63.310 shall be kept onsite at all times. The owner or operator shall maintain the following information:

(1) For nonrecovery coke oven batteries,

(i) Records of daily pressure monitoring, if applicable according to § 63.303(a)(1)(ii) or § 63.303(b)(1)(ii);

(ii) Records demonstrating the performance of work practice requirements according to § 63.306(b)(7); and

(iii) Design characteristics of each emission control system for the capture and collection of charging emissions, as required by § 63.303(b)(2).

(2) For an approved alternative emission limitation according to § 63.305;

(i) Monitoring records for parameter(s) that indicate the exhaust flow rate is maintained;

(ii) If applicable under § 63.305(f)(4)(i);

(A) Records of opacity readings from the continuous opacity monitor for the control device for the shed; and

(B) Records that demonstrate the continuous opacity monitoring system meets the requirements of Performance Specification 1 in appendix B to part 60 of this chapter and the operation and maintenance requirements in part 52 of this chapter; and

(iii) Records of quarterly visual inspections as specified in § 63.305(f)(5), including the time and date a defect is detected and repaired.

(3) A copy of the work practice plan required by § 63.306 and any revision to the plan;

(4) If the owner or operator is required under § 63.306(c) to implement the provisions of a work practice plan for a particular emission point, the following records regarding the implementation of plan requirements for that emission point during the implementation period;

(i) Copies of all written and audiovisual materials used in the training, the dates of each class, the names of the participants in each class, and documentation that all appropriate personnel have successfully completed the training required under § 63.306(b)(1);

(ii) The records required to be maintained by the plan provisions implementing § 63.306(b)(7);

(iii) Records resulting from audits of the effectiveness of the work practice program for the particular emission point, as required under §§ 63.306(b)(2)(i), 63.306(b)(3)(i), 63.306(b)(4)(i), or 63.306(b)(5)(i); and

(iv) If the plan provisions for coke oven doors must be implemented, records of the inventory of doors and jambs as required under § 63.306(b)(2)(vi); and

(5) The design drawings and engineering specifications for the bypass/bleeder stack flare system or approved alternative control device or system as required under § 63.307.

(6) Records specified in § 63.310(f) regarding the basis of each malfunction notification.

(g) Records required to be maintained and reports required to be filed with the Administrator under this subpart shall be made available in accordance with the requirements of this paragraph by the owner or operator to the authorized collective bargaining representative of the employees at a coke oven battery, for inspection and copying.

(1) Requests under paragraph (g) of this section shall be submitted in writing, and shall identify the records or reports that are subject to the request with reasonable specificity;

(2) The owner or operator shall produce the reports for inspection and copying within a reasonable period of time, not to exceed 30 days. A reasonable fee may be charged for copying (except for the first copy of any document), which shall not exceed the copying fee charged by the Administrator under part 2 of this chapter;

(3) Nothing in paragraph (g) of this section shall require the production for inspection or copying of any portion of a document that contains trade secrets or confidential business information that the Administrator would be prohibited from disclosing to the public under part 2 of this chapter; and

(4) The inspection or copying of a document under paragraph (g) of this section shall not in any way affect any property right of the owner or operator in such document under laws for the protection of intellectual property, including the copyright laws.

**§ 63.312 Existing regulations and requirements.**

(a) The owner or operator shall comply with all applicable State implementation plan emission limits and (subject to any expiration date) all federally enforceable emission limitations which are contained in an order, decree, permit, or settlement agreement for the control of emissions from offtake systems, topside port lids, coke oven doors, and charging operations in effect on September 15, 1992, or which have been modified according to the provisions of paragraph (c) of this section.

(b) Nothing in this subpart shall affect the enforcement of such State implementation plan emission limitations (or, subject to any expiration date, such federally enforceable emission limitations contained in an order, decree, permit, or settlement agreement) in effect on September 15, 1992, or which have been modified according to the provisions in paragraph (c) of this section.

(c) No such State implementation plan emission limitation (or, subject to any expiration date, such federally enforceable emission limitation contained in an order, decree, permit, or settlement agreement) in effect on September 15, 1992, may be modified under the Act unless:

(1) Such modification is consistent with all requirements of section 110 of the Act; and either

(i) Such modification ensures that the applicable emission limitations and format (e.g., single pass v. multiday average) in effect on September 15, 1992, will continue in effect; or

(ii) Such modification includes a change in the method of monitoring (except frequency unless frequency was indicated in the State implementation plan, or subject to any expiration date, other federally enforceable requirements contained in an order, decree, permit, or settlement agreement) that is more stringent than the method of monitoring in effect on September 15, 1992, and that ensures coke oven emission reductions greater than the emission reductions required on September 15, 1992. The burden of proof in demonstrating the stringency of the methods of monitoring is borne by the party requesting the modification and must be made to the satisfaction of the Administrator; or

(iii) Such modification makes the emission limitations more stringent while holding the format unchanged, makes the format more stringent while holding the emission limitations unchanged, or makes both more stringent.

(2) Any industry application to make a State implementation plan revision or other adjustment to account for differences between Method 303 in appendix A to this part and the State's method based on paragraph (c)(1)(ii) of this section shall be submitted within 12 months after October 27, 1993.

(d) Except as specified in § 63.307(f), nothing in this subpart shall limit or affect any authority or obligation of Federal, State, or local agencies to establish emission limitations or other requirements more stringent than those specified in this subpart.

(e) Except as provided in § 63.302(c), section 112(g) of the Act shall not apply to sources subject to this subpart.

**§ 63.313 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (c) of this section shall be retained by the Administrator and not transferred to a State.

(b) Whenever the Administrator learns that a delegated agency has not fully carried out the inspections and performance tests required under § 63.309 for each applicable emission point of each battery each day, the Administrator shall immediately notify the agency. Unless the delegated agency demonstrates to the Administrator's satisfaction within 15 days of notification that the agency is

consistently carrying out the inspections and performance tests required under § 63.309 in the manner specified in the preceding sentence, the Administrator shall notify the coke oven battery owner or operator that inspections and performance tests shall be carried out according to § 63.309(a)(5). When the Administrator determines that the delegated agency is prepared to consistently perform all required inspections and performance tests each day, the Administrator shall give the coke oven battery owner or operator at least 15 days notice that implementation will revert back to the previously delegated agency.

(c) Authorities which will not be delegated to States:

(1) § 63.302(d);

(2) § 63.304(b)(6);

(3) §§ 63.305 (b), (d) and (e);

(4) § 63.307(d); and

(5) Section 2 of Method 303 in appendix A to this part.

(d) The authority to enforce this subpart is delegated to the States of: [Reserved]

APPENDIX A TO SUBPART L—OPERATING COKE OVEN BATTERIES AS OF APRIL 1, 1992

| No. | Plant | Battery |
|---|---|---|
| 1 | ABC Coke, Tarrant, AL. | A |
| | | 5 |
| | | 6 |
| 2 | Acme Steel, Chicago, IL. | 1 |
| | | 2 |
| 3 | Armco, Inc., Middletown, OH. | 1 |
| | | 2 |
| | | 3 |
| 4 | Armco, Inc., Ashland, KY. | 3 |
| | | 4 |
| 5 | Bethlehem Steel, Bethlehem, PA. | A |
| | | 2 |
| | | 3 |
| 6 | Bethlehem Steel, Burns Harbor, IN. | 1 |
| | | 2 |
| 7 | Bethlehem Steel, Lackawanna, NY. | 7 |
| | | 8 |
| 8 | Citizens Gas, Indianapolis, IN. | E |
| | | H |
| | | 1 |
| 9 | Empire Coke, Holt, AL. | 1 |
| | | 2 |
| 10 | Erie Coke, Erie, PA | A |
| | | B |
| 11 | Geneva Steel, Provo, UT. | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| 12 | Gulf States Steel, Gadsden, AL. | 2 |
| | | 3 |
| 13 | Inland Steel, East Chicago, IN. | 6 |
| | | 7 |
| | | 8 |
| | | 9 |
| | | 10 |
| | | 11 |
| 14 | Jewell Coal and Coke, Vansant, VA. | 2 |
| | | 3A |
| | | 3B |
| | | 3C |
| 15 | Koppers, Woodward, AL. | 1 |
| | | 2A |
| | | 2B |
| | | 4A |
| | | 4B |
| | | 5 |
| 16 | LTV Steel, Cleveland, OH. | 6 |
| | | 7 |
| 17 | LTV Steel, Pittsburgh, PA. | P1 |
| | | P2 |
| | | P3N |
| | | P3S |
| | | P4 |
| 18 | LTV Steel, Chicago, IL. | 2 |
| 19 | LTV Steel, Warren, OH. | 4 |
| 20 | National Steel, Ecorse, MI. | 5 |
| 21 | National Steel, Granite City, IL. | A |
| | | B |
| 22 | New Boston Coke, Portsmouth, OH. | 1 |
| 23 | Sharon Steel, Monessen, PA. | 1B |
| | | 2 |
| 24 | Shenango, Pittsburgh, PA. | 1 |
| | | 4 |
| 25 | Sloss Industries, Birmingham, AL. | 3 |
| | | 4 |
| | | 5 |
| 26 | Toledo Coke, Toledo, OH. | C |
| 27 | Tonawanda Coke, Buffalo, NY. | 1 |
| 28 | USX, Clairton, PA | 1 |
| | | 2 |
| | | 3 |
| | | 7 |
| | | 8 |
| | | 9 |
| | | 13 |
| | | 14 |
| | | 15 |
| | | 19 |
| | | 20 |
| | | B |
| 29 | USX, Gary, IN | 2 |
| | | 3 |
| | | 5 |
| | | 7 |
| 30 | Wheeling-Pittsburgh, E. Steubenville, WV. | 1 |
| | | 2 |
| | | 3 |
| | | 8 |

5. Appendix A to part 63 is amended by adding in numerical order Method 303 and Method 303A as follows:

**Appendix A—Test Methods**

* * * * *

*METHOD 303—DETERMINATION OF VISIBLE EMISSIONS FROM BY-PRODUCT COKE OVEN BATTERIES*

1. *Applicability and Principle*

1.1 Applicability. This method applies to the determination of visible emissions (VE) from the following by-product coke oven battery sources: Charging systems during charging, doors, topside port lids, and offtake systems on operating coke ovens; and collecting mains. In order for the test method results to be indicative of plant performance, the time of day of the run should vary.

1.2 Principle. A certified observer visually determines the VE from coke oven battery sources (the certification procedures are described in section 2). This method does not require that opacity of emissions be determined or that magnitude be differentiated.

1.3 Definitions.

1.3.1 Bench. The platform structure in front of the oven doors.

1.3.2 By-product Coke Oven Battery. A source consisting of a group of ovens connected by common walls, where coal undergoes destructive distillation under positive pressure to produce coke and coke oven gas, from which by-products are recovered.

1.3.3 Charge or Charging Period. The period of time that commences when coal begins to flow into an oven through a topside port and ends when the last charging port is recapped.

1.3.4 Charging System. An apparatus used to charge coal to a coke oven (e.g., a larry car for wet coal charging systems).

1.3.5 Coke Oven Door. Each end enclosure on the pusher side and the coking side of an oven. The chuck, or leveler-bar, door is considered part of the pusher side door. The coke oven door area includes the entire area on the vertical face of a coke oven between the bench and the top of the battery between two adjacent buck stays.

1.3.6 Coke Side. The side of a battery from which the coke is discharged from ovens at the end of the coking cycle.

1.3.7 Collecting Main. Any apparatus that is connected to one or more offtake systems

and that provides a passage for conveying gases under positive pressure from the by-product coke oven battery to the by-product recovery system.

1.3.8 Consecutive Charges. Charges observed successively, excluding any charge during which the observer's view of the charging system or topside ports is obscured.

1.3.9 Damper-off. To close off the gas passage between the coke oven and the collecting main, with no flow of raw coke oven gas from the collecting main into the oven or into the oven's offtake system(s).

1.3.10 Decarbonization Period. The period of time for combusting oven carbon that commences when the oven lids are removed from an empty oven or when standpipe caps of an oven are opened. The period ends with the initiation of the next charging period for that oven.

1.3.11 Larry Car. An apparatus used to charge coal to a coke oven with a wet coal charging system.

1.3.12 Log Average. Logarithmic average as calculated in section 3.8.

1.3.13 Offtake System. Any individual oven apparatus that is stationary and provides a passage for gases from an oven to a coke oven battery collecting main or to another oven. Offtake system components include the standpipe and standpipe caps, goosenecks, stationary jumper pipes, mini-standpipes, and standpipe and gooseneck connections.

1.3.14 Operating Oven. Any oven not out of operation for rebuild or maintenance work extensive enough to require the oven to be skipped in the charging sequence.

1.3.15 Oven. A chamber in the coke oven battery in which coal undergoes destructive distillation to produce coke.

1.3.16 Push Side. The side of the battery from which the coke is pushed from ovens at the end of the coking cycle.

1.3.17 Run. The observation of visible emissions from topside port lids, offtake systems, coke oven doors, or the charging of a single oven in accordance with this method.

1.3.18 Shed. Structures for capturing coke oven emissions on the coke side or pusher side of the coke oven battery, which route the emissions to a control device or system.

1.3.19 Standpipe Cap. An apparatus used to cover the opening in the gooseneck of an offtake system.

1.3.20 Topside Port Lid. A cover, removed during charging or decarbonizing, that is placed over the opening through which coal can be charged into the oven of a by-product coke oven battery.

1.3.21 Traverse Time. Accumulated time for a traverse as measured by a stopwatch. Traverse time includes time to stop and write down oven numbers but excludes time waiting for obstructions of view to clear or for time to walk around obstacles.

1.3.22 Visible Emissions (VE). Any emission seen by the unaided (except for corrective lenses) eye, excluding steam or condensing water.

2. *Observer Certification*

2.1 Certification Procedures. This method requires only the determination of whether VE occur and does not require the determination of opacity levels; therefore, observer certification according to Method 9 in appendix A to part 60 of this chapter is not required to obtain certification under this method. However, in order to receive Method 303 observer certification, the first-time observer (trainee) shall have attended the lecture portion of the Method 9 certification course. In addition, the trainee shall successfully complete the Method 303 training course, satisfy the field observation requirement, and demonstrate adequate performance and sufficient knowledge of Method 303. The Method 303 training course shall be conducted by or under the sanction of the EPA and shall consist of classroom instruction and field observations, and a proficiency test.

2.1.1 The classroom instruction shall familiarize the trainees with Method 303 through lecture, written training materials, and a Method 303 demonstration video. A successful completion of the classroom portion of the Method 303 training course shall be demonstrated by a perfect score on a written test. If the trainee fails to answer all of the questions correctly, the trainee may review the appropriate portion of the training materials and retake the test.

2.1.2 The field observations shall be a minimum of 12 hours and shall be completed before attending the Method 303 certification course. Trainees shall observe the operation of a coke oven battery as it pertains to Method 303, including topside operations, and shall also practice conducting Method 303 or similar methods. During the field observations, trainees unfamiliar with coke battery operations shall receive instruction from an experienced coke oven observer familiar with Method 303 or similar methods and the operation of coke batteries. The trainee must verify completion of at least 12 hours of field observation prior to attending the Method 303 certification course.

2.1.3 All trainees must demonstrate proficiency in the application of Method 303 to a panel of three certified Method 303 observers, including an ability to differentiate coke oven emissions from condensing water vapor and smoldering coal. Each panel member shall have at least 120 days experience in reading visible emissions from coke ovens. The visible emissions inspections that will satisfy the experience requirement must be inspections of coke oven battery fugitive emissions from the emission points subject to emission standards under subpart L of this part (i.e., coke oven doors, topside port lids, offtake system(s), and charging operations), using either Method 303 or predecessor State or local test methods. A "day's experience" for a particular inspection is a day on which one complete inspection was performed for that emission point under Method 303 or a predecessor State or local method. A "day's experience" does not mean 8 or 10 hours performing inspections, or any particular time expressed in minutes or hours that may have been spent performing them. Thus, it would be possible for an individual to qualify as a Method 303 panel member for some emission points, but not others (e.g., an individual might satisfy the experience requirement for coke oven doors, but not topside port lids). Until November 15, 1994, the EPA may waive the certification requirement (but not the experience requirement) for panel members. The composition of the panel shall be approved by the EPA. The panel shall observe the trainee in a series of training runs and a series of certification runs. There shall be a minimum of 1 training run for doors, topside port lids, and offtake systems, and a minimum of 5 training runs (i.e., 5 charges) for charging. During training runs, the panel can advise the trainee on proper procedures. There shall be a minimum of 3 certification runs for doors, topside port lids, and offtake systems, and a minimum of 15 certification runs for charging (i.e., 15 charges). The certifications runs shall be unassisted. Following the certification test runs, the panel shall approve or disapprove certification based on the trainee's performance during the certification runs. To obtain certification, the trainee shall demonstrate to the satisfaction of the panel a high degree of proficiency in performing Method 303. To aid in evaluating the trainee's performance, a checklist, provided by the EPA, will be used.

*Caution:* Because coke oven batteries have hazardous environments, the training materials and the field training shall cover the precautions required by the company to address health and safety hazards. Special emphasis shall be given to the Occupational Safety and Health Administration (OSHA) regulations pertaining to exposure of coke oven workers (see Citation 3 in the Bibliography). In general, the regulation requires that special fire-retardant clothing and respirators be worn in certain restricted areas of the coke oven battery. The OSHA regulation also prohibits certain activities, such as chewing gum, smoking, and eating in these areas.

2.2 Observer Certification/Recertification. The coke oven observer certification is valid for 1 year from date of issue. The observer shall recertify annually by viewing the training video and answering all of the questions on the certification test correctly. Every 3 years, an observer shall be required to pass the proficiency test in section 2.1.3 in order to be certified.

2.3 The EPA (or applicable enforcement agency) shall maintain records reflecting a certified observer's successful completion of the proficiency test, which shall include the completed proficiency test checklists for the certification runs.

2.4 An owner or operator of a coke oven battery subject to subpart L of this part may observe a training and certification program under this section.

3. *Procedure for Determining VE From Charging Systems During Charging*

3.1 Number of Oven Charges. Refer to § 63.309(c)(1) of this part for the number of oven charges to observe. The observer shall observe consecutive charges. Charges that are nonconsecutive can only be observed when necessary to replace observations terminated prior to the completion of a charge because of visual interferences. (See section 3.5.)

3.2 Data Records. Record all the information requested at the top of the charging system inspection sheet (Figure 303–1). For each charge, record the

identification number of the oven being charged, the approximate beginning time of the charge, and the identification of the larry car used for the charge.

3.3 Observer Position. Stand in an area or move to positions on the topside of the coke oven battery with an unobstructed view of the entire charging system. For wet coal charging systems or non-pipeline coal charging systems, the observer should have an unobstructed view of the emission points of the charging system, including larry car hoppers, drop sleeves, and the topside ports of the oven being charged. Some charging systems are configured so that all emission points can only be seen from a distance of five ovens. For other batteries, distances of 8 to 12 ovens are adequate.

3.4 Observation. The charging period begins when coal begins to flow into the oven and ends when the last charging port is recapped. During the charging period, observe all of the potential sources of VE from the entire charging system. For wet coal charging systems or non-pipeline coal charging systems, sources of VE typically include the larry car hoppers, drop sleeves, slide gates, and topside ports on the oven being charged. Any VE from an open standpipe cap on the oven being charged is included as charging VE.

3.4.1 Using an accumulative-type stopwatch with unit divisions of at least 0.5 seconds, determine the total time VE are observed as follows. Upon observing any VE emerging from any part of the charging system, start the stopwatch. Stop the watch when VE are no longer observed emerging, and restart the watch when VE reemerges.

3.4.2 When VE occur simultaneously from several points during a charge, consider the sources as one. Time overlapping VE as continuous VE. Time single puffs of VE only for the time it takes for the puff to emerge from the charging system. Continue to time VE in this manner for the entire charging period. Record the accumulated time to the nearest 0.5 second under "Visible emissions, seconds" on Figure 303–1.

3.5 Visual Interference. If fugitive VE from other sources at the coke oven battery site (e.g., door leaks or condensing water vapor from the coke oven wharf) prevent a clear view of the charging system during a charge, stop the stopwatch and make an appropriate notation under "Comments" on Figure 303–1. Label the observation an observation of an incomplete charge, and observe another charge to fulfill the requirements of section 3.1.

3.6 VE Exemptions. Do not time the following VE:

3.6.1 The VE from burning or smoldering coal spilled on top of the oven, topside port lid, or larry car surfaces;

Note: The VE from smoldering coal are generally white or gray. These VE generally have a plume of less than 1 meter long. If the observer cannot safely and with reasonable confidence determine that VE are from charging, do not count them as charging emissions.

3.6.2 The VE from the coke oven doors or from the leveler bar; or

3.6.3 The VE that drift from the top of a larry car hopper if the emissions had already been timed as VE from the drop sleeve.

Note: When the slide gate on a larry car hopper closes after the coal has been added to the oven, the seal may not be airtight. On occasions, a puff of smoke observed at the drop sleeves is forced past the slide gate up into the larry car hopper and may drift from the top; time these VE either at the drop sleeves or the hopper. If the larry car hopper does not have a slide gate or the slide gate is left open or partially closed, VE may quickly pass through the larry car hopper without being observed at the drop sleeves and will appear as a strong surge of smoke; time these as charging VE.

3.7 Total Time Record. Record the total time that VE were observed for each charging operation in the appropriate column on the charging system inspection sheet.

3.8 Five charging observations (runs) obtained in accordance with this method shall be considered a valid set of observations for that day. No observation of an incomplete charge shall be included in a daily set of observations that is lower than the lowest reading for a complete charge. If both complete and incomplete charges have been observed, the daily set of observations shall include the five highest values observed. Four or three charging observations (runs) obtained in accordance with this method shall be considered a valid set of charging observations only where it is not possible to obtain five charging observations, because of visual interferences (see section 3.5) or inclement weather prevent a clear view of the charging system during charging. However, observations from three or four charges that satisfy these requirements shall not be considered a valid set of charging observations if use of such set of observations in a calculation under section 3.9 would cause the value of A to be less than 145.

3.9 Log Average. For each day on which a valid daily set of observations is obtained, calculate the daily 30-day rolling log average of seconds of visible emissions from the charging operation for each battery using these data and the 29 previous valid daily sets of observations, in accordance with the following equation:

$$\text{logarithmic average} = e^{y} - 1 \quad \text{(Eq. 303-1)}$$

where

e=2.72,

$$y = \frac{\ln(X_1 + 1) + \ln(X_2 + 1) + L\ \ln(X_A + 1)}{A}$$

ln=Natural logarithm, and

$X_i$=Seconds of VE during the $i^{th}$ charge.

A=150 or the number of valid observations (runs). The value of A shall not be less than 145, except for purposes of determinations under § 63.306(c) (work practice plan implementation) or § 63.306(d) (work practice plan revisions) of this part. No set of observations shall be considered valid for such a recalculation that otherwise would not be considered a valid set of observations for a calculation under this paragraph.

4. *Procedure for Determining VE From Coke Oven Door Areas*

The intent of this procedure is to determine VE from coke oven door areas by carefully observing the door area from a standard distance while walking at a normal pace.

4.1 Number of Runs. Refer to § 63.309(c)(1) of this part for the appropriate number of runs.

4.2 Battery Traverse. To conduct a battery traverse, walk the length of the battery on the outside of the pusher machine and quench car tracks at a steady, normal walking pace, pausing to make appropriate entries on the door area inspection sheet (Figure 303–2). A single test run consists of two timed traverses, one for the coke side and one for the push side. The walking pace shall not exceed an average rate of 4 seconds per oven door, excluding time spent moving around stationary obstructions or waiting for other obstructions to move from positions blocking the view of a series of doors. Extra time is allowed for each leak for the observer to make the proper notation. A walking pace of 3 seconds per oven door has been found to be typical. Record the actual traverse time with a stopwatch.

4.2.1 Time only the time spent observing the doors and recording door leaks. To measure actual traverse time, use an accumulative-type stopwatch with unit divisions of 0.5 seconds or less. Exclude interruptions to the traverse and time required for the observer to move to positions where the view of the battery is unobstructed, or for obstructions, such as the door machine, to move from positions blocking the view of a series of doors.

4.2.2 Various situations may arise that will prevent the observer from viewing a door or a series of doors. Prior to the door inspection, the owner or operator may elect to temporarily suspend charging operations for the duration of the inspection, so that all of the doors can be viewed by the observer. The observer has two options for dealing with obstructions to view: (a) Stop the stopwatch and wait for the equipment to move or the fugitive emissions to dissipate before completing the traverse; or (b) stop the stopwatch, skip the affected ovens, and move to a position to continue the traverse. Restart the stopwatch and continue the traverse. After the completion of the traverse, if the equipment has moved or the fugitive emissions have dissipated, inspect the affected doors. If the equipment is still preventing the observer from viewing the doors, then the affected doors may be counted as not observed. If option (b) is used because of doors blocked by machines during charging operations, then, of the affected doors, exclude the door from the most recently charged oven from the inspection. Record the oven numbers and make an appropriate notation under "Comments" on the door area inspection sheet (Figure 303–2).

4.2.3 When batteries have sheds to control emissions, conduct the inspection from outside the shed unless the doors cannot be adequately viewed. In this case, conduct the inspection from the bench. Be aware of special safety considerations

pertinent to walking on the bench and follow the instructions of company personnel on the required equipment and operations procedures. If possible, conduct the bench traverse whenever the bench is clear of the door machine and hot coke guide.

4.3 Observations. Record all the information requested at the top of the door area inspection sheet (Figure 303–2), including the number of inoperable ovens. Record the clock time at the start of the traverse on each side of the battery. Record which side is being inspected, i.e., coke side or push side. Other information may be recorded at the discretion of the observer, such as the location of the leak (i.e., top of the door, chuck door, etc.), the reason for any interruption of the traverse, or the position of the sun relative to the battery and sky conditions (i.e., overcast, partly sunny, etc.).

4.3.1 Begin the test run by starting the stopwatch and traversing either the coke side or the push side of the battery. After completing one side, stop the watch. Complete this procedure on the other side. If inspecting more than one battery, the observer may view the push sides and the coke sides sequentially.

4.3.2 During the traverse, look around the entire perimeter of each oven door. The door is considered leaking if VE are detected in the coke oven door area. The coke oven door area includes the entire area on the vertical face of a coke oven between the bench and the top of the battery between two adjacent buck stays (e.g., the oven door, chuck door, between the masonry brick, buck stay or jamb, or other sources). Record the oven number and make the appropriate notation on the door area inspection sheet (Figure 303–2).

Note: Multiple VE from the same door area (e.g., VE from both the chuck door and the push side door) are counted as only one emitting door, not as multiple emitting doors.

4.3.3 Do not record the following sources as door area VE:

4.3.3.1 VE from ovens with doors removed. Record the oven number and make an appropriate notation under "Comments;"

4.3.3.2 VE from ovens taken out of service. The owner or operator shall notify the observer as to which ovens are out of service. Record the oven number and make an appropriate notation under "Comments;" or

4.3.3.3 VE from hot coke that has been spilled on the bench as a result of pushing.

4.4 Criteria for Acceptance. After completing the run, calculate the maximum time allowed to observe the ovens by the following equation:

$$T = (4 \times D_t) + (10 \times L) \qquad \text{(Eq. 303-2)}$$

where

T=Total time allowed for traverse, seconds;
$D_t$=Total number of oven doors on the battery; and
L=Number of doors with VE.

4.4.1 If the total traverse time exceeds T, void the run, and conduct another run to satisfy the requirements of § 63.309(c)(1) of this part.

4.5 Calculations for Percent Leaking Doors (PLD). Determine the total number of doors for which observations were made on the coke oven battery as follows:

$$D_{ob} = (2 \times N) - (D_t + D_{no}) \qquad \text{(Eq. 303-3)}$$

where

$D_{ob}$=Total number of doors observed on operating ovens;
$D_t$=Number of doors on nonoperating ovens;
$D_{no}$=Number of doors not observed; and
N=Total number of ovens in the battery.

4.5.1 For each test run (one run includes both the coke side and the push side traverses), sum the number of doors with door area VE. For batteries subject to an approved alternative standard under § 63.305 of this part, calculate the push side and the coke side PLD separately.

4.5.2 Calculate percent leaking doors by using the following equation:

$$PLD = \frac{L_y}{D_{ob}} \times 100 \qquad \text{(Eq. 303-4)}$$

where

PLD=Percent leaking doors for the test run;
$L_y$=Number of doors with VE observed from the yard; and
$D_{ob}$=Total number of doors observed on operating ovens.

4.5.3 When traverses are conducted from the bench under sheds, calculate the coke side and the push side separately. Use the following equation to calculate a yard-equivalent reading:

$$L_b = L_s - (N \times 0.06) \qquad \text{(Eq. 303-5)}$$

where

N=Total number of ovens on the battery;
$L_b$=Yard-equivalent reading; and
$L_s$=Number of doors with VE observed from the bench under sheds.

If $L_b$ is less than zero, use zero for $L_b$ in Equation 303–6 in the calculation of PLD.

4.5.3.1 Use the following equation to calculate PLD:

$$PLD = \frac{L_b + L_y}{D_{ob}} \times 100 \qquad \text{(Eq. 303-6)}$$

where

PLD=Percent leaking coke oven doors for the run;
$L_b$=Yard equivalent reading;
$L_y$=Number of doors with VE observed from the yard on the push side; and
$D_{ob}$=Total number of doors observed on operating ovens.

Round off PLD to the nearest hundredth of 1 percent and record as the percent leaking coke oven doors for the run.

4.5.3.2 30-day Rolling Average. For each day on which a valid observation is obtained, calculate the daily 30-day rolling average for each battery using these data and the 29 previous valid daily observations, in accordance with the following equation:

$$PLD(30\text{-day}) = \frac{(PLD_1 + PLD_2 + \ldots + PLD_{30})}{30} \qquad \text{(Eq. 303-7)}$$

5. *Procedure for Determining VE from Topside Port Lids and Offtake Systems*

5.1 Number of Runs. Refer to § 63.309(c)(1) of this part for the number of runs to be conducted. Simultaneous runs or separate runs for the topside port lids and offtake systems may be conducted.

5.2 Battery Traverse. To conduct a topside traverse of the battery, walk the length of the battery at a steady, normal walking pace, pausing only to make appropriate entries on the topside inspection sheet (Figure 303–3). The walking pace shall not exceed an average rate of 4 seconds per oven, excluding time spent moving around stationary obstructions or waiting for other obstructions to move from positions blocking the view. Extra time is allowed for each leak for the observer to make the proper notation. A walking pace of 3 seconds per oven is typical. Record the actual traverse time with a stopwatch.

5.3 Topside Port Lid Observations. To observe lids of the ovens involved in the charging operation, the observer shall wait to view the lids until approximately 5 minutes after the completion of the charge. Record all the information requested on the topside inspection sheet (Figure 303–3). Record the clock time when traverses begin and end. If the observer's view is obstructed during the traverse (e.g., steam from the coke wharf, larry car, etc.), follow the guidelines given in section 4.2.2.

5.3.1 To perform a test run, conduct a single traverse on the topside of the battery. The observer shall walk near the center of the battery but may deviate from this path to avoid safety hazards (such as open or closed charging ports, luting buckets, lid removal bars, and topside port lids that have been removed) and any other obstacles. Upon noting VE from the topside port lid(s) of an oven, record the oven number and port number, then resume the traverse. If any oven is dampered-off from the collecting main for decarbonization, note this under "Comments" for that particular oven.

Note: Count the number of topside ports, not the number of points, exhibiting VE, i.e., if a topside port has several points of VE, count this as one port exhibiting VE.

5.3.2 Do not count the following as topside port lid VE:

5.3.2.1 VE from between the brickwork and oven lid casing or VE from cracks in the oven brickwork. Note these VE under "Comments;"

5.3.2.2 VE from topside ports involved in a charging operation. Record the oven number, and make an appropriate notation (i.e., not observed because ports open for charging) under "Comments;"

5.3.2.3 Topside ports having maintenance work done. Record the oven number and make an appropriate notation under "Comments;" or

5.3.2.4 Condensing water from wet-sealing material. Ports with only visible condensing water from wet-sealing material are counted as observed but not as having VE.

5.3.2.5 Visible emissions from the flue inspection ports and caps.

5.4 Offtake Systems Observations. To perform a test run, traverse the battery as in section 5.3.1. Look ahead and back two to four ovens to get a clear view of the entire offtake system for each oven. Consider visible emissions from the following points as offtake system VE: (a) the flange between the gooseneck and collecting main ("saddle"), (b) the junction point of the standpipe and oven ("standpipe base"), (c) the other parts of the offtake system (e.g., the standpipe cap), and (d) the junction points with ovens and flanges of jumper pipes.

5.4.1 Do not stray from the traverse line in order to get a "closer look" at any part of the offtake system unless it is to distinguish leaks from interferences from other sources or to avoid obstacles.

5.4.2 If the centerline does not provide a clear view of the entire offtake system for each oven (e.g., when standpipes are longer than 15 feet), the observer may conduct the traverse farther from (rather than closer to) the offtake systems.

5.4.3 Upon noting a leak from an offtake system during a traverse, record the oven number. Resume the traverse. If the oven is dampered-off from the collecting main for decarbonization and VE are observed, note this under "Comments" for that particular oven.

5.4.4 If any part or parts of an offtake system have VE, count it as one emitting offtake system. Each stationary jumper pipe is considered a single offtake system.

5.4.5 Do not count standpipe caps open for a decarbonization period or standpipes of an oven being charged as source of offtake system VE. Record the oven number and write "Not observed" and the reason (i.e., decarb or charging) under "Comments."

Note: VE from open standpipes of an oven being charged count as charging emissions. All VE from closed standpipe caps count as offtake leaks.

5.5 Criteria for Acceptance. After completing the run (allow 2 traverses for batteries with double mains), calculate the maximum time allowed to observe the topside port lids and/or offtake systems by the following equation:

$$T = (4\ \text{sec} \times N) + (10\ \text{sec} \times Z) \qquad \text{(Eq. (303-8)}$$

where

T=Total time allowed for traverse, seconds;
N=Total number of ovens in the battery; and
Z=Number of topside port lids or offtake systems with VE.

5.5.1 If the total traverse time exceeds T, void the run and conduct another run to satisfy the requirements of § 63.309(c)(1) of this part.

5.6 In determining the percent leaking topside port lids and percent leaking offtake systems, do not include topside port lids or offtake systems with VE from the following ovens:

5.6.1 Empty ovens, including ovens undergoing maintenance, which are properly dampered off from the main.

5.6.2 Ovens being charged or being pushed.

5.6.3 Up to 3 full ovens that have been dampered off from the main prior to pushing.

5.6.4 Up to 3 additional full ovens in the pushing sequence that have been dampered off from the main for offtake system cleaning, for decarbonization, for safety reasons, or when a charging/pushing schedule involves widely separated ovens (e.g., a Marquard system); or that have been dampered off from the main for maintenance near the end of the coking cycle. Examples of reasons that ovens are dampered off for safety reasons are to avoid exposing workers in areas with insufficient clearance between standpipes and the larry car, or in areas where workers could be exposed to flames or hot gases from open standpipes, and to avoid the potential for removing a door on an oven that is not dampered off from the main.

5.6.5 Topside Port Lids. Determine the percent leaking topside port lids for each run as follows:

$$PLL = \frac{P_{VE}}{P_{ovn}(N - N_i) - P_{NO}} \times 100 \qquad \text{(Eq. 303-9)}$$

where

PLL=Percent leaking topside port lids for the run;
$P_{VE}$=Number of topside port lids with VE;
$P_{ovn}$=Number of ports per oven;
N=Total number of ovens in the battery;
$N_i$=Number of inoperable ovens; and
$P_{NO}$=Number of ports not observed.

5.6.5.1 Round off this percentage to the nearest hundredth of 1 percent and record this percentage as the percent leaking topside port lids for the run.

5.6.5.2 30-day Rolling Average. For each day on which a valid daily observation is obtained, calculate the daily 30-day rolling average for each battery using those data and the 29 previous valid daily observations, in accordance with the following equation:

$$PLL(30\text{-day}) = \frac{(PLL_1 + PLL_2 + K + PLL_{30})}{30} \qquad \text{(Eq. 303-10)}$$

5.6.6 Offtake Systems. Determine the percent leaking offtake systems for the run as follows:

$$PLO = \frac{T_{VE}}{T_{ovs}(N - N_i) + J - T_{NO}} \times 100 \qquad \text{(Eq. 303-11)}$$

where

PLO=Percent leaking offtake systems;
$T_{VE}$=Number of offtake systems with VE;
$T_{ovs}$=Number of offtake systems (excluding jumper pipes) per oven;
N=Total number of ovens in the battery;
$N_i$=Total number of inoperable ovens;
$T_{NO}$=Number of offtake systems not observed; and
J=Number of stationary jumper pipes.

5.6.6.1 Round off this percentage to the nearest hundredth of 1 percent and record this percentage as the percent leaking offtake systems for the run.

5.6.6.2 30-day Rolling Average. For each day on which a valid daily observation is obtained, calculate the daily 30-day rolling average for each battery using these data and the 29 previous valid daily observations, in accordance with the following equation:

$$PLO(30\text{-day}) = \frac{(PLO_1 + PLO_2 K + PLO_{30})}{30} \qquad \text{(Eq. 303-12)}$$

6. *Procedure for Determining VE From Collecting Mains*

6.1 Traverse. To perform a test run, traverse both the collecting main catwalk and the battery topside along the side closest to the collecting main. If the battery has a double main, conduct two sets of traverses for each run, i.e., one set for each main.

6.2 Data Recording. Upon noting VE from any portion of a collection main, identify the source and approximate location of the source of VE and record the time under "Collecting main" on Figure 303-3; then resume the traverse.

6.3 Collecting Main Pressure Check. After the completion of the door traverse, the topside port lids, and offtake systems, compare the collecting main pressure during the inspection to the collecting main pressure during the previous 8 to 24 hours. Record the following: (a) The pressure during inspection, (b) presence of pressure deviation from normal operations, and (c) the explanation for any pressure deviation from normal operations, if any, offered by the operators. The owner or operator of the coke battery shall maintain the pressure recording equipment and conduct the quality assurance/quality control (QA/QC) necessary to ensure reliable pressure readings and shall keep the QA/QC records for at least 6 months. The observer may periodically check the QA/QC records to determine their completeness. The owner or operator shall provide access to the records within 1 hour of an observer's request.

7. *Bibliography*

1. Missan, R., and A. Stein. Guidelines for Evaluation of Visible Emissions Certification, Field Procedures, Legal Aspects, and Background Material. U.S. Environmental Protection Agency. EPA Publication No. EPA-340/1-75-007. April 1975.

2. Wohlschlegel, P., and D.E. Wagoner. Guideline for Development of a Quality Assurance Program: Volume IX—Visual Determination of Opacity Emission from Stationary Sources. U.S. Environmental Protection Agency. EPA Publication No. EPA-650/4-005i. November 1975.

3. U.S. Occupational Safety and Health Administration. *Code of Federal Regulations*. title 29, chapter XVII, section 1910.1029(g). Washington, DC Government Printing Office. July 1, 1990.

4. U.S. Environmental Protection Agency. National Emission Standards for Hazardous Air Pollutants; Coke Oven Emissions from Wet-Coal Charged By-Product Coke Oven Batteries; Proposed Rule and Notice of Public Hearing. Washington, DC Federal Register. Vol. 52, No. 78 (13586). April 23, 1987.

BILLING CODE 6560-60-P

Company name:_____ Battery no.:_____ Date:_____ Run no.:_____

City, State:_____

Observer name:_____ Company representative(s):_____

| Charge no. | Oven no. | Clock time | Visible Emissions, seconds | Comments |
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Figure 303-1. Charging system inspection.

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Company name:_____ Battery no.:_____ Date:_____

City, State:_____ Total no. of ovens in battery:_____

Observer name:_____ Certification expiration date:_____

Inoperable ovens:_____ Company representative(s):_____

Traverse time CS:_____ Traverse time PS:_____ Valid run (Y or N):_____

| Time traverse started/ completed | PS/CS | Door Number | Comments (no. of blocked doors, interruptions to traverse, etc.) |
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Figure 303-2. Door area inspection.

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Company name:_____ Battery no.:_____ Date:_____

City, State:_____ Total no. of ovens in battery:_____

Observer name:_____ Certification expiration date:_____

Inoperable ovens:_____ Company representative(s):_____

Total no. of lids:_____ Total no. of offtakes:_____ Total no. of jumper pipes:_____

Ovens not observed:_____ Total traverse time:_____ Valid run (Y or N):_____

| Time traverse started/ completed | Type of Inspection (lids, offtakes, collecting main) | Location of VE (Oven #/Port #) | Comments |
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Figure 303-3. Topside inspection.

BILLING CODE 6560-50-C

*METHOD 303A—DETERMINATION OF VISIBLE EMISSIONS FROM NONRECOVERY COKE OVEN BATTERIES*

1. *Applicability and Principle*

1.1 Applicability. This method determines percent leaking doors.

1.2 Principle. A certified observer visually determines the VE from coke oven battery sources. This method does not require that opacity of emissions be determined or that magnitude be differentiated.

1.3 Definitions.

1.3.1 Bench. The platform structure in front of the oven doors.

1.3.2 Nonrecovery Coke Oven Battery. A source consisting of a group of ovens connected by common walls and operated as a unit, where coal undergoes destructive distillation under negative pressure to produce coke, and which is designed for the combustion of coke oven gas from which by-products are not recovered.

1.3.3 Coke Oven Door. Each end enclosure on the pusher side and the coking side of an oven.

1.3.4 Coke Side. The side of a battery from which the coke is discharged from ovens at the end of the coking cycle.

1.3.5 Operating Oven. Any oven not out of operation for rebuild or maintenance work extensive enough to require the oven to be skipped in the charging sequence.

1.3.6 Oven. A chamber in the coke oven battery in which coal undergoes destructive distillation to produce coke.

1.3.7 Push Side. The side of the battery from which the coke is pushed from ovens at the end of the coking cycle.

1.3.8 Run. The observation of visible emissions from coke oven doors in accordance with the procedures in this method.

1.3.9 Shed. An enclosure that covers the side of the coke oven battery, captures emissions from pushing operations and from leaking coke oven doors on the coke side or pusher side of the coke oven battery, and routes the emissions to a control device or system.

2. *Training*

2.1 Training. This method requires only the determination of whether VE occur and does not require the determination of opacity levels; therefore, observer certification according to Method 9 in appendix A to part 60 of this chapter is not required. However, the first-time observer (trainee) shall have attended the lecture portion of the Method 9 certification course. Furthermore, before conducting any VE observations, an observer shall become familiar with nonrecovery coke oven battery operations and with this test method by observing for a minimum of 4 hours the operation of a nonrecovery coke oven battery.

3. *Procedure for Determining VE From Coke Oven Door Areas*

The intent of this procedure is to determine VE from coke oven door areas by carefully observing the door area while walking at a normal pace.

3.1 Number of Runs. Refer to § 63.309(c)(1) of this part for the appropriate number of runs.

3.2 Battery Traverse. To conduct a battery traverse, walk the length of the battery on the outside of the pusher machine and quench car tracks at a steady, normal walking pace, pausing to make appropriate entries on the door area inspection sheet (Figure 303A–1). A single test run consists of two timed traverses, one for the coke side and one for the push side.

3.2.1 Various situations may arise that will prevent the observer from viewing a door or a series of doors. The observer has two options for dealing with obstructions to view: (a) Wait for the equipment to move or the fugitive emissions to dissipate before completing the traverse; or (b) skip the affected ovens and move to a position to continue the traverse. Continue the traverse. After the completion of the traverse, if the equipment has moved or the fugitive emissions have dissipated, complete the traverse by inspecting the affected doors. Record the oven numbers and make an appropriate notation under "Comments" on the door area inspection sheet (Figure 303A–1).

3.2.2 When batteries have sheds to control pushing emissions, conduct the inspection from outside the shed, if the shed allows such observations, or from the bench. Be aware of special safety considerations pertinent to walking on the bench and follow the instructions of company personnel on the required equipment and operations procedures. If possible, conduct the bench traverse whenever the bench is clear of the door machine and hot coke guide.

3.3 Observations. Record all the information requested at the top of the door area inspection sheet (Figure 303A–1), including the number of inoperable ovens. Record which side is being inspected, i.e., coke side or push side. Other information may be recorded at the discretion of the observer, such as the location of the leak (e.g., top of the door), the reason for any interruption of the traverse, or the position of the sun relative to the battery and sky conditions (i.e., overcast, partly sunny, etc.).

3.3.1 Begin the test run by traversing either the coke side or the push side of the battery. After completing one side, traverse the other side.

3.3.2 During the traverse, look around the entire perimeter of each oven door. The door is considered leaking if VE are detected in the coke oven door area. The coke oven door area includes the entire area on the vertical face of a coke oven between the bench and the top of the battery. Record the oven number and make the appropriate notation on the door area inspection sheet (Figure 303A–1).

3.3.3 Do not record the following sources as door area VE:

3.3.3.1 VE from ovens with doors removed. Record the oven number and make an appropriate notation under "Comments;"

3.3.3.2 VE from ovens where maintenance work is being conducted. Record the oven number and make an appropriate notation under "Comments;" or

3.3.3.3 VE from hot coke that has been spilled on the bench as a result of pushing.

3.4 Calculations for percent leaking doors (PLD). Determine the total number of doors for which observations were made on the coke oven battery as follows:

$$D_{ob} = (2 \times N) - (D_i + D_{no}) \quad \text{(Eq. 303A-1)}$$

where

$D_{ob}$=Total number of doors observed on operating ovens;
$D_i$=Number of doors on nonoperating ovens;
$D_{no}$=Number of doors not observed; and
N=Total number of ovens in the battery.

3.4.1 For each test run (one run includes both the coke side and the push side traverses), sum the number of doors with door area VE.

Note: Multiple VE from the same door area are counted as only one emitting door, not as multiple emitting doors.

3.4.2 Calculate percent leaking doors by using the following equation:

$$PLD = \frac{L_y}{D_{ob}} \times 100 \quad \text{(Eq. 303A-2)}$$

where

PLD=Percent leaking doors for the test run;
$L_y$=Number of doors with VE observed from the yard; and
$D_{ob}$=Total number of doors observed on operating ovens.

3.4.3 When traverses are conducted from the bench under sheds, calculate the coke side and the push side reading separately. Use the following equation to calculate a yard-equivalent reading for the coke side:

$$L_b = L_s - (N \times 0.06) \quad \text{(Eq. 303A-3)}$$

where

N=Total number of ovens on the battery;
$L_b$=Yard-equivalent reading; and
$L_s$=Number of doors with VE observed from the bench under sheds.

If $L_b$ is less than zero, use zero for Lb in Equation 303A–4 in the calculation of PLD.

3.4.3.1 Use the following equation to calculate PLD:

$$PLD = \frac{L_b + L_y}{D_{ob}} \times 100 \quad \text{(Eq. 303A-4)}$$

where

PLD=Percent leaking coke oven doors for the run;
$L_b$=Yard equivalent reading;
$L_y$=Number of doors with VE observed from the yard on the push side; and
$D_{ob}$=Total number of doors observed on operating ovens.

Round off PLD to the nearest hundredth of 1 percent and record as the percent leaking coke oven doors for the run.

3.4.3.2 30-day Rolling Average. For each day on which a valid observation is obtained, calculate the daily 30-day rolling average for each battery using these data and the 29 previous valid daily observations, in accordance with the following equation:

$$PLD(30-day) = \frac{(PLD_1 + PLD_2 L + PLD_{30})}{30} \quad \text{(Eq. 303-5)}$$

4. *Bibliography*

1. Missan, R., and A. Stein. Guidelines for Evaluation of Visible Emissions Certification, Field Procedures, Legal Aspects, and Background Material. U.S. Environmental Protection Agency. EPA Publication No. EPA-340/1-75-007. April 1975.

2. Wohlschlegel, P., and D.E. Wagoner. Guideline for Development of a Quality Assurance Program: Volume IX—Visual Determination of Opacity Emission from Stationary Sources. U.S. Environmental Protection Agency. EPA Publication No. EPA-650/4-005i. November 1975.

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4. U.S. Environmental Protection Agency. National Emission Standards for Hazardous Air Pollutants; Coke Oven Emissions from Wet-Coal Charged By-Product Coke Oven Batteries; Proposed Rule and Notice of Public Hearing. Washington, DC Federal Register. Vol. 52, No. 78 (13586). April 23, 1987.

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Company name:_____ Battery no.:_____ Date:_____

City, State:_____ Total no. of ovens in battery:_____

Observer name:_____ Certification expiration date:_____

Inoperable ovens:_____ Company representative(s):_____

Traverse time CS:_____ Traverse time PS:_____ Valid run (Y or N):_____

| Time traverse started/ completed | PS/CS | Door Number | Comments (no. of blocked doors, interruptions to traverse, etc.) |
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Figure 303A-1. Door area inspection.

[FR Doc. 93-26162 Filed 10-26-93; 8:45 am]
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federal register

Wednesday
October 27, 1993

Part III

# Department of Education

34 CFR Part 300, et al.
Education and Rehabilitative Services Programs; Proposed Rule

## DEPARTMENT OF EDUCATION

**34 CFR Parts 300, 307, 315, 318, 346, 350, 351, 359, 361, 363, 365, 366, 367, 369, 371, 373, 374, 376, 377, 378, 379, 380, 385, 386, 387, 388, and 389**

**RIN 1820-AB26**

### Office of Special Education and Rehabilitative Services Programs

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking; Nomenclature changes.

**SUMMARY:** The Secretary proposes to revise certain program regulations administered by the Office of Special Education and Rehabilitative Services (OSERS) to change the term "severe" in all its forms to "significant" in referring to an individual's disability if this change would not alter the meaning of the reference. The Secretary is concerned that the term "severe" has largely negative connotations and associations in common usage and that the term "significant" may be preferred by persons with disabilities.

**DATES:** Comments must be received on or before December 13, 1993.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Judith E. Heumann, Assistant Secretary, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., room 3006, Mary E. Switzer Building, Washington, DC 20202-2575.

**FOR FURTHER INFORMATION CONTACT:** Gregory March, U.S. Department of Education, 400 Maryland Ave., SW., room 3124, Mary E. Switzer Building, Washington, DC 20202-2741. Telephone: (202) 205-8441 for voice or TDD services.

**SUPPLEMENTARY INFORMATION:** The Secretary proposes to revise certain program regulations administered by OSERS to change the term "severe" in all its forms to "significant" in referring to an individual's disability if this change would not alter the meaning of the reference. The Secretary is concerned that the term "severe" has largely negative connotations and associations in common usage and that the term "significant" may be preferred by persons with disabilities. The Secretary plans to use the term "significant" as a synonym for "severe" in referring to an individual's disability. However, no change in meaning is intended and use of the term "severe" will be retained if it has an operational impact. For example, the term "individuals with severe disabilities" would be changed to "individuals with significant disabilities," but the statutory definition of that term—which uses the word "severe"—would not be revised. Similarly, the use of the term "severity" would be retained if used to describe the content of a functional evaluation of an individual's disability.

The proposed change would apply to all forms of the term "severe." For example, the Secretary proposes to change the term "individual with a severe disability" to "individual with a significant disability," "severe disabilities" to "significant disabilities," and "individuals with the most severe disabilities" to "individuals with the most significant disabilities."

The proposed change would affect the following regulations in Title 34 of the Code of Federal Regulations: Assistance to States for the Education of Children with Disabilities Program (Part 300); Services for Children with Deaf-Blindness (Part 307); Program for Children with Severe Disabilities (Part 315); Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training (Part 318); Technology-Related Assistance for Individuals with Disabilities: Demonstration and Innovation Projects of National Significance (Part 346); Disability and Rehabilitation Research: General Provisions (Part 350); Disability and Rehabilitation Research: Research and Demonstration Projects (Part 351); Disability and Rehabilitation Research: Special Projects and Demonstrations for Spinal Cord Injuries (Part 359); The State Vocational Rehabilitation Services Program (Part 361); The State Supported Employment Services Program (Part 363); The State Independent Living Rehabilitation Services Program (Part 365); Centers for Independent Living (Part 366); Independent Living Services for Older Blind Individuals (Part 367); Vocational Rehabilitation Service Projects (Part 369); Vocational Rehabilitation Service Projects for American Indians with Disabilities (Part 371); Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities (Part 373); Special Projects and Demonstrations for Making Recreational Activities Accessible to Individuals with Disabilities (Part 374); Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities (Part 376); Demonstration Projects to Increase Client Choice Program (Part 377); Projects for Initiating Recreational Programs for Individuals with Disabilities (Part 378); Projects with Industry (Part 379); Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects (Part 380); Rehabilitation Training (Part 385); Rehabilitation Training: Rehabilitation Long-Term Training (Part 386); Experimental and Innovative Training (Part 387); State Vocational Rehabilitation Unit In-Service Training (Part 388); and Rehabilitation Continuing Education Programs (Part 389).

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) and centers for independent living receiving Federal funds under these programs. However, the regulations would not have a significant economic impact on the LEAs and centers affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would simply make a nomenclature change and impose no additional regulatory burdens.

### Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements. The Secretary, however, solicits comments on whether the proposed change in terminology may cause States or localities to reprogram or redesign any existing forms or policy documents, and the cost of these efforts.

### Intergovernmental Review

Some of the programs affected by these proposed regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary is interested in any suggestions for alternative terminology. The Secretary is also interested in comments on whether the proposed change in terminology may interfere with the administration of the programs listed in the **SUPPLEMENTARY INFORMATION** section of this preamble or any other Federal, State, or local program.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3214, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Dated: October 20, 1993.

**Richard W. Riley,**

*Secretary of Education.*

[FR Doc. 93–26337 Filed 10–26–93; 8:45 am]

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federal register

Wednesday
October 27, 1993

Part IV

# Department of Education

34 CFR Part 366

Centers for Independent Living; Proposed Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Part 366**

**RIN 1820-AA81**

## Centers for Independent Living

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the Centers for Independent Living (CIL) program. These proposed regulations are needed to establish indicators of what constitutes minimum compliance with the evaluation standards for centers for independent living enacted in the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1992 (1992 Amendments) and the Rehabilitation Act Amendments of 1993.

**DATES:** Comments must be received on or before December 13, 1993.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to William L. Smith, Acting Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Mary E. Switzer Building, Washington, DC 20202-2575.

A copy of any comments that concern information collection requirements also should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** John Nelson, U.S. Department of Education, 400 Maryland Ave., SW., room 3326, Mary E. Switzer Building, Washington, DC 20202-2741. Telephone: (202) 205-9362 for voice or TDD services.

**SUPPLEMENTARY INFORMATION:** The CIL program supports the planning for and establishing, conducting, administrating, assisting, and evaluating of centers for independent living. The proposed regulations would add a new subpart G to 34 CFR part 366, which contains the regulations governing the CIL program. Section 725(b) of the Act establishes evaluation standards for centers for independent living. Section 706(b) of the Act requires the Secretary to publish indicators of what constitutes minimum compliance with the evaluation standards. Subpart G would incorporate these evaluation standards and compliance indicators into the program regulations.

The CIL program furthers the National Education Goals. The program furthers Goal 5 of the National Education Goals, that every adult American—including individuals with significant disabilities—will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers Goal 5 by providing individuals with significant disabilities with the skills necessary for independent living.

The Rehabilitation Act Amendments of 1986 required that the Secretary publish indicators of what constitutes minimum compliance with the evaluation standards under section 711(e) of the Act, as it existed prior to the 1992 Amendments. The Secretary published proposed compliance indicators in the **Federal Register** in an advance notice of proposed rulemaking (ANPRM) on July 10, 1992. The Secretary received over 100 written comments during the comment period on the ANPRM, as well as 35 oral comments during a public meeting held on August 27, 1992. Following the publication of the ANPRM, the Secretary also solicited and received additional input from experts in the field concerning alternative approaches to the indicators.

Commenters expressed concern with the evaluation standards and compliance indicators proposed in the ANPRM. Many of these concerns (e.g., need for independent living core services, including the development of peer relationships) have been superseded by the 1992 Amendments, which were enacted shortly after publication of the ANPRM. Additional changes made in response to public comments are identified in the following discussion of the proposed indicators.

The 1992 Amendments codified the six evaluation standards proposed by the Department in the ANPRM and added an evaluation standard for community capacity. In addition, the 1992 Amendments: (1) Expanded the first evaluation standard on independent living philosophy by including the development peer relationships and peer role models as part of the standard; (2) added explanatory language to the second evaluation standard to require the provision of independent living services to individuals with a range of significant disabilities; (3) added the concept of independent living core services to the fifth evaluation standard on independent living services; and (4) made other minor changes to the language of the remaining evaluation standards proposed in the ANPRM.

### Summary of Major Changes

The following is a summary of the major regulatory changes in these proposed regulations. The summary first describes the evaluation standards established by the 1992 Amendments and then discusses the proposed indicators of what would constitute minimum compliance with these standards. The public is requested to comment on the proposed compliance indicators and the general approach adopted by the Secretary in implementing the evaluation standards.

*Evaluation Standards—§ 361.61*

Section 725(b) of the Act lists seven evaluation standards for centers for independent living. These evaluation standards are as follows:

- *Evaluation standard 1—Philosophy*: This evaluation standard requires a center to promote and practice the independent living philosophy of: (1) Consumer control of the center regarding decision-making, service delivery, management, and establishment of the policy and direction of the center; (2) self-help and self-advocacy; and (3) development of peer relationships and peer role models. The evaluation standard also requires equal access for individuals with significant disabilities. The Secretary has interpreted the equal access part of the philosophy evaluation standard to require equal access for individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, and the promotion of equal access for individuals with significant disabilities to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source.
- *Evaluation standard 2—Provision of services*: This evaluation standard requires a center to provide independent living services to individuals with a range of significant disabilities. The evaluation standard also requires that a center provide independent living services on a cross-disability basis (for individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of populations that are unserved or underserved by programs under Title VII of the Act). Finally, this evaluation standard provides that eligibility for independent living services must be determined by the center, and that eligibility may not be based on the presence of any one or more specific significant disabilities, separately or in combination.
- *Evaluation standard 3—Independent living goals*: This evaluation standard requires a center to

facilitate the development and achievement of independent living goals selected by individuals with significant disabilities who seek assistance from the center.

• *Evaluation standard 4—Community options*: This evaluation standard requires a center to work to increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of independent living goals by individuals with significant disabilities.

• *Evaluation standard 5—Independent living core services*: This evaluation standard requires that a center provide independent living core services and, as appropriate, a combination of any other independent living services specified in section 7(30)(B) of the Act.

• *Evaluation standard 6—Activities to increase community capacity*: This evaluation standard requires a center to conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

• *Evaluation standard 7—Resource development activities*: This evaluation standard requires a center to conduct resource development activities to obtain funding from sources other than Chapter 1 of Title VII of the Act.

*Indicators of Compliance—§ 361.62*

The Secretary has developed proposed indicators of what constitutes minimum compliance with the evaluation standards. The Secretary has divided the compliance indicators into (1) baseline requirements; and (2) bonus point categories. The baseline requirements include activities that the Secretary believes must be carried out by each center to demonstrate minimum compliance with the evaluation standards. If a center fails to satisfy any one of the baseline requirements, it would be found to be out of compliance with the evaluation standards.

The bonus point categories include activities that further the baseline requirements. The Secretary would not require a center to satisfy each of the bonus point categories to demonstrate compliance, but would require each center to achieve a minimum composite score of 50 points out of 100 available total points. A center would be able to earn a maximum of 36 points under the indicator for philosophy, 20 points under the indicator for cross-disability, 12 points under the indicator for independent living goals, 12 points under the indicator for community options and community capacity, 8 points under the indicator for independent living services, and 12 points under the indicator for resource development. The Secretary solicits comments on each of the proposed baseline requirements and bonus point activities, whether there are additional bonus point activities that exemplify the most worthwhile types of activities conducted by centers, and whether each of the proposed bonus point activities have been accorded a reasonable number of points.

The proposed indicators attempt to accommodate many of the concerns expressed by commenters in response to the ANPRM. First, many commenters expressed the concern that the level of compliance proposed in the ANRPM was too low. Second, many commenters also believed centers should be required to demonstrate compliance with each of the evaluation standards, rather than be allowed to compensate for poor performance on one standard with exceptional performance on another. The Secretary has sought to accommodate these concerns by proposing a minimum level of compliance for each evaluation standard, in addition to the 50-point minimum composite score on the bonus point categories. Third, many commenters expressed the concern that the indicators proposed in the ANPRM left a CIL with too little discretion to implement activities that are the most appropriate for its size and type of consumer population. The bonus point categories address this concern by affording centers greater discretion in the selection of activities. Fourth, many commenters expressed concern with the scoring system proposed in the ANPRM. The Secretary has revised the scoring system in the proposed regulations, especially the points awarded to the philosophy indicator. Finally, many commenters recommended that the Secretary eliminate the proposed categorization of disabilities. The Secretary has eliminated this categorization in these proposed regulations.

The proposed compliance indicators, baseline requirements, and bonus point categories are as follows:

• *Compliance indicator 1—Philosophy.*

The compliance indicator for the evaluation standard on philosophy is divided into: (1) Consumer control; (2) self-help and self-advocacy; (3) development of peer relationships and peer role models; and (4) equal access. Each aspect of this indicator has separate baseline requirements and bonus point categories. The total bonus points available under this indicator is 36, divided as follows: consumer control—15 points; self-help and self-advocacy—3 points; development of peer relationships and peer role models—6 points; and equal access—12 points.

Consumer Control.

Section 725(c)(2) of the Act requires a center to provide an assurance that a majority of the members of its governing board are individuals with significant disabilities. Section 725(c)(6) of the Act requires a center to provide an assurance that it will ensure that a majority of the center's decision-making and staff positions are filled by individuals with disabilities. Therefore, the Secretary proposes to implement these statutory provisions by establishing a baseline for the consumer control aspect of the philosophy indicator that would require a center to provide evidence in its continuation application that more than 50 percent of the center's (1) governing board is composed of individuals with significant disabilities; (2) decision-making positions are filled by individuals with disabilities; and (3) staff positions are filled by individuals with disabilities.

For purposes of determining whether more than 50 percent of the center's staff positions are filled by individuals with disabilities, the Secretary has determined that a center would not be required to count personal care assistants, readers, and interpreters employed by the center. Centers are required to provide reasonable accommodation to individuals with disabilities. Personal care assistants, readers, and interpreters are among those responsible for providing this accommodation. The Secretary believes it may be difficult for centers to find individuals with disabilities who can provide reasonable accommodation because of their own disability. For example, an individual with a physical disability may not be able to serve as a personal care assistant because of his or her own disability. A person who is blind cannot be an interpreter, nor can a person with neuromuscular or orthopedic conditions limiting the use of the hands. Because of such functional limitations, the Secretary believes it is more appropriate to encourage—rather than mandate—centers to hire individuals with disabilities for these positions. The Secretary has sought to encourage these hiring practices by providing bonus points to a center for having more than 50 percent of the personal care assistants, readers, and interpreters employed by the center be individuals with disabilities.

While section 725(c)(6) of the Act requires a center to meet the more than 50 percent requirement at all times the determination that more than 50 percent of a center's decision-making and staff positions are filled by individuals with disabilities would be based on the total number of hours worked by paid employees of the center during the three-month period preceding the date a center submits its continuation application. In other words, a center would be required to submit evidence that more than 50 percent of the total number of hours worked by paid employees in staff and decision-making positions, within the three-month period preceding the date the center submits its continuation application, were worked by individuals with disabilities.

The bonus point category for consumer control would provide a maximum of 15 points for evidence that: (1) The center provides an opportunity for consumers to evaluate the center's independent living services and administration; (2) the center has a consumer advisory council, in addition to the governing board; (3) the center includes individuals with a diversity of disabilities on its governing board; (4) the center includes individuals with a diversity of disabilities in staff and decision-making positions; and (5) more than 50 percent of the personal care assistants, readers, and interpreters employed by the center are individuals with disabilities. A center would receive 3 points for satisfying each of these categories and 15 points for satisfying all 5 categories.

*—Self-help and self-advocacy.*

The baseline requirement for the self-help and self-advocacy aspect of the philosophy indicator would require a center to provide evidence in its continuation application that it: (1) Has established written policies for promoting self-help and self-advocacy among individuals with significant disabilities; and (2) conducts activities that promote self-help and self-advocacy among individuals with significant disabilities.

The bonus point category for self-help and self-advocacy would provide a maximum of 3 points for evidence that the center has specific activities to train individuals with significant disabilities in self-advocacy and empowerment. A center would receive three points for satisfying this category. The Secretary is particularly interested in receiving comments of other bonus point activities that exemplify the most worthwhile types of activities conducted by centers in this area.

*—Development of peer relationships and peer role models.*

The baseline requirement for the development of the peer relationships and peer role models aspect of the philosophy indicator would require a center to provide evidence in its continuation application that it: (1) Has established written policies for promoting the development of peer relationships and peer role models among individuals with significant disabilities; and (2) conducts activities that promote the development of peer relationships and peer role models among individuals with significant disabilities.

The bonus point category for the development of peer relationships and peer role models would provide a maximum of 6 points for evidence that the center: (1) Uses as instructors in its training programs individuals with significant disabilities who have achieved independent living goals; and (2) employs in its decision-making and staff positions individuals with significant disabilities who have achieved independent living goals. A center would receive three points for satisfying each of these categories and six points for satisfying both categories.

*—Equal access.*

The baseline requirement for the equal access aspect of the philosophy indicator would require a center to provide evidence in its continuation application that it has written policies to ensure equal access of individuals with significant disabilities, including communicative and physical access, to the center's services, programs, activities, resources, and facilities, whether publicly or privately funded. In this context, equal access would mean that the center's services, programs, activities, resources, and facilities would be available without regard to the type of significant disability of the individual. A center would also be required to provide evidence in its continuation application that it conducts activities that promote equal access of individuals with significant disabilities to all services, programs, activities, resources, and facilities in society, whether public and private, and regardless of funding source. In this context, equal access would mean that society's services, programs, activities, resources, and facilities would be available on the same basis to individuals with significant disabilities, other individuals with disabilities, and individuals without disabilities. These two uses of the term equal access would also apply to the compliance indicators relating to equal access.

The bonus point category for equal access would provide a maximum of 12 points for evidence that the center: (1) Uses the media to promote equal access to society for individuals with significant disabilities; (2) provides training to individuals with significant disabilities and the general public about the independent living philosophy; (3) conducts affirmative action activities to recruit individuals who are members of minority groups for its governing board and includes individuals who are members of minority groups on its governing board; and (4) conducts affirmative action activities to recruit individuals who are members of minority groups for its staff and decision-making positions and employs individuals who are members of minority groups in staff and decision-making positions of the center. A center would receive 3 points for satisfying each of these categories and 12 points for satisfying all of these activities.

• *Compliance indicator 2—Cross-disability*

The baseline requirement for minimum compliance with the evaluation standard on the provision of independent living services would require a center to provide evidence in its continuation application that it: (1) Does not deny eligibility for independent living services based on type of significant disability; (2) provides independent living services to individuals with a range of significant disabilities, including individuals with all different types of significant disabilities and individuals with significant disabilities who are members of populations that are unserved or underserved by programs under Title VII of the Act; and (3) provides independent living core services to individuals with significant disabilities that are neither targeted nor limited to a particular type of disability.

The bonus point category for the cross-disability indicator would provide a maximum of 20 points to a center that provides evidence of its continuation application that it: (1) Performs a community-based needs assessment every three years of the service needs of individuals with significant disabilities, including the numbers of individuals with different types of physical, cognitive, mental, and sensory significant disabilities in the community; (2) assesses the center's resources and makes appropriate adjustments in resource allocations to meet these needs; (3) performs a community-based needs assessment every three years that identifies individuals with significant disabilities who are members of populations that

have been unserved or underserved by programs under Title VII of the Act in the center's community; and (4) provides independent living services to individuals with different types of significant disabilities and individuals with significant disabilities who are members of populations that have been unserved or underserved under Title VII of the Act that are consistent with their representation and needs, as identified by the community-based needs assessment conducted as stated above. A center would receive 5 points for satisfying each of these categories and 20 points for satisfying all of these activities.

In conducting a community-based needs assessment of the service needs of individuals with significant disabilities, a center would not be required to develop original data to receive points under the bonus point category. A center would be permitted to use existing census data, other demographic data that identifies individuals by type of disability, studies, information gathered by a local service agency, or any other type of data that reliably identifies the numbers of individuals with different types of significant disabilities and individuals with significant disabilities who are members of populations that have been unserved or underserved by programs under Title VII of the Act in the center's community.

• *Compliance indicator 3—Independent living goals.*

The baseline requirement for minimum compliance with the evaluation standard on independent living goals would require a center to provide documentation in its continuation application that it: (1) Maintains a consumer service record for each consumer; (2) measures the achievement of independent living goals by consumers; (3) notifies all consumers of their right to have an independent living plan; and (4) facilitates the development and achievement of independent living goals selected by individuals with significant disabilities who request assistance from the center. The baseline requirement also would require a center to submit in its continuation application evidence that the center maintains data on: (1) The achievement of independent living goals by consumers receiving services at the center; (2) the number of independent living plans developed by consumers receiving services at the center; and (3) the number of waivers stating that an independent living plan is unnecessary that are signed by consumers receiving services at the center.

The bonus point category for the independent living goals indicator would provide a maximum of 12 points for evidence that: (1) the center conducts an annual survey of all consumers who are currently receiving independent living services from the center to determine if consumers are satisfied with the center's performance in facilitating the development and achievement of their independent living goals; (2) at least 75 percent of all consumers who are currently receiving independent living services from the center responded to the survey; (3) if the center receives a response rate of at least 75 percent, at least 80 percent of consumers who are currently receiving independent living services from the center responded that they were satisfied with the center's performance in facilitating the development and achievement of their independent goals; and (4) the governing board and center responded to the findings of their consumer satisfaction survey by taking appropriate action. A center would receive 3 points for satisfying each of these categories and 12 points for satisfying all categories.

• *Compliance indicator 4—Community options and community capacity.*

The Secretary would combine the indicators of what constitutes minimum compliance with the evaluation standards on community options and activities to increase community capacity into one compliance indicator because of the similarity of the activities that would indicate minimum compliance with these two evaluation standards. The Secretary believes combining the activities that constitute minimum compliance with these two evaluation standards into one compliance indicator avoids overlapping baseline requirements and awarding bonus points for nearly identical activities.

The baseline requirement for the community options and community capacity indicator would require a center to provide evidence in its continuation application that it performed at least one activity in each of the categories below in the 12 month period preceding the submission of its continuation application. These activities would promote the increased availability and quality of community-based programs that serve individuals with significant disabilities and the removal of any existing architectural, attitudinal, communicative, environmental, or other type of barrier that prevents the full integration of these individuals into society. The categories include: (1) Community advocacy; (2) technical assistance to the community on making services, programs, activities, resources, and facilities in society accessible to individuals with significant disabilities; (3) public information and education; (4) aggressive outreach to consumers who are members of populations of individuals with significant disabilities who are unserved or underserved by programs under Title VII of the Act in the center's community; and (5) collaboration with service providers, other agencies, and organizations that could assist in improving the options available for individuals with significant disabilities to participate in the services, programs, activities, resources, and facilities in the community.

The bonus point category for the community options and community capacity indicator would provide points for evidence that the center: (1) Conducts a community-based needs assessment every three years to determine the barriers to full integration of individuals with significant disabilities into society that exist in the community and the resources available to remove these barriers; (2) directs the activities required under the baseline requirement specifically to remove the barriers identified in the needs assessment; and (3) conducts activities to promote the creation of new programs that will expand the options available to individuals with significant disabilities identified in the needs assessment. A center would receive 4 points for satisfying each of these categories and 12 points for satisfying all of these activities.

• *Compliance indicator 5—Independent living services.*

The baseline requirement for minimum compliance with the evaluation standard on independent living services would require a center to provide evidence in its continuation application that it provides information and referral services to all individuals who request assistance or services from the center and, as appropriate to their needs, provides to individuals with significant disabilities who are eligible for independent living services from the center the following services: (1) Independent living skills training; (2) peer counseling (including cross-disability peer counseling); (3) individual and systems advocacy; and (4) a combination of other independent living services.

The bonus point category for the independent living services indicator would provide a maximum of 8 points for evidence that the center: (1) Provides a combination of independent living

services that are in addition to independent living core services and that are representative of the service needs identified in the needs assessment conducted under the bonus point category for the cross-disability indicator; and (2) conducts activities to assess the effectiveness and quality of the independent living services provided by the center. A center would receive 4 points for satisfying each of these categories and 8 points for satisfying both of these categories.

• *Compliance indicator 6—Resource development activities.*

The baseline requirement for minimum compliance with the evaluation standard on resource development activities would require a center to provide evidence in its continuation application that it conducts ongoing resource development activities to obtain funding from sources other than Chapter 1 of Title VII of the Act.

The bonus point category for the resource development activities indicator would provide a maximum of 12 points. Three points would be available if the center provided evidence that it developed and annually updates a plan for obtaining and increasing funding from sources other than Title VII of the Act. A maximum of an additional 9 points also would be available to a center based on the percentage that the non-Title VII funds received by the center represent of all the funds received by the center during the project year. A center whose non-Title VII funds represent 10 to 14 percent of all funds received by the center during the project year would receive 1 point. A center whose non-Title VII funds represent 15 to 19 percent of all funds received by the center during project year would receive 2 points. The number of points received would increase by increments of 1 with every 5 percent increase in non-Title VII funds until 50 percent or more is reached. At this point, a center would receive 9 points.

*Definitions*

The Secretary has defined "consumer," "consumer service record," "cross-disability peer counseling," "decision-making position," "independent living skills training," "individual with a significant disability," "information and referral services," "minority group," "peer counseling," "significant disability," "staff position," and "unserved or underserved." These definitions would be incorporated in § 366.4(b) of the proposed regulations.

The Secretary has changed all references to "individual with severe disabilities" to "individual with a significant disability." The Secretary has defined individual with a significant disability to mean an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment, respectively. This definition is derived from the definition of individual with a severe disability in section 7(15)(B) of the Act. The Secretary is concerned that the term "severe" has largely negative connotations and associations in common usage, and that the term "significant" may be preferred by persons with disabilities. Consequently, the Secretary is proposing to change the reference. The Secretary believes that the term "significant disability" is a functional synonym for the present term "severe disability."

The Secretary has published a separate notice of proposed rulemaking (NPRM) in this issue of the Federal Register soliciting comment on this change. Commenters are requested to direct their comments on this change to that NPRM.

The Secretary would define unserved or underserved, with respect to populations of individuals with significant disabilities in a State, to include, but not be limited to, populations of individuals with significant disabilities who have cognitive and sensory impairments, individuals with significant disabilities who are members of racial and ethnic minority groups, and individuals with significant disabilities who live in rural areas. The Secretary has made special reference to individuals with cognitive and sensory impairments in this definition because the legislative history of the Amendments provides, "[w]ith respect to unserved and underserved populations, the term includes racial and ethnic minorities and individuals with cognitive and sensory impairments."

*Application of Compliance Indicators*

As stated earlier, the Secretary would use the proposed compliance indicators to determine whether a center has complied with the proposed evaluation standards and, thus, is eligible for continuation funding. For those grants that include several centers, each center would have to meet the compliance indicators. If one or more centers under a grant do not meet the compliance indicators, the Secretary would continue funding only those centers under the grant that are in compliance with the indicators.

A center's performance would be determined by the data it submitted for the most recent complete project year. Failure to submit the required data with a center's application for continuation funding would prevent the Secretary from considering the continued funding of the center's project.

The proposed compliance indicators would apply to continuation awards for the third or any subsequent year of a CIL grant initially made in fiscal year 1993 and thereafter. Because grant awards under this program are made near the end of the fiscal year with project periods that run concurrently with the following fiscal year, a center would receive two years of funding before its performance would be measured against the proposed compliance indicators. This is because, at the time a center would apply for its second year of funding (its first continuation award), it would not have available a full project year of data. When a center submits its application for its third year of funding (its second continuation award), it would be required to submit project data from the first full year of funding.

If the Secretary determines that a center receiving funds under part C of Title VII of the Act fails to satisfy any one of the baseline requirements of these proposed compliance indicators or fails to achieve a minimum composite score of 50 bonus points from the bonus point activities, the Secretary would immediately notify the center that it is out of compliance with the evaluation standards. A center would have to submit a corrective action plan to achieve compliance within 90 days of notification that the center is out of compliance. The Secretary would provide technical assistance to any center found to be out of compliance. Failure to satisfy the provisions of the corrective action plan would result in termination of assistance under part C of Title VII of the Act. Procedures for appeals will be addressed in a later NPRM.

Beginning with new awards, if applicable, the Secretary also would use the proposed compliance indicators as an additional factor in evaluating a center's "past performance" under the selection criteria for new centers under this part. The selection criteria for this program will be published in a later NPRM.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are centers receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the centers affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

*Paperwork Reduction Act of 1980*

Sections 366.60 through 366.64 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

States and centers are eligible to apply for grants under these proposed regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 60 hours per response for 200 respondents, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

*Intergovernmental Review*

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary is particularly interested in comments regarding additional areas or indicators or alternative measures that should be considered by the Department.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3214, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

*Assessment of Educational Impact*

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 366**

Centers for independent living, Compliance indicators, Evaluation standards, Recordkeeping and reporting requirements.

(Catalog of Federal Domestic Assistance Number 84.132—Centers for Independent Living)

Dated: October 20, 1993.

**Richard W. Riley,**

*Secretary of Education.*

The Secretary proposes to amend part 366 of title 34 of the Code of Federal Regulations as follows:

## PART 366—CENTERS FOR INDEPENDENT LIVING

1. The authority citation for part 366 is revised to read as follows:

**Authority:** 29 U.S.C. 796d–1(b) and 796f–796f–6, unless otherwise noted.

2. Section 366.4 is amended by adding in alphabetical order new definitions of *Consumer, Consumer service record, Cross-disability peer counseling, Decision-making position, Information and referral services, Independent living skills training, Individual with a significant disability, Minority group, Peer counseling, Significant disability, Staff position,* And *Unserved or underserved* in paragraph (b) to read as follows:

**§ 366.4 What definitions apply to this program?**

* * * * *

(b) * * *

*Consumer* means any individual who—

(1) Is eligible for independent living services; and

(2) Is currently or has been provided with any service under the program other than information and referral.

*Consumer service record* means a record of independent living services provided to an individual who has been defined as a consumer under the program. A consumer service record must include either an independent living plan or a waiver signed by the individual stating that a plan is unnecessary.

*Cross-disability peer counseling* under this part means peer counseling by an individual with one type of significant disability to an individual with a different type of significant disability.

*Decision-making position* means the executive director, any first and second-line supervisory position, and any other policy position within the center.

* * * * *

*Independent living skills training* means instruction to develop independent living skills in areas including, but not limited to, daily living activities, personal care, financial management, social skills, and prevocational training.

*Individual with a significant disability* means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family of community or to continue in employment, respectively.

* * * * *

*Information and referral services* means any response to a request for information—

(1) Concerning the center and the independent living services it provides; or

(2) The availability, location, and source of community resources for individuals with disabilities.

*Minority group* means Alaskan Natives, American Indians, Asian Americans, Blacks (African Americans), Hispanic Americans, Native Hawaiians, and Pacific Islanders.

*Peer counseling* means guidance provided by individuals with significant disabilities (e.g., as counselors, advisors, role models, and mentors) to assist other individuals with significant disabilities to develop, clarify, and achieve their independent living goals.

*Significant disability* means a severe physical or mental impairment that substantially limits an individual's

ability to function independently in the family or community or to obtain, maintain, or advance in employment.

*Staff position* means a paid non-contract position within the center that is not defined as a decision-making position.

*Unserved or underserved,* with respect to populations of individuals with significant disabilities in a State, include, but are not limited to, populations of individuals with significant disabilities who have cognitive and sensory impairments, individuals with significant disabilities who are members of racial and ethnic minority groups, and individuals with significant disabilities who live in rural areas. A center also may present evidence that identifies other populations of individuals with significant disabilities who are unserved or underserved within its project area.

3. Part 366 would be amended by adding a new Subpart G consisting of §§ 366.70 through 366.74 to read as follows:

**Subpart G—Evaluation Standards and Compliance Indicators**

Sec.



## Subpart G—Evaluation Standards and Compliance Indicators

### § 366.70 What are the requirements for continuation funding?

(a) To be eligible to receive a continuation award for the third or any subsequent year of a grant, a center shall:

(1) Have complied fully during the previous project year with all of the terms and conditions of its grant.

(2) Provide adequate evidence that the center complies with the baseline requirements in each of the compliance indicators in § 366.73.

(3) Achieve a minimum composite score of 50 out of 100 available points on the bonus point categories in § 366.73.

(4) Meet the requirements in this part.

(5) Provide any other evidence the Secretary requests.

(b) If a single grant application requests funding for more than one center, each individual center to be funded under the grant shall meet the requirements of paragraph (a) of this section.

(Authority: 29 U.S.C. 711, 796d–1(b), 796e, and 796f–4)

### § 366.71 What are project evaluation standards?

(a) *Evaluation standard 1—Philosophy.* The center shall promote and practice the independent living philosophy of—

(1) Consumer control of the center regarding decision-making, service delivery, management, and establishment of the policy and direction of the center;

(2) Self-help and self-advocacy;

(3) Development of peer relationships and peer role models;

(4) Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(5) Promoting equal access of individuals with significant disabilities to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

(b) *Evaluation standard 2—Provision of services.* (1) The center shall provide independent living services to individuals with a range of significant disabilities.

(2) The center shall provide independent living services on a cross-disability basis (for individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of populations that are unserved or underserved by programs under Title VII of this Act).

(3) The center must determine eligibility for independent living services. The center may not base eligibility on the presence of any one specific significant disability or any combination of two or more specific significant disabilities.

(c) *Evaluation standard 3—Independent living goals.* The center shall facilitate the development and achievement of independent living goals selected by individuals with significant disabilities who seek assistance from the center.

(d) *Evaluation standard 4—Community options.* The center shall work to increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of independent living goals by individuals with significant disabilities.

(e) *Evaluation standard 5—Independent living core services.* The center shall provide independent living core services and, as appropriate, a combination of any other independent living services specified in section 7(30)(B) of the Act.

(f) *Evaluation standard 6—Activities to increase community capacity.* The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(g) *Evaluation standard 7—Resource development activities.* The center shall conduct resource development activities to obtain funding from sources other than Chapter 1 of Title VII of the Act.

(Authority: 29 U.S.C. 796f–4)

### § 366.72 What are the compliance indicators?

(a) The compliance indicators establish what constitutes minimum compliance with the evaluation standards.

(b) The compliance indicators are divided into—

(1) Baseline requirements; and

(2) Bonus point categories (100 points).

(c) The baseline requirements are activities that a center shall carry out to demonstrate minimum compliance with the evaluation standards. If a center fails to satisfy any one of the baseline requirements, the center is out of compliance with the evaluation standards.

(d) The bonus point categories are activities that further the baseline requirements. A center shall achieve a minimum composite score of 50 points out of 100 available points under the bonus point categories to be in compliance with the evaluation standards.

(Authority: 20 U.S.C. 796d–1(b))

### § 366.73 What evidence must a center present in order to demonstrate that it is in minimum compliance with the evaluation standards?

(a) *Compliance indicator 1—Philosophy* (36 bonus points).

(1) *Consumer control.*

(i) *Baseline requirement.* The center shall provide evidence in its continuation application that more than 50 percent of the center's—

(A) Governing board is composed of individuals with significant disabilities;

(B) Decision-making positions are filled by individuals with disabilities; and

(C) Staff positions are filled by individuals with disabilities. For purposes of this paragraph, staff positions do not include personal care assistants, readers, and interpreters employed by the center.

(ii) The determination that more than 50 percent of a center's decision-making and staff positions are filled by individuals with disabilities in paragraphs (a)(1)(i) (B) and (C) of this section must be based on the total number of hours worked by paid employees during the three-month period preceding the date the center submits its continuation application.

(iii) *Bonus point category* (15 points). The Secretary awards up to 15 points for evidence that—

(A) The center provides an opportunity for consumers to evaluate the center's independent living services and administration (3 points);

(B) The center has a consumer advisory council, in addition to the governing board (3 points);

(C) The center includes individuals with a diversity of disabilities on its governing board (3 points);

(D) The center includes individuals with a diversity of disabilities in staff and decision-making positions (3 points); and

(E) More than 50 percent of the personal care assistants, readers, and interpreters employed by the center are individuals with disabilities (3 points).

(2) *Self-help and self-advocacy.* (i) *Baseline requirement.* The center shall provide evidence in its continuation application that it—

(A) Has established written policies for promoting self-help and self-advocacy among individuals with significant disabilities; and

(B) Conducts activities that promote self-help and self-advocacy among individuals with significant disabilities.

(ii) *Bonus point category* (3 points). The Secretary awards 3 points for evidence that the center has specific activities to train individuals with significant disabilities in self-advocacy and empowerment.

(3) *Development of peer relationships and peer role models.*

(i) *Baseline requirement.* The center shall provide evidence in its continuation application that it—

(A) Has established written policies for promoting the development of peer relationships and peer role models among individuals with significant disabilities; and

(B) Conducts activities that promote the development of peer relationships and peer role models among individuals with significant disabilities.

(ii) *Bonus point category* (6 points). The Secretary awards up to 6 points for evidence that the center—

(A) Uses as instructors in its training programs individuals with significant disabilities who have achieved independent living goals (3 points); and

(B) Employs in its decision-making and staff positions individuals with significant disabilities who have achieved independent living goals (3 points).

(4) *Equal access.* (i) *Baseline requirement.* The center shall provide evidence in its continuation application that it—

(A) Has written policies to ensure equal access of individuals with significant disabilities, including communicative and physical access, to the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(B) Conducts activities that promote the equal access to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, for individuals with significant disabilities on the same basis that access is provided to other individuals with disabilities and individuals without disabilities.

(ii) *Bonus point category* (12 points). The Secretary awards up to 12 points for evidence that the center—

(A) Uses the media to promote equal access to society for individuals with significant disabilities (3 points);

(B) Provides training to individuals with significant disabilities and the general public about the independent living philosophy (3 points);

(C) Conducts affirmative action activities to recruit individuals who are members of minority groups for its governing board and includes individuals who are members of minority groups on its governing board (3 points); and

(D) Conducts affirmative action activities to recruit individuals who are members of minority groups for its staff and decision-making positions and employs individuals who are members of minority groups in its staff and decision-making positions (3 points).

(b) *Compliance indicator 2—Cross-disability* (20 bonus points).

(1) *Baseline requirement.* The center shall provide evidence in its continuation application that it—

(i) Does not deny eligibility for independent living services based on type of disability;

(ii) Provides independent living services to individuals with a range of significant disabilities, including individuals with all different types of significant disabilities and individuals who are members of populations that are unserved or underserved by programs under Title VII of the Act; and

(iii) Provides independent living core services to individuals with significant disabilities that are neither targeted nor limited to a particular type of disability.

(2) *Bonus point category* (20 points). The Secretary awards 20 points for evidence that the center—

(i) Performs a community-based needs assessment every three years of the service needs of individuals with significant disabilities, including the numbers of individuals with different types of physical, cognitive, mental, and sensory disabilities in the community (5 points);

(ii) Assesses the center's resources and makes appropriate adjustments in resource allocations to meet the needs identified in paragraph (b)(2)(i) of this section (5 points);

(iii) Performs a community-based needs assessment every three years of the service needs of individuals with significant disabilities who are members of populations that have been unserved or underserved by programs under Title VII of the Act in the center's community; and

(iv) Provides independent living services to individuals with different types of significant disabilities and individuals with significant disabilities who are members of populations that have been unserved or underserved under Title VII of the Act that are consistent with their representation and needs, as identified by the community-based needs assessment conducted in paragraph (b)(2)(iii) of this section (5 points).

(c) *Compliance indicator 3—Independent living goals* (12 bonus points).

(1) *Baseline requirement* (i) The Center shall provide evidence in its conjunction application that it—

(A) Maintains a consumer service record for each consumer;

(B) Measures the achievement of independent living goals by consumers;

(C) Notifies all consumers of their right to have an independent living plan; and

(D) Facilitates the development and achievement of independent living goals selected by individuals with significant disabilities who request assistance from the center.

(ii) The center also shall submit in its continuation application evidence that the center maintains data on—

(A) The achievement of independent living goals by consumers receiving services at the center;

(B) The number of independent living plans developed by consumers receiving services at the center; and

(C) The number of waivers stating that an independent living plan is unnecessary that are signed by consumers receiving services at the center.

(2) *Bonus point category* (12 points). The Secretary awards up to 12 points for evidence that—

(i) The center conducts an annual survey of all consumers who are currently receiving independent living services from the center to determine if consumers are satisfied with the center's performance in facilitating the development and achievement of their independent living goals (3 points);

(ii) At least 75 percent of all consumers who are currently receiving independent living services from the center responded to the survey (3 points);

(iii) If at least 75 percent of the consumers responded to the survey, at least 80 percent of the consumers responded that they were satisfied with the center's performance in facilitating the development and achievement of their independent living goals (3 points); and

(iv) The governing board and center responded to the findings of their consumer satisfaction survey by taking appropriate action (3 points).

(d) *Compliance indicator 4—Community options and community capacity.*

(1) *Baseline requirement.* The center shall provide evidence in its continuation application that it performed at least one activity in each of the following categories in the 12-month period preceding the submission of its continuation application to promote the increased availability and quality of community-based programs that serve individuals with significant disabilities and to promote the removal of any existing architectural, attitudinal, communicative, environmental, or other type of barrier that prevents the full integration of these individuals into society:

(i) Community advocacy.

(ii) Technical assistance to the community on making services, programs, activities, resources, and facilities in society accessible to individuals with significant disabilities.

(iii) Public information and education.

(iv) Aggressive outreach to consumers who are members of populations of individuals with significant disabilities that are unserved or underserved by programs under Title VII of the Act in the center's community.

(v) Collaboration with service providers, other agencies, and organizations that could assist in improving the options available for individuals with significant disabilities to participate in the services, programs, activities, resources, and facilities in the community.

(2) *Bonus point category* (12 points). The Secretary awards up to 12 points for evidence that the center conducts—

(i) A community-based needs assessment every three years to determine the barriers to full integration of individuals with significant disabilities into society that exist in the community and the resources available to remove these barriers (4 points);

(ii) The activities required under paragraphs (d)(1)(i)–(v) of this section to remove the barriers identified in the assessment (4 points); and

(iii) Activities to promote the creation of new programs that will expand the options available to individuals with significant disabilities identified in the needs assessment (4 points).

(e) *Compliance indicator 5—Independent living services* (8 bonus points).

(1) *Baseline requirement.* The center shall provide evidence in its continuation application that—

(i) It provides information and referral services to all individuals who request assistance or services from the center; and

(ii) As appropriate to their needs, provides to individuals with significant disabilities who are eligible for independent living services from the center the following services:

(A) Independent living skills training.

(B) Peer counseling (including cross-disability peer counseling).

(C) Individual and systems advocacy.

(D) A combination of other independent living services.

(2) *Bonus point category* (8 points). The Secretary awards up to 8 points for evidence that the center—

(i) Provides a combination of independent living services that are in addition to independent living core services and that are representative of the service needs identified in the needs assessment conducted in accordance with paragraph (b)(2)(i) of this section (4 points); and

(ii) Conducts activities to assess the effectiveness and quality of the independent living services provided by the center (4 points).

(f) *Compliance indicator 6—Resource development activities* (12 bonus points).

(1) *Baseline requirement.* The center shall provide evidence in its continuation application that it conducts ongoing resource development activities to obtain funding from sources other than Chapter 1 of Title VII of the Act.

(2) *Bonus point category* (12 points). (i) The Secretary awards 3 points for evidence that the center developed and annually updates a plan for obtaining and increasing funding from sources other than Title VII of the Act.

(ii) The Secretary awards the following points based on the percentage that the funds received by the center from sources other than Title VII of the Act represent of all the funds received by the center during the project year:

(A) 10 percent to 14 percent = 1 point.

(B) 15 percent to 19 percent = 2 points.

(C) 20 percent to 24 percent = 3 points.

(D) 25 percent to 29 percent = 4 points.

(E) 30 percent to 34 percent = 5 points.

(F) 35 percent to 39 percent = 6 points.

(G) 40 percent to 44 percent = 7 points.

(H) 45 percent to 49 percent = 8 points.

(I) 50 percent or more = 9 points.

(Authority: 29 U.S.C. 796d–1(b))

**§ 366.74 Composite chart of maximum bonus points.**

| | Possible bonus points |
|---|---|
| Compliance indicator 1—Philosophy: | |
| Consumer control | 15 |
| Self-help and self-advocacy | 3 |
| Development of peer relationships and peer role models | 6 |
| Equal access | 12 |
| Total points on philosophy indicator | 36 |
| Compliance indicator 2—Cross-disability | 20 |
| Compliance indicator 3—Independent living goals | 12 |
| Compliance indicator 4—Community options and community capacity | 12 |
| Compliance indicator 5—Independent living services | 8 |
| Compliance indicator 6—Resource development | 12 |
| Total bonus points | 100 |
| Minimum passing composite score | 50 |

(Authority: 29 U.S.C. 796d–1(b))

[FR Doc. 93–26336 Filed 10–26–93; 8:45 am]
BILLING CODE 4000-01-M

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Making further continuing appropriations for the fiscal year 1994, and for other purposes. (Oct. 21, 1993; 107 Stat. 1114; 1 page)

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