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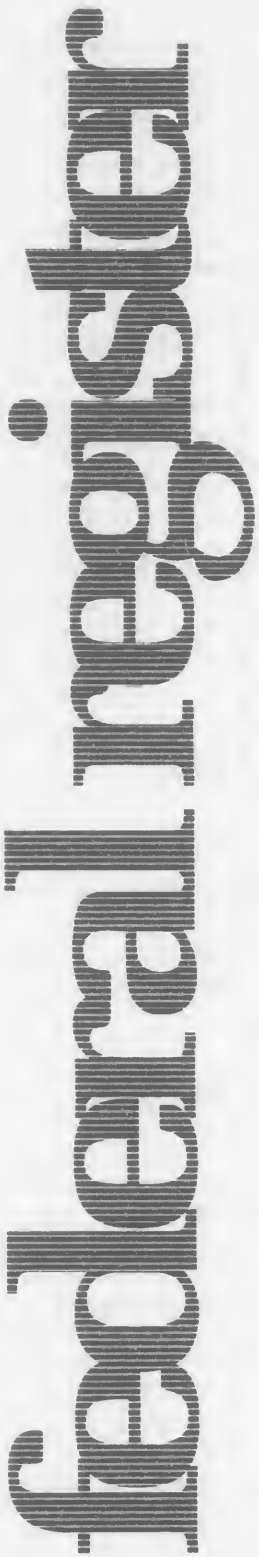

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Rules and Regulations

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 910 and 912

[No. 98–03]

RIN 3069–AA54

Regulations Governing Book-Entry Federal Home Loan Bank Securities

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board is adopting a final rule amending its regulations governing procedures for maintaining book-entry (uncertificated) Federal Home Loan Bank securities within the Federal Reserve Banks' system of accounts to eliminate the need to treat such securities as if they were certificated securities and to conform more closely to the manner in which book-entry securities are treated under the laws of the majority of states (as set forth in Article 8 of the Uniform Commercial Code, as revised in 1994).

DATES: This final rule is effective on March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, 202/408–2932, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On December 3, 1996, the Federal Housing Finance Board (Finance Board) published, and requested public comments on, an interim rule that amended part 912 of the Finance Board's regulations, which governs Federal Home Loan Bank (FHLBank) securities maintained in book-entry (uncertificated) form. 61 FR 64021 (Dec. 3, 1996). The interim final rule was intended to update part 912 to reflect new developments in commercial law regarding ownership and other rights in uncertificated securities and, especially, to parallel the treatment of such securities under Article 8 of the Uniform Commercial Code (UCC), as amended in 1994.

Paragraphs (b) and (c) of section 11 of the Federal Home Loan Bank Act (Bank Act) authorize the Finance Board to issue, upon such terms and conditions as it may establish, consolidated Federal Home Loan Bank (FHLBank) debentures or bonds (collectively, "FHLBank securities"), which are the joint and several obligations of the twelve regional FHLBanks. *See* 12 U.S.C. 1431(b), (c). The Finance Board has set forth the terms and conditions regarding the issuance of FHLBank securities in part 910 of its regulations. 12 CFR part 910. Although, under the Bank Act, the Finance Board is designated as the "issuer" of FHLBank securities, it has delegated this issuance function, along with such other ministerial functions as the servicing of the FHLBank securities, to the Office of Finance (OF) (a joint office of the FHLBanks) pursuant to section 2B(b)(1) of the Bank Act, 12 U.S.C. 1422b(b)(1), part 941 of the Finance Board's regulations, 12 CFR part 941, and periodic resolutions of the Board of Directors of the Finance Board.

Since 1977, the OF has issued domestic FHLBank securities exclusively in "book-entry" form; that is, as uncertificated securities recorded as entries on the computerized system of accounts maintained by the Federal Reserve Banks (Reserve Banks). Under this arrangement, the Reserves Banks, acting as fiscal agents of the Finance Board, the FHLBanks and the OF: issue book-entry FHLBank securities; maintain related book-entry accounts; pay principal and interest due on book-entry FHLBank securities; and otherwise service such FHLBank securities.

Prior to the adoption of the interim final rule in 1996, the rights and obligations of the FHLBanks, the Reserve Banks, and other persons with respect to the issuance and servicing of book-entry FHLBank securities, and the operation of the associated FHLBank book-entry system, were governed by regulatory text that had been promulgated by the former Federal Home Loan Bank Board (FHLBB)—the Finance Board's predecessor as regulator of the FHLBanks in 1973. *See* 12 CFR 506a (1974); 38 FR 10969 (May 3, 1973) (proposed rule); 38 FR 26355 (Sept. 20, 1973) (final rule). These regulations, and those of other government sponsored enterprises (GSEs) having similar book-entry arrangements with the Reserve Banks, were patterned after former part 306 of the regulations of the Department of Treasury, 31 CFR part 306 (1996), which governed Reserve Bank book-entry procedures for Treasury securities.

By 1996, the legal concepts upon which former part 912 were based, like those underlying the analogous Department of Treasury regulations, had become outdated. In the early 1970s, when these regulations were developed, the United States government securities market was in a state of transition between one in which most securities existed in definitive form (that is, the traditional certificate) to one in which securities are maintained almost exclusively within computerized book-entry systems. Corresponding law (including state laws based on the UCC) at the time former part 912 was promulgated assumed that possession and delivery of physical certificates were the key elements in the securities holding system. This led the Department of Treasury, the FHLBB, and other GSE regulators to premise their regulations upon the "bearer-definitive security fiction," which deemed each book-entry security to be the equivalent of a bearer-definitive security. The shortcomings of the bearer-definitive security fiction became increasingly apparent over the years, as the rules based on this fiction were found to leave many unanswered questions regarding transactions and rights in book-entry securities.

In addition, the rules proved inadequate to deal with the tiered system of accounts in which book-entry securities are held. Each interest in a book-entry security must be credited to the account of a Reserve Bank "participant"—that is, an entity having an account with a Reserve Bank. Persons or entities, including securities broker-dealers, who wish to acquire an interest in book-entry securities, but who do not have an account with a Reserve Bank, must do so through a Reserve Bank participant. Non-participant broker-dealers who deal in book-entry securities through a participant may, in turn, hold these

securities for other persons or entities who otherwise lack access to the securities markets. Accordingly, a Reserve Bank most likely will have no information regarding the beneficial owners of interests in book-entry securities, but, instead, will consider the participants in whose Reserve Bank accounts the book-entry securities are held to be the "owners" of the interests therein.

In 1994, the American Law Institute and the National Conference of Commissioners on Uniform State Laws ratified a revised version of Article 8 of the UCC (Revised Article 8), which addresses investment securities. Thereafter, in 1996, the Department of Treasury amended its regulations governing the book-entry system for Treasury securities (called "Treasury/Reserve Automated Debt Entry System" or "TRADES") to incorporate many of the concepts regarding transactions and rights in book-entry securities set forth in Revised Article 8 and to defer to state law modeled after Revised Article 8 in many circumstances. *See* 61 FR 43626 (Aug. 23, 1996) (final rule); 61 FR 8420 (Mar. 4, 1996) (proposed rule). Shortly thereafter, in order to ensure uniformity in the treatment of book-entry government securities, the regulators of GSEs that maintain book-entry securities at Reserve Banks also promulgated new regulations to govern their respective book-entry systems. These regulations parallel the new TRADES regulation, with modifications appropriate to the particular GSE and government securities to which such regulations apply.

As part of this effort, the Finance Board adopted an interim final rule amending part 912 of its regulations, governing book-entry FHLBank securities, in December 1996. The Finance Board chose to act through an interim final rule so that new part 912 would become effective simultaneously with the new TRADES regulation on January 1, 1997, while also giving the agency an opportunity to solicit comments from the public and to give further consideration to some minor issues relating to various aspects of the rule.

II. Analysis of the Final Rule

The Finance Board received no comments on the interim final rule and, therefore, has made no changes thereto in response to public comment. However, pursuant to its own review, the Finance Board has incorporated some minor clarifications into the final rule without altering the substance of the regulation. In the final rule, § 910.3, which cross-references part 912, has been modified to replace the commas surrounding the phrase "regarding book-entry procedure" with parentheses. This change has been made in order to make clear that all Department of Treasury regulations governing transactions in United States securities except those governing book-entry securities shall apply to FHLBank securities. As this section appeared in the interim final rule, it was possible to read the first sentence as providing that the Department of Treasury's regulations governing book-entry securities were to be incorporated into part 910.

In the final rule, the definition of "Entitlement Holder" and "Participant," which are set forth in § 912.1(c) and § 912.1(j) (designated as § 912.1(h) in the interim final rule), respectively, have been amended to include FHLBanks, which are permitted by statute both to hold FHLBank securities and to maintain accounts with a reserve Bank. *See* 12 U.S.C. 1431(h), 1435. In the interim final rule, these definitions encompassed only entities meeting the definition of a "Person," from which the FHLBanks are expressly excluded.

The majority of changes made have been incorporated in order to reflect more expressly in the regulation the rights and obligations of the Finance Board as statutory issuer of FHLBank securities and of the OF as agent for the Finance Board or the FHLBanks with respect to the securities. In this vein, § 912.1(d) has been amended to make clear that, under section 11 of the Bank Act, the Finance Board is considered to be the issuer of FHLBank securities. *See* 12 U.S.C. 1431. Section 912.1(e) has been amended to refer to the OF, instead of the FHLBanks, in order make clear that, in issuing and maintaining FHLBank securities in its book-entry system, a Federal Reserve Bank acts as agent of the OF which, in turn, acts as agent for the Finance Board or the FHLBanks. In addition, definitions of "Finance Board" and "Office of Finance" have been added to § 912.1 to permit the use of these terms within the substantive portion of the regulation. The definition of "Office of Finance" set forth in § 912.1(i) makes clear that the OF acts as agent of the Finance Board when it issues book-entry FHLBank securities, but as agent of the FHLBanks when it performs any functions relating to the maintenance and servicing of these securities.

Given the complex nature of the statutorily-mandated system under which FHLBank securities are issued and serviced, the rights and obligations of the Finance Board, the FHLBanks and the OF may overlap, or may be at times ambiguous, depending on the function at issue. Accordingly, all references to rights, obligations, or liabilities arising in connection with book-entry FHLBank securities which in the interim final rule referred only to the FHLBanks and the Reserve Banks have been amended in the final rule to refer to the FHLBanks, the Finance Board, the OF and the United States, in addition to the Reserve Banks. These changes affect § 912.1(l) (which was designated as § 912.1(j) in the interim final rule, defining the term "person" to exclude the foregoing entities), § 912.2(a) (specifying the law governing rights and obligations regarding book-entry FHLBank securities), § 912.5(a) (addressing obligations arising from the transfer of interests in book-entry FHLBank securities), and § 912.7 (addressing liabilities arising from transactions in book-entry FHLBank securities).

In addition, in order to more accurately reflect the fact that the Reserve Banks deal with the OF—and not directly with the FHLBanks or the Finance Board (for whom the OF acts as agent)—in matters concerning the book-entry system, references to dealings with the Reserve Banks have been amended to refer to the OF, instead of to the FHLBanks. This change affects § 912.2(a) (addressing procedures established to govern book-entry transactions) and § 912.6(a) (addressing the authority of the Reserve Banks as fiscal agents).

Finally, the Finance Board has amended the interim final rule by adding a new paragraph (a) to § 912.8 and designating the existing text as § 912.8(b). New § 912.8(a) has been added in order to conform to common practice among private parties and other GSEs by authorizing the OF to require an indemnity bond of a party if, in its judgment, or in the judgment of the Finance Board or FHLBanks, such action is necessary to protect the interests of any of these entities.

In summary, although the final rule is intended to provide a legal framework for all book-entry FHLBank securities, it is not a codification of all laws that could affect interests in book-entry FHLBank securities. In general, the regulation provides that (with some exceptions regarding security interests) Federal law will govern the rights and obligations of the FHLBanks, the Finance Board, the OF, the United States and the Reserve Banks arising from book-entry FHLBank securities and the book-entry system, and that state law (to the extent that states have adopted Revised Article 8) will govern all other rights and obligations. The regulation also sets forth the substantive

Federal law that applies to the rights and obligations of the FHLBanks, the Finance Board, the OF, the United States and the Reserve Banks arising from book-entry FHLBank securities and the book-entry system. The most prominent aspect of the substantive law set forth therein is that none of the aforementioned entities is liable to persons having or claiming interests in book-entry securities that are below the participant level in the tiered system of ownership; that is, the FHLBanks, the Finance Board, the OF, the United States and the Reserve Banks need only recognize Reserve Bank participants as holders of interests in book-entry FHLBank securities.

III. Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" under Executive Order 12866.

Because the Finance Board adopted the changes to § 910.3 and part 912 in the form of an interim final rule and not as a proposed rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

There are no collections of information contained in this final rule. Therefore, the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, does not apply.

List of Subjects

12 CFR Part 910

Federal home loan banks, Government securities.

12 CFR Part 912

Federal home loan banks, Federal Reserve System, Government securities, electronic funds transfer.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX of the Code of Federal Regulations, as follows:

PART 910—CONSOLIDATED BONDS AND DEBENTURES

1. The authority citation for part 910 continues to read as follows:

Authority: 12 U.S.C. 1422b, 1431.

2. Section 910.3 is revised to read as follows:

§ 910.3 Transactions in consolidated bonds.

The general regulations of the Department of Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357 (regarding book-entry procedure), are hereby incorporated into this part, so far as applicable and as necessarily modified to relate to consolidated Federal Home Loan Bank bonds, as the regulations of the Board for similar transactions in consolidated Federal Home Loan Bank bonds. The book-entry procedure for consolidated Federal Home Loan Bank bonds is contained in part 912 of this subchapter.

3. Part 912 is revised to read as follows:

PART 912—BOOK-ENTRY PROCEDURE FOR FEDERAL HOME LOAN BANK SECURITIES

Sec.

Authority: 12 U.S.C. 1422a, 1422b, 1431, 1435.

§ 912.1 Definitions.

For purposes of this part, unless the context otherwise requires or indicates:

(a) *Adverse Claim* means a claim that a claimant has a property interest in a Book-entry Federal Home Loan Bank Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Security.

(b) *Book-entry Federal Home Loan Bank Security* means a Federal Home Loan Bank Security maintained in the book-entry system of the Federal Reserve Banks.

(c) *Entitlement Holder* means a Person or a Federal Home Loan Bank to whose account an interest in a Book-entry Federal Home Loan Bank Security is credited on the records of a Securities Intermediary.

(d) *Federal Home Loan Bank Security* means a consolidated bond, debenture, note, or other obligation of the Federal Home Loan Bank issued by the Finance Board under authority of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431).

(e) *Federal Reserve Bank* means a Federal Reserve Bank or branch, acting as fiscal agent for the Office of Finance, unless otherwise indicated.

(f) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains Book-entry Securities accounts and transfers Book-entry Securities.

(g) *Finance Board* means the Federal Housing Finance Board.

(h) *Funds account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, Book-entry Securities transaction fees, or principal and interest payments.

(i) *Office of Finance* means the Office of Finance established under part 941 of this chapter, acting as agent of the Finance Board in all matters relating to the issuance of Book-entry Federal Home Loan Bank Securities, or as agent of the Federal Home Loan Banks in the performance of all other necessary and proper functions relating to Book-entry Federal Home Loan Bank Securities, including the payment of principal and interest due thereon.

(j) *Participant* means a Person or a Federal Home Loan Bank that maintains a Participant's Securities Account with a Federal Reserve Bank.

(k) *Participant's Securities Account* means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Federal Home Loan Bank Securities held for a Participant are or may be credited.

(l) *Person* means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include a Federal Home Loan Bank, the Finance Board, the Office of Finance, the United States, or a Federal Reserve Bank.

(m) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611.

(n) *Securities Intermediary* means:

(1) A Person that is registered as a "clearing agency" under the federal

securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a Book-entry Federal Home Loan Bank Security that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, it its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) *Security Entitlement* means the rights and property interest of an Entitlement Holder with respect to a Book-entry Federal Home Loan Bank Security.

(p) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(q) *Transfer Message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Federal Home Loan Bank Security, as set forth in Federal Reserve Bank Operating Circulars.

§ 912.2 Law governing rights and obligations of Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks; rights of any Person against Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the rights and obligations of the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation of the Book-entry system, as it applies to Federal Home Loan Bank Securities; and the rights of any Person, including a Participant, against the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation of the Book-entry system, as it applies to Federal Home Loan Bank Securities; are governed solely by regulations of the Finance Board, including the regulations of this part 912, the applicable offering notice, applicable procedures established by the Office of Finance, and Federal Reserve Bank Operating Circulars.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 912.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 912.4(c)(1), is governed by the law determined in the manner specified in § 912.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in the first sentence of paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 912.3 Law governing other interests.

(a) To the extent not inconsistent with this part 912, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection, and priority of a security interest in a Security Entitlement.

(b) The following rules determine a "Securities Intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant's interest in a Federal Home Loan Bank Book-entry Security is a Security Entitlement.

§ 912.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book entry that a Book-entry Federal Home Loan Bank Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including, without limitation, deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that

is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the Securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the Security. For purposes of this paragraph (b), an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in a Security Entitlement in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the Securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 912.2(b) or § 912.3. The perfection, effect of perfection or non-perfection, and priority of a security interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 912.5 Obligations of the Federal Home Loan Banks and the Office of Finance; no Adverse Claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 912.4(c)(1), for the purposes of this part 912, the Federal Home Loan Banks, the Office of Finance and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Federal Home Loan Bank Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to the Security, notwithstanding any information or notice to the contrary. Neither the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States, nor the Federal Reserve Banks are liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Federal Home Loan Bank Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Federal Home Loan Bank Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Federal Home Loan Banks and the Office of Finance to make payments of interest and principal with respect to Book-entry Federal Home Loan Bank Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Federal Home Loan Bank Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at the Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry Federal Home Loan Bank Securities are paid, either at maturity or upon redemption, in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the proceeds, including both principal and interest, where applicable, to a Funds Account at the Federal Reserve Bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant is required in connection with the payment of a Book-entry Federal Home Loan Bank Security, unless otherwise expressly required.

§ 912.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Office of Finance: to perform functions with respect to the issuance of Book-entry Federal Home Loan Bank Securities, in accordance with the terms of the applicable offering notice and with procedures established by the Office of Finance; to service and maintain Book-entry Federal Home Loan Bank Securities in accounts established for such purposes; to make payments of principal, interest and redemption premium (if any), as directed by the Office of Finance; to effect transfer of Book-entry Federal Home Loan Bank Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Office of Finance.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this part 912, governing the details of its handling of Book-entry Federal Home Loan Bank Securities, Security Entitlements, and the operation of the Book-entry system under this part 912.

§ 912.7 Liability of Federal Home Loan Banks, Finance Board, Office of Finance and Federal Reserve Banks.

The Federal Home Loan Banks, the Finance Board, the Office of Finance and the Federal Reserve Banks may rely on the information provided in a tender, transaction request form, other transaction documentation, or Transfer Message, and are not required to verify the information. Neither the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States, nor the Federal Reserve Banks shall be liable for any action taken in accordance with the information set out in a tender, transaction request form, other transaction documentation, or Transfer Message, or evidence submitted in support thereof.

§ 912.8 Additional requirements; notice of attachment for Book-entry Federal Home Loan Bank Securities.

(a) *Additional requirements.* In any case or any class of cases arising under the regulations in this part 912, the Office of Finance may require such additional evidence and a bond of indemnity, with or without surety, as may in its judgment, or in the judgment of the Federal Home Loan Banks or the Finance Board, be necessary for the protection of the interests of the Federal

Home Loan Banks, the Finance Board, the Office of Finance or the United States.

(b) *Notice of attachment.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The regulations in this part 912 do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

§ 912.9 Reference to certain Department of Treasury commentary and determinations.

(a) The Department of Treasury TRADES Commentary (31 CFR part 357, appendix B) addressing the Department of Treasury regulations governing book-entry procedure for Treasury Securities is hereby referenced, so far as applicable and as necessarily modified to relate to Book-entry Federal Home Loan Bank Securities, as an interpretive aid to this part 912.

(b) Determinations of the Department of Treasury regarding whether a State shall be considered to have adopted Revised Article 8 for purposes of 31 CFR part 357, as published in the **Federal Register** or otherwise, shall also apply to this part 912.

§ 912.10 Obligations of United States with respect to Federal Home Loan Bank Securities.

Federal Home Loan Bank Securities are not obligations of the United States and are not guaranteed by the United States.

By the Board of Directors of the Federal Housing Finance Board

Dated: January 21, 1998.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–4070 Filed 2–17–98; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–177–AD; Amendment 39–10343; AD 98–04–31]

RIN 2120–AA64

Airworthiness Directives; Fairchild Model F27 and FH227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fairchild Model F27 and FH227 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; telephone (516) 256–7520; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fairchild Model F27 and FH227 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48574). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Since the Issuance of the Proposal

The FAA has received information verifying that propeller spinners on Fairchild Model F27 and FH227 series airplanes will not accumulate ice because the propeller spinners are heated. Consequently, the FAA has determined that it is unnecessary to include the propeller spinners as part of the visual cues specified in paragraph (a) of the proposal that addresses "accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed." Therefore, the FAA has removed reference to the propeller spinners as a visual cue from the final rule, and has retained reference to the "accumulation of ice on the engine nacelles" in the final rule.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24

proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62–FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatia le, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Models YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Models G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those

airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. Other than the previously discussed removal of a visual cue that referenced ice on the propeller spinners, the FAA considers that no other changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cures, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 426 Fairchild Model F27 and FH227 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,820, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–04–31 Fairchild: Amendment 39–10343. Docket 97–NM–177–AD.

Applicability: All Model F27 and FH227 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Unusual accumulation of ice on the engine nacelles.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

"PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface farther aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3698 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–176–AD; Amendment 39–10344; AD 98–04–32]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–14 and L–18 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L–14 and L–18 Series Airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Tom Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Lockheed Modle L–14 and L–18 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48570). That action proposed to require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

• Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);

• Prohibit flight in severe icing conditions (as determined by certain visual cues);

• Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and

• Require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

• Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all revelant public comments received for each of these proposed rules.

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97–CE–50–AD	Harbin Aircraft Mfg., Corporation Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models	62 FR 48524
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97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P,and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
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97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Models YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Models G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

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

Cost Impact

There are approximately 120 Lockheed Model L–14 and L–18 series

airplanes of the affected design in the worldwide fleet. The FAA estimates that 109 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,540, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–04–32 Lockheed: Amendment 39–10344. Docket 97–NM–176–AD.

Applicability: All Model L–14 and L–18 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing

than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3697 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–175–AD; Amendment 39–10345; AD 98–04–33]

RIN 2120–AA64

Airworthiness Directives; Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Rotorcraft Directorate, Airplane Certification Office, 1601 Meacham Boulevard, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Efrain Esparza, Aerospace Engineer, Airplane Certification Office, ASW–150, FAA, Rotorcraft Directorate, 1601 Meacham Boulevard, Fort Worth, Texas 76137–4298; telephone (817) 222–5130; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Gulfstream American Model G–73 (Mallard) and G–73T series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48577). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

• Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);

• Prohibit flight in severe icing conditions (as determined by certain visual cues);

• Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and

• Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

• Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

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

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97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
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97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P.	62 FR 48481

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97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
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The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

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One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed

notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cures, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

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

Cost Impact

There are approximately 8 Gulfstream America (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes of the affected design in the worldwide fleet. The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $300, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and

that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–04–33 Gulfstream American (Frakes Aviation): Amendment 39–10345. Docket 97–NM–175–AD.

Applicability: All Model G–73 (Mallard) and G–73T series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Airplane Certification Office (ACO), ASW–150, FAA,

Rotorcraft Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, ACO, ASW–150.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ACO, ASW–150.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3696 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–174–AD; Amendment 39–10346; AD 98–04–34]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Model YS–11 and YS–11A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Mitsubishi Model YS–11 and YS–11A series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that will prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Mitsubishi Model YS–11 and YS–11A series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48567). That action proposed to require the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46–310P and PA–46–350P	62 FR 48542

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Model L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Removal of Certain Visual Cues

One commenter, the manufacturer, requests that the sentence describing visual cues of "Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed" in paragraph (a) of the proposal be deleted. The manufacturer bases this request on the fact that ice will not accrete to the propeller spinner because the heater element for anti-icing is installed in the spinner. Further, the manufacturer points out that it is impossible to see the engine nacelle from the cockpit.

The FAA concurs, and has revised the final rule by removing that specific visual cue from the visual cue requirements specified in the final rule.

Comment 2. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design specified in the proposal. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because, without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and that provide procedures to safely exit those conditions.

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The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

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One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 6. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flight crew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

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

Cost Impact

There are approximately 76 Mitsubishi Model YS–11 and YS–11A–200, –300, –500, and –600 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,280, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and

that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that the required actions may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–04–34 Mitsubishi Heavy Industries, Ltd. [Formerly Nihon Aeroplane Manufacturing Company (NMAC)]: Amendment 39–10346. Docket 97–NM–174–AD.

Applicability: All Model YS–11 and YS–11A–200, –300, –500, and –600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exist, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night.

[**Note:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD into the AFM.

"May Be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as –18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The

request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3695 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–173–AD; Amendment 39–10347; AD 98–04–35]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–3 and DC–4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–3 and DC–4 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346 fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnel Douglas Model DC–3 and DC–4 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48553). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit flight in severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg., Corporation Model Y12IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600.	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180.	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA–Groupe Aerospatia le, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601,–601P, –602P, and –700P.	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000.	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series.	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Models YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Models G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results

from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cures, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

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

Cost Impact

There are approximately 300 McDonnell Douglas Model DC–3 and DC–4 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 166 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,960, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that

continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–04–35 McDonnell Douglas: Amendment 39–10347. Docket 97–NM–173–AD.

Applicability: All Model DC–3 and DC–4 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

The Following Weather Conditions May Be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

"Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3923 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–172–AD; Amendment 39–10348; AD 98–04–36]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–159 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Gulfstream Model G–159 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: John W. McGraw, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (707) 703–6098; fax (707) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Gulfstream Model G–159 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48563). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Since the Issuance of the Proposal

The FAA has received information verifying that propeller spinners on Gulfstream Model B–159 series airplanes will not accumulate ice because the propeller spinners are heated. Consequently, the FAA has determined that it is unnecessary to include the propeller spinners as part of the visual cues specified in paragraph (a) of the proposal that addresses "accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed." Therefore, the FAA has removed reference to the propeller spinners as a visual cue from the final rule, and has retained reference to the "accumulation of ice on the engine nacelles" in the final rule.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation Model, Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62–FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniché Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten–Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatia le, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Models YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Models G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results

from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. Other than the previously discussed removal of a visual cue that referenced ice on the propeller spinners, the FAA considers that no other changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

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

Cost Impact

There are approximately 141 Gulfstream Model G–159 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,320, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–04–36 Gulfstream Aerospace Corporation (Formerly Grumman): Amendment 39–10348. Docket 97–NM–172–AD.

Applicability: All Model G–159 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Unusual accumulation of ice on the engine nacelles.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing wing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"The Following Weather Conditions May Be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add

comments and then send it to the Manager, Atlanta ACO.

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3922 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–171–AD; Amendment 39–10349; AD 98–04–37]

RIN 2120–AA64

Airworthiness Directives; Sabreliner Model 40, 60, 70, and 80 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Sabreliner Model 40, 60, 70, and 80 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Charles Riddle, Program Manager, Flight Test and Program Management, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4144; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Sabreliner Model 40, 60, 70, and 80 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48556). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

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97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62–FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten–Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc. Models PA–46 –310P and PA–46–350P	62 FR 48542

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–61–AD	The New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

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One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing

certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cures, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 283 Sabreliner Model 40, 60, 70, and 80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,560, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a

"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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–04–37 Sabreliner: Amendment 39–10349. Docket 97–NM–171–AD.

Applicability: Model 40, 60, 70, and 80 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"The Following Weather Conditions may be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3921 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–170–AD; Amendment 39–10350; AD 98–04–38]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 500, 501, 550, 551, and 560 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 500, 501, 550, 551, and 560 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Carlos L. Blacklock, Program Manager, Flight Test and Program Management, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4166; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Cessna Model 500, 501, 550, 551, and 560 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48560). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten–Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc. Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
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Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,710 Cessna Model 500, 501, 550, 551,and 560 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,427 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $85,620, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–04–38 Cessna Aircraft Company: Amendment 39–10350. Docket 97–NM–170–AD.

Applicability: Model 500, 501, 550, 551, and 560 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3920 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–4]

Amendment to Class D and Class E Airspace; Joplin, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class D and Class E airspace areas at Joplin Regional Airport, Joplin, MO. A review of the Class E airspace for Joplin Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. A minor revision to the Airport Reference Point (ARP) coordinates is included in this document. The intended effect of this rule is to revise the ARP coordinates, comply with the criteria of FAA Order 7400.2D, and to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR).

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 20, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–4, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class D and Class E airspace at Joplin, MO. A review of the Class E airspace for Joplin Regional Airport, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The Class D and Class E surface areas are amended to indicate the new ARP coordinates. The amendment at Joplin Regional Airport will meet the criteria of FAA Order 7400.2D, revise the ARP coordinates, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules.

The areas will be depicted on appropriate aeronautical charts. Class D airspace areas designated for an airport containing at least one primary airport around which the airspace is designated are published in paragraph 5000; Class E airspace areas designated as a surface area for an airport are published in paragraph 6002; and Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made "Comments to Docket No. 98–ACE–4". The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866, (2) is not a "significant rule" under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ACE MO D Joplin, MO [Revised]

Joplin Regional Airport, MO
(lat. 37°09'05"N., long. 94°29'54"W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of the Joplin Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE MO E2 Joplin, MO [Revised]

Joplin Regional Airport, MO
(Lat. 37°09'05"N., long. 94°29'54"W.)

Within a 4.2-mile radius of the Joplin Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Joplin, MO [Revised]

Joplin Regional Airport, MO
(Lat. 37°09'05"N., long. 94°29'54"W.)
LUNNS LOM
(Lat. 37°12'11"N., long. 94°33'31"W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Joplin Regional Airport and within 2.6 miles each side of the Joplin Regional ILS localizer course extending from the 6.8-mile radius 7.4 miles northwest of LUNNS LOM and within 2.6 miles each side of the Joplin Regional ILS localizer course extending from the 6.8-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on January 12, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3964 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–2]

Amendment to Class D and Class E Airspace; Cape Girardeau, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class D and Class E airspace areas at Cape Girardeau Municipal Airport, Cape Girardeau, MO. A review of the Class E airspace for Cape Girardeau Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The current airspace description in FAA Order 7400.9E indicates part-time operation for the Class E airspace area. The actual hours of operation for the Class E airspace area are continuous. A minor revision to the Airport Reference Point (ARP) coordinates is included in this document. The intended effect of this rule is to revise the ARP coordinates, indicate the Class E airspace area is in effect continuously, comply with the criteria of FAA Order 7400.2D, and to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR).

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 20, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–2, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class D and Class E airspace at Cape Girardeau, MO. A review of the Class E airspace for Cape Girardeau Municipal Airport, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The airspace description of Class E airspace area at Cape Girardeau Municipal Airport is revised to indicate full-time status by removing the statement which indicates part-time status. The Class E surface airspace area is in effect continuously. The Class D and Class E areas are amended to indicate the new ARP coordinates. The amendment at Cape Girardeau Municipal Airport will meet the criteria of FAA Order 7400.2D, indicate the Class E airspace area status is continuous, revise the ARP coordinates, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The areas will be depicted on appropriate aeronautical charts. Class D airspace areas designated for an airport containing at least one primary airport around which the airspace is designated are published in paragraph 5000; Class E airspace areas designated as a surface area for an airport are published in paragraph 6002; Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004; and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of

the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–2". The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ACE MO D Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(Lat. 37°13'31" N., long. 89°34'15" W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the Cape Girardeau Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface areaa for an airport.

* * * * *

ACE MO E2 Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(Lat. 37°13'31"N., long. 89°34'15"W.)

Within a 4.1-mile radius of the Cape Girardeau Municipal Airport.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extensian to a Class D ar Class E surface area.

* * * * *

ACE MO E4 Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(Lat. 37°13'31"N., long. 89°34'15"W.)
Cape Girardeau VOR/DME
(Lat. 37°13'39"N., long. 89°34'21"W.)

That airspace extending upward from the surface within 2.6 miles each side of the 108° radial of the Cape Girardeau VOR/DME extending from the 4.1-mile radius of Cape Girardeau Municipal Airport to 4.4 miles east of the VOR/DME and within 2.2 miles each side of the 194° radial of the Cape Girardeau VOR/DME extending from the 4.1-mile radius of the airport to 5.7 miles south of the VOR/DME and within 2.6 miles each side of the 279° radial of the Cape Girardeau VOR/DME extending from the 4.1-mile radius of the Airport to 7.4 miles west of the VOR/DME.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet ar mare abave the surface af the earth.

* * * * *

ACE MO E5 Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(Lat. 37°13'31"N., long. 89°34'15"W.)
Cape Girardeau VOR/DME
(Lat. 37°13'39"N., long. 89°34'21"W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Cape Girardeau Municipal Airport and within 2.5 miles each side of the 108° radial of the Cape Girardeau VOR/DME extending from the 6.6-mile radius to 8.7 miles east of the VOR/DME and within 3 miles each side of the 194° radial of the Cape Girardeau VOR/DME extending from the 6.6-mile radius to 10 miles south of the VOR/DME and within 3 miles each side of the 279° radial of the Cape Girardeau VOR/DME extending from the 6.6-mile radius to 8.7 miles west of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on January 9, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Divisian, Central Regian.

[FR Doc. 98–3963 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–3]

Amendment to Class E Airspace; Columbia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Columbia, MO. A review of the Class E airspace for Columbia Regional Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to comply with criteria of FAA Order 7400.2D and to provide controlled Class E airspace for aircraft operating under Instrument Flight Rules.

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 20, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–3, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Columbia, MO. A review of the Class E airspace for Columbia Regional Airport, Columbia, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment to Class E airspace at Columbia Regional Airport, Columbia, MO, will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–3". The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * * * *

ACE MO E5 Columbia, MO [Revised]

Columbia Regional Airport, MO
(Lat. 38°49'05"N., long. 92°13'11"W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Columbia Regional Airport and within 2.5 miles each side of the Columbia Regional ILS localizer course extending from the 6.8-mile radius to 7.4 miles north of the airport and within 2.5 miles each side of the Columbia Regional ILS localizer course extending from the 6.8-mile radius to 7.4 miles south of the airport.

* * * * * * *

Issued in Kansas City, MO, on January 12, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3962 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–14]

Revocation of Class E Airspace; Minneapolis, KS

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the Class E airspace area at Minneapolis, KS. The VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Runway (RWY) 34 Standard Instrument Approach Procedure (SIAP) was the only SIAP serving the Minneapolis City County Airport, and was canceled on August 14, 1997. The Director, Division of Aviation for Kansas concurred with canceling the SIAP. This action will remove the Class E airspace for Minneapolis City County Airport, Minneapolis, KS.

EFFECTIVE DATE: 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 3, 1997, the FAA proposed to amend 14 CFR part 71 by removing the Class E airspace area at Minneapolis, KS (62 FR 63916).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to 14 CFR part 71 removes the Class E airspace area at Minneapolis, KS.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS, ROUTES AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Minneapolis, KS [Removed]

* * * * *

Issued in Kansas City, MO, on January 16, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–3959 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–7]

Admendment to Class E Airspace, Belleville, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Belleville, KS.

EFFECTIVE DATE: The direct final rule published at 62 FR 53943 is effective on 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 17, 1997 (62 FR 53943). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on December 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3969 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–27]

Amendment to Class E Airspace; Lexington, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The document confirms the effective date of a direct final rule which revises Class E airspace at Lexington, NE.

EFFECTIVE DATE: The direct final rule published at 62 FR 64152 is effective on 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 4, 1997 (62 FR 64152). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 16, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3970 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–17]

Amendment to Class E Airspace; Jefferson City, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Jefferson City, MO.

EFFECTIVE DATE: The direct final rule published at 62 FR 60778 is effective on 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 13, 1997 (62 FR 60778). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 21, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3971 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–19]

Amendment to Class E Airspace; Eagle Grove, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Eagle Grove, IA.

EFFECTIVE DATE: The direct final rule published at 62 FR 60779 is effective on 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 13, 1997 (62 FR 60779). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 21, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3972 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–25]

Amendment to Class E Airspace; Pella, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Pella, IA.

EFFECTIVE DATE: The direct final rule published at 62 FR 58645 is effective on 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 30, 1997 (62 FR 58645). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 16, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3973 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–26]

Amendment to Class E Airspace; Atchison, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Atchison, KS.

DATES: The direct final rule published at 62 FR 64151 is effective on 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 4, 1997 (62 FR 64151). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–3975 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–23]

Amendment to Class E Airspace; Crete, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Crete, NE.

DATES: The direct final rule published at 62 FR 64150 is effective on 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 4, 1997 (62 FR 64150). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region

[FR Doc. 98–3976 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. No. 34–39627]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its Rules of Practice to delegate its authority to the Director of the Division of Market Regulation to grant or deny exemptions from Section 11(d)(1) of the Securities Exchange Act of 1934 pursuant to Section 36 of the Exchange Act. The delegation of authority is intended to conserve Commission resources by permitting the staff to review and act on

exemptive applications under Section 36 when appropriate.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Paul P. Andrews, Special Counsel at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Mail Stop 7–11, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Amendment To Rules of Practice

The Securities and Exchange Commission ("Commission") today announces an amendment to its Rules of Practice governing Delegations of Authority to the Director of the Division of Market Regulation ("Director").[1] The amendment adds to Rule 30–3 a new paragraph (a)(63) authorizing the Director to grant or deny exemptions from Section 11(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), where appropriate, under Section 36 of the Exchange Act.[2]

Section 36(a) provides that:

> Except as provided in subsection (b) [not applicable here], but notwithstanding any other provision of this title, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulations thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

The delegation of authority to the Director is intended to conserve Commission resources by permitting the staff to review and act on exemptive applications under Section 36(a) when appropriate. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. In addition, under Section 4A(b) of the Exchange Act, the Commission retains discretionary authority to review, upon its own initiative or upon application by a party adversely affected, any exemption granted or denied by the Division pursuant to delegated authority. Information concerning the filing of exemptive relief applications can be found in Release No. 34–39624; Rule 240.0–12, 17 CFR 240.0–12.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(A), that this amendment relates to agency organization, procedure, or practice. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

II. List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

III. Text of Amendment

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

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The general authority citation for Part 200 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(63) to read as follows:

200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(63) Pursuant to section 36 of the Act (15 U.S.C. 78mm) to review and, either unconditionally or on specified terms and conditions, grant or deny exemptions from section 11(d)(1) of the Act (15 U.S.C. 78k(d)(1)).

* * * * *

By the Commission.

Dated: February 9, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3932 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34–39624]

Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its Rules of General Application to set forth procedures to be followed by the Divisions of Market Regulation and Corporation Finance in assessing and processing applications for exemptive relief pursuant to Section 36 of the Securities Exchange Act of 1934. Section 36 requires the Commission to determine the procedures under which an exemptive order under that section may be granted.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Paul P. Andrews, Special Counsel at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Mail Stop 7–11; or Anita Klein, Special Counsel at (202) 942–2900, Office of Chief Counsel, Division of Corporation Finance, Mail Stop 3–3, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The National Securities Markets Improvement Act of 1996 ("NSMIA") added Section 36 to the Securities Exchange Act of 1934 ("Exchange Act").[1] This section gives the Securities and Exchange Commission ("Commission") the authority to exempt any person, security, or transaction from the provisions of the Exchange Act. The Commission has similar authority under the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(d)), the Investment Company Act of 1940 (15 U.S.C. 80a–6(c)), and the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(a)). In particular, Section 36(a)(1) provides that "the Commission by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a).[2]

Before the Commission may begin using its new order authority, it must develop procedures that applicants must follow in seeking such an exemption from provisions of the Exchange Act. Accordingly, the Commission is amending its Rules of General Application to set forth the following procedures pursuant to which

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[1] 17 CFR 200.30–3.

[2] 15 U.S.C. 78k(d)(1) and 78mm.

[1] Pub. L. No. 104–290, 110 Stat. 3442.

[2] The Commission also has authority to issue exemptive orders that grant relief from specific provisions of the Exchange Act as well as from specific Commission rules promulgated thereunder. For example, either by rule or by order, the Commission may, pursuant to Section 15(a)(2) of the Exchange Act, conditionally or unconditionally exempt any broker or dealer from the registration provisions of Section 15(a)(1).

it will consider applications for these exemptive orders. These procedures are similar to those now used by the Commission in considering exemptive order applications under the Trust Indenture Act (*see* 17 CFR 260.4d–7; 260.4d–8), the Investment Company Act (*see* 17 CFR 270.0–2; Investment Company Act Release No. 14492 (April 30, 1985)); and the Investment Advisers Act (*see* 17 CFR 275.0–5). Applicants should also be aware, however, that under Section 36(a)(2), the Commission has sole discretion to decline to consider any application.

Some provisions under the Exchange Act give the Commission specific authority to provide exemptions.[3] In those areas, the Commission intends to continue to consider exemptive requests under the specific exemptive provisions. Under general exemptive authority, the Division of Corporation Finance will evaluate on a case-by-case basis any requests for exemptive relief it receives. With respect to areas of the Exchange Act administered by the Division of Market Regulation [4] where the Exchange Act does not provide specific exemptive authority, the Commission currently views two areas as appropriate for requests for exemptive relief under Section 36: (1) Requests made under Section 11(d)(1) of the Exchange Act, which prohibits broker-dealers from extending, arranging, or maintaining credit on a new issue the broker-dealer is distributing and for thirty days thereafter; and (2) requests made under the various statutory and regulatory requirements otherwise imposed on a broker or dealer by Sections 15 and 17 of the Exchange Act, if such broker or dealer has received an exemption from the Commission from the registration provisions of Section 15.[5]

II. Amendment to Rules of General Application

The Commission today announces an amendment to its Rules of General Application governing procedures to be followed for filing application for exemptive orders pursuant to Section 36 of the Exchange Act. The amendment adds new Rule 240.0–12 which sets forth the general procedures.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that these rules relate to agency organization, procedure, or practice, an agency interpretation, and a general statement of policy. Accordingly, notice, opportunity for public comment, and publication of these procedures and guidelines prior to their effective date are unnecessary.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, Part 240 of the Code of Federal Regulations is amended as follows:

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

1. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

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2. Section 240.0–12 is added to read as follows:

§ 240.0–12 Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act.

(a) The application shall be in writing in the form of a letter, must include any supporting documents necessary to make the application complete, and otherwise must comply with § 240.0–3. All applications must be submitted to the Office of the Secretary of the Commission. Requestors may seek confidential treatment of their applications to the extent provided under § 200.81 of this chapter. If an application is incomplete, the Commission, through the Division handling the application, may request that the application be withdrawn unless the applicant can justify, based on all the facts and circumstances, why supporting materials have not been submitted and undertakes to submit the omitted materials promptly.

(b) An applicant may submit a request electronically in standard electronic mail text or ASCII format. The electronic mailbox to use for these applications is described on the Commission's website at www.sec.gov in the "Exchange Act Exemptive Applications" subsection located under the "Current SEC Rulemaking" section. In the event electronic mailboxes are revised in the future, applicants can find the appropriate mailbox by accessing the Commission's website directory of electronic mailboxes at http://www.sec.gov/asec/mailboxs.htm.

(c) An applicant also may submit a request in paper format. Five copies of every paper application and every amendment to such an application must be submitted to the Office of the Secretary at 450 Fifth Street, N.W., Washington, D.C. 20549. Applications must be on white paper no larger than 8½ by 11 inches in size. The left margin of applications must be at least 1½ inches wide, and if the application is bound, it must be bound on the left side. All typewritten or printed material must be on one side of the paper only and must be set forth in black ink so as to permit photocopying.

(d) Every application (electronic or paper) must contain the name, address and telephone number of each applicant and the name, address, and telephone number of a person to whom any questions regarding the application should be directed. The Commission will not consider hypothetical or anonymous requests for exemptive relief. Each applicant shall state the basis for the relief sought, and identify the anticipated benefits for investors and any conditions or limitations the applicant believes would be appropriate for the protection of investors. Applicants should also cite to and discuss applicable precedent.

(e) Amendments to the application should be prepared and submitted as set forth in these procedures and should be marked to show what changes have been made.

(f) After the filing is complete, the applicable Division will review the application. Once all questions and issues have been answered to the satisfaction of the Division, the staff will make an appropriate recommendation to the Commission. After consideration of the recommendation by the Commission, the Commission's Office of the Secretary will issue an appropriate response and will notify the applicant. If the application pertains to a section of the Exchange Act pursuant to which the Commission has delegated its authority to the appropriate Division, the Division Director or his or her designee will issue an appropriate response and notify the applicant.

(g) The Commission, in its sole discretion, may choose to publish in the **Federal Register** a notice that the application has been submitted. The

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[3] For example, Section 12(h) of the Exchange Act permits the Commission to exempt certain persons, or classes of persons, from the provisions of Sections 12(g), 13, 14, 15(d), and 16.

[4] The Division of Corporation Finance is responsible for administering various sections of the Exchange Act, including provisions of Sections 10A, 12, 13, 14, 15(d), 16, and 21E. The Division of Market Regulation administers other provisions of the Exchange Act, including Sections 6, 11, 15, 17 and 19. The Division of Investment Management administers Section 13(f) of the Exchange Act and that Division follows certain other procedures in considering exemptive applications.

[5] *See*, e.g., Exchange Act Section 15(c)(3) and the rules thereunder.

notice would provide that any person may, within the period specified therein, submit to the Commission any information that relates to the Commission action requested in the application. The notice also would indicate the earliest date on which the Commission would take final action on the application, but in no event would such action be taken earlier than 25 days following publication of the notice in the **Federal Register**.

(h) The Commission may, in its sole discretion, schedule a hearing on the matter addressed by the application.

By the Commission.

Dated: February 5, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3931 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 96P–0338]

Food Labeling: Health Claims; Soluble Fiber From Certain Foods and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing its decision to authorize the use, on food labels and in food labeling, of health claims on the association between soluble fiber from psyllium seed husk and reduced risk of coronary heart disease (CHD). Based on its review of evidence submitted with comments to the proposal, as well as evidence described in the proposal, the agency has concluded that soluble fiber from psyllium seed husk, similar to beta (β)-glucan soluble fiber from whole oats, when included as part of a diet low in saturated fat and cholesterol, may reduce the risk of CHD by lowering blood cholesterol levels. The agency has concluded, based on the totality of publicly available scientific evidence, that there is significant scientific agreement among qualified experts to support the relationship between soluble fiber in psyllium seed husk and CHD. Therefore, the agency has decided to amend the regulation that authorized a health claim on soluble fiber from whole oats and the risk of CHD to include soluble fiber from psyllium seed husk. FDA has determined that label statements alerting consumers to the need to consume adequate amounts of liquids with products containing dry or incompletely hydrated psyllium will be required on products bearing the health claim. FDA is announcing this action in response to a petition filed by the Kellogg Co. (the petitioner).

DATES: This regulation is effective February 18, 1998. The Director of the Office of the Federal Register approves of the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 101.81(c)(2)(ii)(B), effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535) was signed into law. This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments was that they confirmed FDA's authority to regulate health claims on food labels and in food labeling. FDA published final rules implementing the 1990 amendments on January 6, 1993 (58 FR 2478). In those final rules, FDA adopted § 101.14 (21 CFR 101.14), which sets out the rules for the authorization and use of health claims. The agency also adopted § 101.70 (21 CFR 101.70), which establishes a process for petitioning the agency to authorize health claims about a substance-disease relationship and sets out the types of information that any such petition must include.

In addition, FDA conducted an extensive review of the evidence on the 10 substance disease relationships listed in the 1990 amendments. As a result of its review, FDA authorized a health claim in § 101.77 (21 CFR 101.77) on the association between diets low in saturated fat and cholesterol and high in vegetables, fruits, and grain products that contain soluble fiber and a reduced risk of heart disease (58 FR 2552, January 6, 1993). In that rulemaking, FDA reviewed the evidence relating dietary fiber to heart disease and concluded that it was difficult to determine the relationship because dietary fiber comprises a diverse group of chemical substances that may be associated with different physiological functions (58 FR 2552 at 2572). Chemically and physiologically, cellulose, lignin, hemicellulose, pectin, and alginate (all relatively purified fiber types) behave differently from one another. Likewise, wheat bran, oat bran, and rice bran are not similar in composition. The agency noted that the available evidence made it difficult to correlate the role of specific fiber components to health effects.

However, in its final rule, FDA noted that hypocholesterolemic properties may be documented for specific food fibers (58 FR 2552 at 2567). Further, the agency stated that if manufacturers could document, through appropriate studies, that dietary consumption of the soluble fiber in their particular food has the effect of lowering low density lipoprotein (LDL)-cholesterol, and has no adverse effects on other heart disease risk factors (e.g., high density lipoprotein (HDL)-cholesterol), they should petition for a health claim for their particular product.

In accordance with the petition procedure in § 101.70, FDA published a final rule on the relationship between soluble fiber from whole oats and reduced risk of heart disease (the soluble fiber from whole oats final rule), § 101.81 (21 CFR 101.81) (62 FR 3584, January 23, 1997 and modified at 62 FR 15343, March 31, 1997). In that document, the agency concluded that, based on the totality of publicly available scientific evidence, there is significant scientific agreement among qualified experts to support the relationship between soluble fiber in whole oats and reduced risk of CHD. FDA also concluded that the type of soluble fiber in whole oats, β-glucan soluble fiber, is the primary component responsible for the lowering of blood total- and LDL-cholesterol associated with consumption of whole oat products when part of a diet low in saturated fat and cholesterol. The rule specified the chemical nature of the specific fiber and methods for measuring its presence in foods.

In the soluble fiber from whole oats final rule, the agency acknowledged the likelihood that consumption of β-glucan soluble fiber from sources other than whole oats, as well as soluble fiber from other sources, will affect blood lipid levels and thus the risk of heart disease (62 FR 3584 at 3587). At that time, FDA considered structuring the final rule as an umbrella regulation authorizing the use of a claim for "soluble fiber from certain foods" and risk of CHD. Such action would have allowed flexibility in expanding the claim to other specific food sources of soluble fiber when

consumption of those foods has been demonstrated to help reduce risk of heart disease. However, the agency concluded that it was premature to do so inasmuch as FDA had not reviewed the totality of evidence on other, nonwhole oat sources of soluble fiber (62 FR 3584 at 3588). Instead, the agency stated that because soluble fiber is a family of very heterogeneous substances that vary greatly in their effect on risk of CHD, a case-by-case approach is necessary as documentation is developed through appropriate studies that a soluble fiber product has an effect on blood total- and LDL-cholesterol levels and can therefore be useful in reducing risk of CHD. To this end, FDA structured § 101.81 in such a way that, while the regulation covered β-glucan soluble fiber from whole oats, it could easily be amended as evidence becomes available to support the use of the claim for other sources of soluble fiber.

In the soluble fiber from whole oats final rule, FDA emphasized the importance of the dietary component of the health claim, i.e., the necessity for the whole oat product to be consumed as part of a low saturated fat, low cholesterol diet, for a complete understanding of the claim (62 FR 3684 at 3594). FDA stated that diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk, and that, while soluble fiber from whole oats could contribute to this effect, its role is generally recognized as being of smaller magnitude.

In the **Federal Register** of May 22, 1997 (62 FR 28234), and in response to a petition filed under § 101.70, the agency proposed to amend § 101.81 by adding psyllium seed husk as an additional source of soluble fiber, thereby providing for health claims on the association between soluble fiber from psyllium seed husk and reduced risk of CHD (the psyllium husk proposed rule). In this proposed rule, FDA considered the relevant scientific studies and data presented in the petition as part of its review of the scientific literature on soluble fiber from psyllium seed husk and heart disease. The agency summarized this evidence in the proposed rule (62 FR 28234).

The psyllium husk proposed rule included qualifying criteria for the purpose of identifying psyllium-containing foods eligible to bear the proposed health claim. The proposal also specified mandatory content and label information for health claim statements and provided model health claims.

Section 101.81(c)(2)(ii) of the soluble fiber from whole oats health claim regulation lists the sources of β-glucan soluble fiber for which FDA has evaluated data pertaining to effects on blood cholesterol levels and has concluded that significant scientific agreement exists regarding a relationship between soluble fiber in whole oats and the risk of CHD. In the psyllium husk proposed rule, FDA proposed to add new § 101.81(c)(2)(ii)(B) to specify psyllium husk as a source of soluble fiber eligible to be the subject of this claim. Proposed § 101.81(c)(2)(ii)(B)(*1*) identifies psyllium husk as the dried seed coat (epidermis) of the seed of *Plantago ovata*, known as blond or Indian *psyllium*, *P. indica*, or *P. psyllium*, and specifies that the purity of the psyllium husk shall be no less than 95 percent, such that it has 3 percent or less protein content, 4.5 percent or less of light extraneous matter, and 0.5 percent or less of heavy extraneous matter, but in no case may the combined extraneous matter exceed 4.9 percent, as determined by U.S. Pharmacopeia (USP) methods.

In its evaluation of the scientific evidence for a relationship between consumption of soluble fiber from psyllium seed husk and blood total- and LDL-cholesterol levels, the agency found no reliable data to establish a dose-response for this relationship. However, the agency did find that in placebo-controlled studies that tested an intake of 10.2 grams (g) of psyllium seed husk per day as a part of a diet low in saturated fat and cholesterol, there were consistently significant effects of psyllium husk on blood total- and LDL-cholesterol levels. Therefore, the agency proposed to base the qualifying level of soluble fiber from psyllium seed husk on a total daily intake of 10.2 g husk (about 7 g of soluble fiber), as suggested by the petitioner. Therefore, the proposed qualifying criterion in § 101.81(c)(2)(iii)(A)(*2*) was that the food provide at least 1.7 g of soluble fiber from psyllium seed husk per reference amount customarily consumed (RACC) (i.e., 7 g divided by 4 eating occasions per day). The psyllium husk proposed rule also stated that if a manufacturer can demonstrate that a diet low in saturated fat and cholesterol that includes a blend of the eligible sources of soluble fiber listed in § 101.81(c)(2)(ii) has an effect on the risk of heart disease, the manufacturer should petition to amend § 101.81 further.

To reflect the agency's tentative decision to broaden § 101.81 to include soluble fiber from psyllium seed husk, the agency proposed to modify the section heading in § 101.81 from "Soluble fiber from whole oats and risk of coronary heart disease" to "Soluble fiber from certain foods and risk of coronary heart disease." Accordingly, the agency also proposed to revise the statement "soluble fiber from whole oats" to either "soluble fiber from certain foods" or "soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section" where appropriate in § 101.81. The agency did not propose to modify the model claims.

II. Summary of Comments and the Agency's Responses

In response to the psyllium husk proposed rule, the agency received 19 letters, each containing one or more comments, from professional organizations, industry, consumer groups, health care professionals, and research scientists.

Approximately one-half of the comments that the agency received agreed with one or more provisions of the psyllium husk proposed rule without providing grounds for this support other than those provided by FDA in the preamble to the psyllium husk proposed rule. A few of these comments also requested modification of one or more provisions of the proposed rule. Some comments provided additional data on the relationship between psyllium husk soluble fiber and CHD. Some of the comments that disagreed with the proposed rule provided specific support for their positions. The agency has summarized and addressed the relevant issues raised in all comments in the sections of this document that follow.

A. Food Substance Associated With Reduced Risk of CHD

Health claims have two essential elements: A food substance and a disease or health-related condition (§ 101.14). The agency proposed to authorize a health claim on the relationship between consumption of soluble fiber from psyllium husk, as part of a diet low in saturated fat and cholesterol, and reduced risk of CHD. Further, the agency proposed to amend the authorized claim for soluble fiber from whole oats and CHD (§ 101.81) to include soluble fiber from psyllium husk and to broaden the subject of the claim to "soluble fiber from certain foods" and risk of CHD (62 FR 28234 at 28239).

1. Terminology

(Comment 1)

Comments received in response to the proposed rule used the term "psyllium"

interchangeably with the terms "psyllium seed husk" and "psyllium husk." The agency also noticed that a few comments used the term "psyllium" when referring to the soluble fiber component of the psyllium husk. Therefore, the agency finds it important to clarify the terms that may be used in referring to the substance that is the subject of this claim as well as the common or usual name of the product that should be used in ingredient statements.

The substance that is the subject of this claim is soluble fiber of the psyllium husk, i.e., the seed coat that has been removed from the psyllium seed. It is the seed husk, rather than the seed, that is the source of soluble dietary fiber. The purity specifications suggested by the petitioner and adopted in proposed § 101.81(c)(2)(ii)(B)(*1*) refer to the extent to which psyllium husk has been separated from residual seed components.

The agency notes that in the ingredient list of the petitioner's psyllium husk-containing cereal the substance is declared as "psyllium seed husk" (Ref. 1). The agency also notes that in the USP National Formulary this substance is referred to as "psyllium husk" (Ref. 2). The agency therefore considers both "psyllium seed husk" and "psyllium husk" to be common or usual names for the soluble dietary fiber source that is the subject of this rule. In the psyllium husk proposed rule, the agency used the term "psyllium" synonymously with the term "psyllium husk" (62 FR 28234 at 28237). Upon further consideration, the agency concludes that the term "psyllium" is not sufficiently descriptive of the substance of this claim because this term is likely to be construed as inclusive of the psyllium seed. The psyllium seed includes nutrients and allergenic proteins that are not components of psyllium husk. The psyllium husk purity specifications of § 101.81(c)(2)(ii)(B)(*1*) make the presence of psyllium seed in a food a disqualifying criterion for foods eligible to bear the claim.

In this final rule, the agency is clarifying under § 101.81(c)(2) that the proper terms for the soluble fiber source which is the substance of this rule are "psyllium husk" or "psyllium seed husk." Therefore, § 101.81 (c)(2)(ii)(B)(*1*) is revised to read "psyllium seed husk, also known as psyllium husk, shall have a purity of * * *." Section 101.81 (c)(2)(ii)(B)(*1*), (c)(2)(ii)(B)(*2*), and (c)(2)(iii)(A)(*2*) are revised to read "psyllium husk" where the term "psyllium" had been used in the proposed rule.

2. Eligibility of Psyllium Seed Husk

(Comment 2)

Some comments stated that psyllium husk is not a food and is not consumed by itself. The comments stated that psyllium husk is an ingredient or additive and, therefore, should not be eligible for a health claim. One comment expressed concern that a health claim on a food additive will put more reliance on food fortification or supplementation as a strategy to improve health. The comment asserted that the psyllium proposal represents a public policy shift that may result in diverting attention from the importance of a varied selection of foods.

FDA disagrees with comments that psyllium husk, as a food ingredient, is not an appropriate substance for consideration of a health claim. As discussed in the final rule implementing the 1990 amendments on the use of health claims (58 FR 2478 at 2480, January 6, 1993), a broad range of substances are potentially subject to regulation under section 403 (r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)). Section 101.14(a)(2) was written to reflect this broad coverage. Under the general requirements for health claims, the substance that is the subject of the health claim can be either a specific food or a component of food (§ 101.14(a)(2)). Moreover, the fact that a substance may be a "food additive," within the meaning of that term in 21 CFR 170.3(g), does not preclude it from also being a "substance" under § 101.14(a)(2). Although psyllium seed husk is not consumed as a single food, it is a consumable portion of a seed grain that is, or could be, used as a component of foods (e.g., cereal, pasta, cookies, breakfast bars) and is a rich source of soluble fiber. As such, psyllium seed husk is a "substance" within the meaning of § 101.14(a)(2) and thus eligible for consideration of a health claim.

The agency also disagrees with the comment that the proposed health claim represents a public policy shift in diverting attention from the importance of a varied selection of foods by placing more reliance on food fortification or supplementation to achieve public health goals. The establishment of a health claim for soluble fiber from psyllium husk and CHD, when viewed in conjunction with existing health claims for fruits, vegetables, and grain products and CHD and for soluble fiber from whole oats and CHD, emphasizes an important role (i.e., possible reduced risk of CHD) of an even wider variety of food selections. It is important to note that the concept of formulating a food product with psyllium seed husk is no different than formulating a product with oat bran (another food ingredient supplying soluble fiber that is the subject of an authorized health claim). As with oat bran, the inclusion of psyllium husk in a food would be based on its basic functional properties in addition to its nutritional contribution or potential health benefit. The decision to include such an ingredient in a food would be considered food product development, not fortification. Therefore, the agency disagrees that the approval of this health claim represents a public policy shift on food fortification.

B. Updated Review of Scientific Evidence and Issues Related to the Evidence

Under § 101.14(c), FDA will issue a regulation authorizing a health claim only when it determines, based on the totality of publicly available scientific evidence, that there is significant scientific agreement that the claim is supported by such evidence. In its review of the psyllium petition, the agency completed a comprehensive review (see Ref. 7) of 21 human studies (Refs. 8 through 28) (62 FR 28234 at 28237). Of these, it gave particular weight to 7 studies (Refs. 13, 14, 15, 18, 22, 23, and 28) that were well designed and controlled and that reported intakes of dietary saturated fat and cholesterol.

1. Data Submitted With Comments

(Comment 3)

One comment to the psyllium husk proposed rule noted that FDA excluded from comprehensive review three studies (Ref. 12, 17, and 25) because they lacked evidence that the study subjects were compliant with a low saturated fat and cholesterol diet (i.e., the American Heart Association "Step 1" diet). This comment submitted reports of subsequent diet analyses of these studies indicating that study subjects were compliant with the Step 1 diet (see Docket 96P–0338, C8). This comment also noted that two unpublished studies included in the psyllium petition have since been published or submitted for publication (Refs. 12 and 25).

Another comment submitted five recently published studies for consideration (Refs. 29 through 33) and three studies for reconsideration (Refs. 14, 28, and 34). The latter were recently published revisions of material submitted in the psyllium petition. The comment stated that the published report by Jenkins et al. (Ref. 28) contains additional data not presented in the

unpublished report submitted with the petition.

FDA, in reviewing the supplemental data for Refs. 12, 17, and 25, concluded that this information shows the subjects of these three studies were compliant with the dietary protocol and made no significant changes to their diets throughout the duration of the treatment period. Therefore, these studies have been added to the seven studies to which the agency gave particular weight in evaluating the relationship of soluble fiber from psyllium husk and CHD risk in the psyllium husk proposed rule. These studies are summarized in Table 1 of this document. The results of these three additional studies support the relationship between consumption of soluble fiber from psyllium seed husk and reduced risk of heart disease.

The agency also reviewed the published version of the study by Jenkins et al. (Ref. 28) that was submitted in comments and has summarized this study accordingly in Table 1 of this document. The investigators evaluated the effect on serum lipid levels of two Step 2 metabolic diets that provided either 6 or 12 percent of energy from monounsaturated fat (MUFA), approximately 60 g per day (/d) total dietary fiber, and psyllium seed husk-containing cereal (mean intake of 11 g/d of psyllium seed husk) or wheat bran. The results showed significantly lower total- and LDL-cholesterol levels in the psyllium husk-supplemented groups compared to the control group at both MUFA levels. The saturated fat intake during the two study periods was very low (less than 6 percent of energy).

The agency did not conduct an in-depth review of five of the studies submitted with comments. The study by Jensen and co-workers (Ref. 33) does not meet the agency's criteria for study selection (62 FR 28234 at 28237) because the authors evaluated the usefulness of a soluble fiber mixture (containing psyllium, pectin, guar gum, and locust bean gum) in the long-term management of hypercholesterolemia. The results of this study do not allow an evaluation of the effects of soluble fiber from psyllium seed husk alone.

The experimental design of the study by Ganji and Kies (Ref. 32) did not meet the agency's criteria for comprehensive review. In the psyllium proposal, the agency stated that in evaluating a study, it considered whether the intervention studies had been of long enough duration to reasonably ensure stabilization of blood lipid levels (i.e., greater than or equal to 3 weeks duration) (62 FR 28234 at 28237). In this study, diets were varied in four 7-day treatment periods with no time between treatment periods. With this study design, it cannot be determined whether the subjects' blood lipids had stabilized to each diet or that there were no carryover effects from one treatment period to another. Neither did the study design have an adequate pre-intervention baseline period to ensure blood lipids had stabilized to the base diet.

The other three studies submitted in comments that were not reviewed indepth were animal studies (Refs. 29 through 31). Animal studies are useful in studying mechanisms of action. However, the agency relied primarily on the clinical studies in this rule. Such an approach is consistent with that taken by the agency in its evaluation of the relationship between soluble fiber from whole oats and risk of CHD.

A meta-analysis (Ref. 34) was conducted to determine the effect of psyllium seed husk-containing cereal products on serum lipid levels in hypercholesterolemic subjects and to estimate the magnitude of the effect among 404 subjects with mild to moderate hypercholesterolemia (total-cholesterol of about 200 to 300 milligrams per deciliter (mg/dL) who followed a low fat diet. In its review of the evidence submitted in the psyllium petition, the agency reviewed 6 of the 11 studies (Refs. 11, 13, 22 through 24, and 28) included in the meta-analysis (see tables in Ref. 7). The remaining studies used in the meta-analysis did not meet the agency's criteria for study selection (62 FR 28234 at 28237). The conclusion of the meta-analysis report was that hypercholesterolemic subjects who consumed the psyllium seed husk-containing cereal had significantly lower total-cholesterol (about 5 percent) and LDL-cholesterol (about 9 percent) compared with those subjects who consumed the control cereal (Ref. 34).

2. Totality of the Data on Soluble Fiber from Psyllium Seed Husk and CHD

(Comment 4)

One comment stated that there was considerably more scientific data on psyllium seed husk presented in the petition than that reviewed by the agency. The comment noted that results of 56 studies were included in the psyllium petition. The comment expressed concern that the agency failed to consider studies published prior to 1988 and some additional evidence made available since 1988, noting that studies with soluble fiber mixtures, studies with treatment periods that were less than 3 weeks in duration, and abstracts were not selected for comprehensive review. The comment stated that the agency began its review of the scientific evidence by first considering the conclusions of the Surgeon General's report and the Food and Nutrition Board/National Academy of Sciences (FNB/NAS) report (Refs. 3 and 4) and then considered the evidence that was made available since 1988. The comment explained that neither the Surgeon General's report nor the FNB/NAS report reviewed the evidence on psyllium up to 1988; therefore, the agency improperly ignored a significant portion of the scientific evidence provided in the petition (see Ref. 35, Table 3, pages 30 and 31). Another comment noted that among the 56 studies submitted in the psyllium petition (see Ref. 35), the results of only three failed to demonstrate that consumption of psyllium-containing foods was associated with risk of CHD through a reduction in serum cholesterol. The comment stated that the totality of evidence on psyllium husk that was submitted in the petition includes data on children and the elderly.

Some comments stated that it is premature to authorize a claim on psyllium seed husk and risk of CHD because of a lack of significant scientific agreement on this nutrient/disease relationship. Some of these comments stated that the decision to propose this health claim is based on evidence from a limited number of studies that overall covered a small number of subjects, of which women were underrepresented, and on the absence of data on certain subpopulations (children and the elderly).

The agency agrees with the comment that the Surgeon General's report (Ref. 3) and the FNB/NAS report (Ref. 4) did not review of all of the psyllium studies that were publicly available prior to 1988 and identified in the petition (Ref. 35). The petition identified 16 clinical studies, published prior to 1989, of the effect of psyllium seed husk on blood cholesterol levels (see Ref. 35, Table 3). The agency had not reviewed these studies in the psyllium husk proposed rule, but in response to the comment, has subsequently considered them. Half of these studies did not meet the agency's stated criteria for selection of human studies (62 FR 28234 at 28237) in that they were conducted in special populations, were published as abstracts only, or the psyllium dose was unreported. Studies that used special population groups were excluded from review because, as explained in the psyllium husk proposed rule (62 FR 28234 at 28237), the results from such groups may not be relevant to the general healthy U.S. population. The

agency's rationale for excluding from review studies presented only in abstracts was also presented in the proposal. Abstracts do not provide sufficient detail regarding the methodology and results to allow a detailed assessment of the merits of the study. Likewise, information regarding actual amounts of psyllium administered is a key detail of the study design, without which an adequate assessment of the study cannot be made.

In each of the pre-1989 clinical studies meeting the selection criteria, there were aspects of the study design (e.g., lack of dietary data, lack of a control group) that would have precluded the results of these studies from having a major influence on the agency's conclusions. Among the pre-1989 clinical studies was one double-blind placebo-controlled psyllium husk study with dietary data (Ref. 36). However, the report contained no evidence that the study subjects were compliant with a low saturated fat and cholesterol diet. Thus, a review by FDA of pre-1989 data would not have altered the conclusions reached by the agency in the psyllium husk proposed rule nor contribute to issuing the final rule.

The agency disagrees with the comments that there is not significant scientific agreement that soluble fiber from psyllium husk may help reduce the risk of CHD through its action on blood total- and LDL-cholesterol levels. Some of the comments incorrectly suggested that the agency's decision on this nutrient/disease relationship was based solely on the results of the seven studies in Table 1 of the psyllium husk proposed rule (62 FR 28234 at 28244). As stated previously, the agency reviewed 21 human studies on psyllium (Refs. 8 through 28) that were submitted with the petition and met the agency's criteria for consideration (Ref. 7). Of these, the agency gave particular weight to seven studies. As stated in the psyllium husk proposed rule, the results of the seven studies (Refs. 13 through 15, 18, 22, 23, and 28), and now three additional studies (Refs. 12, 17, and 25) (see comment 3 in section II.B.1 of this document), strongly support the relationship between soluble fiber from psyllium husk and risk of CHD in mild to moderate hypercholesterolemic adults (62 FR 28234 at 28238). Moreover, the results of the remaining clinical studies (Refs. 8 through 11, 16, 19 through 21, 24, and 26) that were given less weight in the psyllium husk proposed rule were consistent in showing an effect of soluble fiber from psyllium husk on serum lipid levels. These studies included both men and women subjects and adults of all ages, including the elderly. It is on the totality of this evidence and conclusions from the 1989 Life Sciences Research Office (LSRO) report on health consequences of dietary fiber (Ref. 5) that the agency is basing its conclusion to authorize a health claim on psyllium seed husk.

3. Psyllium Consumed as a Bulk Laxative

In the psyllium husk proposed rule, the agency included in its evaluation the results of studies of this nutrient/disease relationship in which psyllium was administered as a product marketed as a bulk-forming fiber laxative. (Comment 5)

Some comments were opposed to the consideration of studies in which psyllium husk was supplied as a bulk-forming fiber laxative. One comment stated that the use of studies in which psyllium seed husk was consumed in different forms makes meaningful comparisons difficult. Other comments had no objection to the agency's use of this evidence. One comment stated that consuming psyllium husk as a bulk-forming fiber laxative at mealtime is functionally equivalent to consuming a psyllium husk-enriched food at mealtime. Another comment stated that clinical studies evaluating psyllium seed husk administered as a bulk-forming fiber laxative were conducted in a fashion similar to studies conducted with food products, including consuming the substance at mealtime, dietary counseling, and patient selection criteria. The comment stated that both compliance with the regimen and efficacy were comparable for food and laxative studies.

In the psyllium husk proposed rule, the agency tentatively decided that including, in its comprehensive review, the three studies in which psyllium seed husk was administered in the form used as a laxative (Refs. 13, 15, and 18) was appropriate. In these studies, the psyllium seed husk was consumed in concentrations similar to those at which psyllium husk was incorporated into conventional foods in the other studies selected for comprehensive review (Refs. 14, 22, 23, and 28) (62 FR 28234 at 28238). The agency further noted that the magnitude of the effect of soluble fiber from psyllium husk on the change in serum lipid levels reported in the studies in which this substance was consumed in conventional foods (Refs. 14, 22, 23, and 28) was similar to that observed in the studies (Refs. 13, 15, and 18) in which it was consumed as a bulk laxative. Therefore, the agency stated that the results of the studies suggest that the form in which psyllium husk is consumed is not significant when evaluating the effect of psyllium husk on serum lipid levels (62 FR 28234 at 28238). Comments that were opposed to reliance on studies which used a psyllium husk bulk-forming laxative provided no new data to support their position. Therefore, the agency is not persuaded that it is inappropriate to rely on this evidence and concludes that studies that used a psyllium husk bulk-forming laxative are appropriate in the evaluation of this nutrient/disease relationship.

4. Studies in Subjects With Borderline to High Blood Cholesterol Levels

The subject populations in the studies reviewed in the psyllium proposed rule (see Table 1, 62 FR 28234 at 28244) had borderline to high blood total-cholesterol levels (i.e., average baseline cholesterol values in the studies were between 225 and 275 mg/dL). The agency tentatively concluded in the psyllium proposed rule that the studies with hypercholesterolemic subjects are relevant to the general U.S. population (62 FR 28234 at 28238) and requested comments on this issue. (Comment 6)

Some comments agreed with the agency's view that studies of populations with elevated blood cholesterol are relevant to the general population. These comments cited current statistics of the incidence of elevated blood cholesterol in the U.S. population, and noted that the CHD risk factor that is the target of the proposed health claim is elevated blood cholesterol. Other comments disagreed with the view that the results of studies in hypercholesterolemics can be generalized to the general population. One comment stated that because hypercholesterolemic individuals are generally more responsive to dietary intervention that normocholesterolemic individuals, it is questionable whether normocholesterolemic persons would respond to psyllium at all.

As the leading cause of death in this country, CHD is a disease for which the general U.S. population is at risk. The risk of dying from CHD is related to serum cholesterol levels in a continuous and positive manner, increasing slowly for levels between 150 mg/dl and 200 mg/dl and more rapidly when the cholesterol level exceeds 200 mg/dl (Ref. 37). The public health policy elucidated by the National Cholesterol Education Program (NCEP), National Heart, Lung, and Blood Institute, is to extend the benefits of cholesterol lowering to the population as a whole by promoting adoption of eating patterns that can help lower the blood cholesterol levels of most Americans

(Ref. 37). A dietary intervention that lowers blood cholesterol levels only in persons with high levels would, like an intervention that lowers cholesterol levels across the entire population range, cause a shift in the population distribution of blood cholesterol levels resulting in a decrease in the mean value for the blood cholesterol level in the general population (Ref. 37). The anticipated effect of such a shift would be to reduce the morbidity from CHD and to produce a continued or accelerated decline in the CHD mortality rate in the United States. The agency is persuaded by the evidence it has reviewed in this rulemaking that the consumption of psyllium seed husk, as part of a low saturated fat and cholesterol diet, can be a prudent public health measure to assist in the national policy of promoting eating patterns that will help in achieving or maintaining desirable blood cholesterol levels in the general population. Therefore, it concludes that the health claim is relevant to the general population and should not be limited to a subpopulation of hypercholesterolemic individuals. In addition, consistent with the agency's conclusions in rulemaking on the dietary saturated fat and cholesterol/CHD claim (58 FR 2739 at 2745, January 6, 1993), the wording of the health claim as "may' or might' reduce the risk of heart disease" adequately represents the fact that not all persons will realize the same magnitude of benefit from adopting the dietary change.

C. Issues Relative to Amending § 101.81 to Include Soluble Fiber From Psyllium Seed Husk

In the psyllium husk proposed rule, the agency tentatively concluded that the soluble fiber in psyllium husk, like β-glucan soluble fiber from whole oats, when consumed as part of a diet low in saturated fat and cholesterol, may help reduce the risk of heart disease. Therefore, the agency proposed to amend the authorized claim for β-glucan soluble fiber from whole oats and risk of CHD (§ 101.81) to include soluble fiber from psyllium husk and to broaden the subject of the claim to "soluble fiber from certain foods" and risk of CHD. (Comment 7)

One comment stated that § 101.81 should not be expanded to include soluble fiber from psyllium husk because the eligible sources of β-glucan soluble fiber are whole grain foods that provide nutrients in addition to soluble fiber, whereas psyllium seed husk, which offers only soluble fiber, is neither a food nor a whole grain. The comment also stated that psyllium seed husk should not be added to § 101.81 because the husk soluble fiber is separated from the whole seed, whereas β-glucan soluble fiber extracted from the whole oat grain is not eligible for a claim. Two comments suggested that if the claim must be structured as a soluble fiber claim, then only those soluble fiber sources that elicit clinically significant reductions in serum cholesterol via the same mechanism should be eligible to be included in the claim.

FDA disagrees with the comment that substances qualifying for a health claim under § 101.81 must be whole grains similar to the whole oats that are listed under § 101.81(c)(2)(ii)(A). The subject of the claim is soluble fiber and the food source of β-glucan soluble fiber is whole oats. There is no scientific basis to require that only soluble fiber from whole grain foods can qualify for a claim. The soluble fiber in psyllium seed is concentrated in the outer husk. This is the opposite from whole oats where the soluble fiber is concentrated in the inner portion of the oat groat. Moreover, purified β-glucan soluble fiber was not included as a substance eligible to bear the claim because, as discussed in the whole oat final rule, the hypocholesterolemic properties of β-glucan fiber extracts are affected by processing. Therefore, before an extract of β-glucan fiber could qualify for the claim, it would have to be characterized so as to identify the processed form of the soluble fiber that maintains its hypocholesterolemic properties. The data on psyllium husk soluble fiber are associated with reduced risk of CHD via its documented hypocholesterolemic properties. As discussed previously (see comment 2 in section II.A.2 of this document), psyllium seed husk is a "substance" eligible for consideration of a health claim within the meaning of that term in § 101.14(a)(2). Therefore, the agency finds it appropriate to consider soluble fiber from psyllium seed husk as a source of soluble fiber that is eligible to be included in § 101.81.

The agency also disagrees with the comment that a soluble fiber source should not be included in § 101.81 unless it elicits reductions in serum cholesterol via the same mechanism as the β-glucan soluble fiber in whole oats. There is no scientific basis to require soluble fibers to have the same mechanism of action for lowering serum cholesterol in order to be eligible for a health claim under § 101.81, nor did the comments provide such a basis. In the whole oat final rule, the agency stated that if a manufacturer can document that a soluble fiber product has an effect on blood lipid levels, and thereby can be useful in reducing the risk of CHD, the manufacturer may petition to amend § 101.81 to include that type of soluble fiber-containing product as an eligible food source (62 FR 3584 at 3588). In this rulemaking, the agency has concluded that consumption of soluble fiber from psyllium seed husk has an effect of lowering blood total- and LDL-cholesterol levels, and therefore an amendment to § 101.81 to include psyllium seed husk as a soluble fiber source is eligible for a health claim under § 101.81.

D. Specifications for Psyllium Seed Husk

Based upon information provided by the petitioner, the agency proposed a minimum psyllium husk purity specification as a qualifying criterion for eligible sources of soluble fiber from psyllium. Proposed § 101.81(c)(2)(ii)(B)(1) stated that psyllium husk shall have a purity of:

> no less than 95 percent, such that it contains 3 percent or less protein, 4.5 percent or less of light extraneous matter, and 0.5 percent or less of heavy extraneous matter, but in no case may the combined extraneous matter exceed 4.9 percent * * *.

(62 FR 28234 at 28243).

1. Issues Relative to Psyllium Seed Husk Specifications

(Comment 8)

One comment noted that there are no assurances that food manufacturers other than the petitioner will be able to meet the petitioner's product specifications and therefore a compliance monitoring program needs to be developed prior to authorization of the health claim. A comment noted that due to natural variability in psyllium seed husk and analytical variation, a "94 percent purity" specification would better represent the practical limit of commercially-available "95 percent purity" psyllium. Accordingly, this comment urged FDA to adopt a minimum psyllium husk purity of 94 percent with 5.0 percent or less of light extraneous matter and 1.0 percent or less of heavy extraneous matter. One comment expressed concern that the purification of psyllium husk may render psyllium inactive as a hypocholesterolemic agent. This comment also urged FDA to determine whether the purification process described by the petitioner should serve as the approved purification technique for psyllium.

The agency disagrees with the comment that a specific compliance monitoring system is needed for psyllium seed husk. The monitoring and

verification of compliance with current good manufacturing practice in the manufacture of human food is a routine FDA activity. The comment urging the agency to change the psyllium husk purity specification to "no less than 94 percent" provided no data to substantiate that commercial supplies of psyllium seed husk do not routinely meet the 95 percent purity specification and the agency sees no compelling reason to revise the proposed purity specifications. Accordingly, the agency is adopting the specifications proposed in § 101.81(c)(2)(ii)(B)(*1*).

The agency notes that evidence provided in the petition and in comments indicates that the psyllium seed husk in the food and bulk laxative products used in the clinical studies, which were discussed in the psyllium husk proposed rule, had a purity of at least 95 percent. The blood cholesterol lowering effect of psyllium seed husk is attributed to the soluble fiber content of the husk and not to the seed components. As such, the concern that the process of separating the psyllium husk from residual seed components would alter the effectiveness of psyllium husk in lowering blood cholesterol level is unfounded. The agency further notes that it has proposed to adopt a psyllium husk purity specification only, and not a purification process.

E. Nature of the Food Eligible to Bear the Claim

In the proposal, the agency determined a qualifying level of psyllium husk for foods eligible to bear a soluble fiber and CHD claim based on a daily intake of approximately 7 g of soluble fiber from psyllium seed husk (62 FR 28234 at 28240). The agency stated that the level of daily intake of soluble fiber from psyllium seed husk (7 g/d was not based on the results of data from a dose-response study, but was the amount shown in clinical studies to be consistently associated with significant reductions in serum lipids in conjunction with a diet low in saturated fat and cholesterol. Therefore, the agency proposed that the qualifying level of soluble fiber for foods to bear a soluble fiber and CHD claim be 1.7 g of soluble fiber from psyllium seed husk per RACC (7 g divided by 4 eating occasions per day) (62 FR 28234 at 28240). The agency asked for comments on whether this approach for establishing a qualifying soluble fiber level for psyllium husk-containing products is appropriate or for data to support another qualifying level for psyllium husk.

1. Qualifying Criteria for Psyllium Seed Husks

(Comment 9)

Some comments stated that it is premature to authorize this health claim because of the limited data regarding an appropriate dose-response curve. One comment stated that the qualifying level for psyllium should be based on an intake level that will elicit a clinically significant 5 percent reduction in blood cholesterol. The comment stated that results from dose-response and meta-analysis studies would assuage concerns that the proposed qualifying level of soluble fiber from psyllium seed husk may not be an effective cholesterol-lowering dose. Other comments agreed with the proposed qualifying level for psyllium-containing foods. One comment stated that the revised report of the dose-response study by Davidson et al. (Ref. 14), that was submitted with the comment, supports the effectiveness of 10.2 g psyllium husk daily intake in significantly lowering cholesterol levels. In an analysis of data from subjects who completed the protocol (197 of 286 subjects), LDL-cholesterol levels of the group with 10.2 g psyllium husk daily intake was reported to be 5 percent lower than the control group after 24 weeks. The comment also stated that the data from the meta-analysis by Olson et al. (Ref. 34), which was submitted with the comment, lends additional support to the conclusion that 10.2 g/d of psyllium is an appropriate level on which to base the qualifying criteria for this claim. One comment stated that the maximum level of daily psyllium husk consumption should be determined as part of the generally recognized as safe (GRAS) process.

FDA notes that dose-response data are not a requirement to establish the qualifying criteria for a substance that is the subject of a health claim. Under § 101.70, which describes the requirements for health claim petitions, the petition must address whether there is an optimum level of the particular substance to be consumed beyond which no benefit would be expected (§ 101.70(f)B.1.). This information may or may not be based on dose-response data. Even though the optimal or lowest effective cholesterol lowering doses can not be determined from the available data, the qualifying level (10.2 g/d of psyllium husk) has been demonstrated to be effective. The results of studies that evaluated the effect of psyllium husk intakes above 10.2 g/d showed no additional benefit on serum lipid levels (Ref. 7). Therefore, the agency disagrees with the comments stating that dose-response data are needed before the agency can authorize a health claim. The totality of scientific data, which establish a significant reduction in blood cholesterol based on an intake of 10.2 g/d of psyllium seed husk, provides an adequate basis for establishing a qualifying soluble fiber level for psyllium seed husk-containing products.

Similarly, there is no basis to require that the qualifying criteria for a substance associated with risk of CHD be based on the amount of that substance to elicit a 5 percent reduction in blood total- and LDL-cholesterol levels. The data on psyllium seed husk suggests that the magnitude of the effect on blood lipids for intakes of about 10 g/d of psyllium seed husk ranges from 4 to 6 percent for blood total-cholesterol and about 4 to 8 percent for LDL-cholesterol levels in conjunction with diets low in saturated fat and cholesterol (Ref. 7). Although modest in size, these are clinically significant reductions in blood lipids that translate to a reduced risk of CHD for individuals with hypercholesterolemia and serve as a useful adjunct to a diet already low in saturated fat and cholesterol.

In the absence of data to the contrary, the agency concludes that based on the evidence submitted in comments and on the totality of scientific data considered in its review of the petition, a daily intake of 7 g of soluble fiber from psyllium seed husk (10.2 g of psyllium seed husk) as part of a diet low in saturated fat and cholesterol may reduce the risk of CHD by lowering blood total- and LDL-cholesterol levels in individuals with mild to moderate hypercholesterolemia.

FDA finds that the comment that a maximum level of daily consumption of psyllium husk should be determined as part of the psyllium husk GRAS status is not relevant to this rulemaking.

2. Issues Relative to Four Eating Occasions Per Day

(Comment 10)

The proposed qualifying level of soluble fiber from psyllium husk was based on the assumption that individuals will consume four servings of psyllium husk-containing foods a day. Some comments questioned whether it is realistic to assume that consumers will consume four servings per day of psyllium husk-containing foods. One comment stated that the majority of Americans never consume any psyllium husk-containing foods and that there is no evidence that a health claim would convince them to consume up to four servings of these foods daily. Other comments stated that the proposed rule would provide consumers

with an increased selection of foods containing soluble fiber in sufficient quantities to have a potentially beneficial influence on CHD risk and thus have a positive public health impact.

FDA acknowledges that foods containing psyllium seed husk are not widely available; e.g., the petitioner currently produces only one product, a breakfast cereal, containing psyllium. However, the agency disagrees with the comments that it is unrealistic to consider that consumers could consume psyllium-containing foods four times a day. Two studies (Refs. 8 and 14) that were reviewed by the agency tested psyllium seed husk incorporated into a variety of foods that were consumed during the day. These products included cereal, fruit drinks, peanut butter, cookies, muffins, bread, pasta, and snack bars. In addition to these products, the petitioner identified other food products in which psyllium could be used, such as toaster pastries, rolls, biscuits, tortillas, waffles, pancakes, pizza crust, stuffing, breakfast bars, and a variety of ready-to-eat cereals (Ref. 35, pp. 90 and 91). Authorization of a claim on soluble fiber from psyllium seed husk will be an incentive for manufacturers to expand product lines to provide consumers with additional soluble fiber-containing products that can be part of a heart healthy diet. Based on these facts, the agency finds that a factual predicate exists to support the contention that psyllium husk-containing foods could be consumed at four eating occasions a day and, therefore, finds that the comments that questioned whether such consumption was realistic are without support.

The agency notes that the approach used to determine the qualifying level of soluble fiber from psyllium husk (i.e., dividing the amount shown to provide a significant reduction in blood lipid levels by 4 eating occasions per day) is consistent with that used to determine the qualifying level of β-glucan soluble fiber from whole oats in the soluble fiber from whole oats final rule. In that document, the agency pointed out that the approach used to derive the qualifying level of soluble fiber from whole oats is somewhat different from that used in authorizing other health claims. It stated:

> Specifically, the guiding principle for other health claims is to use the established definition for "good source" or "high" which characterizes the amount of a nutrient, based on a percentage of the Daily Value (DV) for the nutrient, in a serving of food. In this way, products that qualify to bear the claim contain a meaningful level of the substance per serving compared to the recommended intake of the substance from all food sources. In the case of this final rule, there is no DV for β-glucan soluble fiber or soluble fiber. (62 FR 3584 at 3592).

The agency had also indicated in the soluble fiber from whole oat final rule that it intends to propose to establish a Daily Reference Value (DRV) for soluble fiber (62 FR 3584 at 3588). The establishment of a DRV for soluble fiber would not only permit claims for "good source" and "high" in soluble fiber, but would allow the agency to consider amendments to § 101.81 to establish a single qualifying level for soluble fiber from all eligible soluble fiber sources that would be effective in lowering cholesterol. Available scientific evidence suggests that there are a variety of soluble fibers in foods that may demonstrate the benefit. Thus, smaller dietary contributions from any one source could be appropriate given the potential for multiple sources of such fibers.

A DRV for soluble fiber would establish a qualifying level for soluble fiber blends in a food that would be effective in lowering cholesterol in hypercholesterolemic individuals. However, in the absence of a DRV for soluble fiber, the qualifying criteria for the eligible sources of soluble fiber in this health claim must be based on the scientific evidence specific for each soluble fiber source. The agency intends to amend § 101.81 to revise the qualifying levels of soluble fibers when a DRV for soluble dietary fiber has been established.

The agency notes that existing § 101.81(d)(6) provides for an optional statement informing consumers of the level of daily intake of β-glucan from whole oats that may help reduce the risk of CHD and the contribution that one serving of the product makes to this specified intake level. However, when issuing the soluble fiber from whole oats and reduced risk of CHD health claim, FDA inadvertently overlooked the requirement in § 101.14(d)(2)(vii) of the general requirements for health claims. That section states that if the claim is about the effects of consuming the substance at other than decreased levels, and if no definition for "high" has been established (e.g., where the claim pertains to a food either as a whole food or as an ingredient in another food), the claim must specify the daily dietary intake necessary to achieve the claimed effect, as established in the regulation authorizing the claim.

As stated, FDA has not established a DRV for soluble fiber. As a result, the term "high" is not defined for soluble fiber. Therefore, consistent with § 101.14(d)(2)(vii), a claim for soluble fiber from whole oats requires specification of the daily dietary intake from whole oats (3 g or more per day of β-glucan soluble fiber from whole oats) necessary to achieve a reduction in the risk of CHD. This requirement is independent of the optional statement provided in § 101.81(d)(6).

When discussing the optional statement under § 101.81(d)(6) in the soluble fiber from whole oats final rule, FDA stated that when the amount of soluble fiber to be consumed per day is stated, the amount per serving is also needed so that consumers would not be misled to believe that a serving of the food contributes the full daily amount (62 FR 3584 at 3596). Therefore, to be consistent with the current regulation in § 101.14(d)(2)(vii) and with the need to specify the amount of soluble fiber that a serving of food contributes when the daily dietary intake is specified in the claim, the agency is requiring, under § 101.81(c)(2)(i)(G), that this information be included in a health claim for both whole oats and psyllium husk soluble fiber claims. However, because FDA did not note this requirement in the soluble fiber from whole oats final rule, firms currently marketing foods that bear the health claim for whole oats may wait until the next printing of their food labels and labeling for such foods to incorporate this added information.

Therefore, the agency is adding § 101.81(c)(2)(i)(G) in this final rule to clarify current regulatory requirements. Existing § 101.81(d)(6), which provides for the same information for whole oats as an optional statement, is being removed. Accordingly, § 101.81(c)(2)(i)(G) states that the claim shall specify that an intake of 7 g or more per day of soluble fiber from psyllium seed husk, or an intake of 3 g or more per day of β-glucan soluble fiber from whole oats may help reduce the risk of CHD. Such a claim must be accompanied by information on the contribution that one serving of the product makes to the specified daily dietary intake level. Any foods containing psyllium seed husk, or whole oats, and bearing the health claim are required to include this information as part of the claim.

3. Blends of Eligible Soluble Fibers

In the psyllium husk proposed rule, the agency noted that foods might be produced with a blend of the eligible soluble fibers listed in § 101.81(c)(2)(ii) and stated that it would be willing to consider whether such foods should be eligible to bear the health claim (62 FR 28234 at 28240). However, the agency stated that it does not have the data from which to evaluate the relationship between consumption of foods

containing both psyllium and whole oats and risk of heart disease, and cannot assume that foods containing a blend of these grains would have the same ability to affect blood total- and LDL-cholesterol levels when compared to a product containing either whole oats or psyllium. In the proposal, the agency encouraged manufacturers to petition to amend § 101.81 further if it can be demonstrated that a diet that is low in saturated fat and cholesterol that includes a blend of the eligible soluble fibers listed in § 101.81(c)(2)(ii) has an effect on the risk of heart disease.

(Comment 11)

One comment agreed with the agency's tentative conclusion not to include blends of the eligible soluble fibers at this time. The comment stated that data should be submitted to verify the effectiveness of any soluble fiber blend.

The agency agrees that data are needed to verify the effectiveness of blends of soluble fiber. In the absence of a review of such data, FDA is not including the option of a blend of the eligible soluble fibers listed in § 101.81(c)(2)(ii) in this final rule. While some studies submitted to the agency did evaluate the usefulness of soluble fiber mixtures in lowering blood cholesterol levels, they were outside the scope of this rulemaking, which pertains to the effects of soluble fiber from psyllium alone. As a result, time and resource constraints did not allow for an indepth review of how blends of eligible soluble fibers might work in synergy with one another. Such a task would better be addressed as a part of rulemaking to establish a DRV for soluble fiber and a review of qualifying levels.

F. Soluble Fiber From Certain Foods and From Eligible Food Sources

In the psyllium husk proposed rule, the agency proposed to modify the section heading of § 101.81 from "Soluble fiber from whole oats and risk of coronary heart disease" to "Soluble fiber from certain foods and risk of coronary heart disease" (62 FR 28234 at 28241). The agency stated that:

> "soluble fiber from certain foods" reflects the fact that the subject of the claim is no longer a specific source of soluble fiber, i.e., beta-glucan from whole oats, but rather a broader class of substances that includes those sources of soluble fiber for which there is significant scientific agreement that they may help to reduce the risk of heart disease. (62 FR 28234 at 28241).

The agency also proposed to revise the statement "soluble fiber from whole oats" in § 101.81(a), (a)(3), (b), (b)(2), (c)(2)(i), (c)(2)(i)(A), (d)(3), and (e) to state "soluble fiber from certain foods," and in § 101.81(c)(2)(i)(E), (c)(2)(i)(F), and (d)(2) to read "soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section" (62 FR 28234 at 28241).

(Comment 12)

The agency received one comment that raised issues relative to the agency's decision to modify the soluble fiber from whole oats and CHD rule to a claim on soluble fiber from certain foods. This comment argued that the final rule for § 101.81 inappropriately refocused this claim from "whole oats" to "soluble fiber from whole oats" and heart disease. The comment asserted that β-glucan was included in the whole oats proposed rule only as a quantitative measure of whole oats for compliance purposes. This comment further argued that because the eligible source of β-glucan soluble fiber is whole oat products whereas the eligible source of psyllium soluble fiber is an isolated fiber-rich fraction (e.g., husk) separated from the whole psyllium seed, these substances should not be combined in one regulation.

The agency disagrees that the focus of § 101.81 should be whole oats. The rationale for positioning this claim as a soluble fiber claim was explained in the soluble fiber from whole oats final rule (62 FR 3584 at 3585).

G. Issues Relative to the Safety of Psyllium Seed Husk

Prior to submitting the health claim petition, the petitioner had petitioned FDA to affirm that the use of psyllium seed husk in grain-based foods is GRAS (55 FR 4481, February 8, 1990). In the psyllium husk proposed rule, the agency noted that although FDA has reached no decision on the GRAS affirmation for the use of this substance, the petition appears to contain evidence that the use of psyllium seed husk at levels necessary to justify a claim is safe and lawful, as required by § 101.14(b)(3)(ii) (62 FR 28234 at 28236). However, the agency indicated that there are some public safety concerns with the consumption of psyllium seed husk (e.g., colonic epithelial cell proliferation, allergenicity, and gastrointestinal obstruction). The agency asked for comments on whether these concerns would be a basis for not authorizing the proposed health claim. The agency also recognized that an increase in psyllium consumption is likely if the proposed health claim is authorized (62 FR 28234 at 28236). Therefore, the agency asked for comments on what type of actions may be necessary to ensure that long-term consumption of psyllium seed husk will be at safe levels, e.g., limiting psyllium husk content of foods or the kinds of foods that can bear a claim.

1. Restrictions on Psyllium Husk Content of Foods or on Types of Foods That Can Bear a Claim.

(Comment 13)

FDA received several comments regarding the safety of psyllium husk-containing foods. Some comments stated that psyllium husk has a long history of safe human consumption as a laxative product at the intake level upon which the qualifying food level of psyllium husk is based. Furthermore, the comments noted that prior authoritative reviews of the safety of psyllium husk in food, such as the 1993 LSRO evaluation of the safety of psyllium seed husk as a food ingredient (Ref. 39), concluded that there were no grounds to suggest that consumption of as much as 25 g/d of psyllium husk would be a hazard to the public. These comments argued that therefore it is unnecessary for FDA to restrict the types of psyllium husk-containing food products, the amount of psyllium husk that may be in a food product, or the amount of psyllium husk that should be consumed per day as conditions for use of the soluble fiber from psyllium husk health claim. Other comments asserted that there is inadequate information about limits of how much psyllium husk can be incorporated into foods, or about safe levels of intake for long-term consumption. These comments argued that there should be limits placed on permissible levels of psyllium husk in foods and types of foods to which psyllium husk may be added. One comment suggested that psyllium husk-containing foods be required to bear a label statement warning consumers of the maximum amount of psyllium husk that should be consumed per day.

FDA agrees that there is a history of human oral consumption of psyllium husk, both in food and over-the-counter (OTC) products, at the daily intake level contemplated for this health claim. The daily intake of psyllium husk that FDA has concluded is effective in reducing CHD risk (10.2 g psyllium husk, which is the amount of psyllium husk that is necessary to provide 7 g of soluble fiber) is well below the daily intake level that the 1993 LSRO psyllium husk report (Ref. 39) concluded was safe (i.e., 25 g psyllium husk). FDA does not expect authorization of the health claim to result in potential psyllium husk consumption exceeding this safe level.

The 1993 LSRO report based its calculation of the potential daily intake of psyllium husk, for a consumer preferentially selecting products containing psyllium husk, on the

selection of four servings of psyllium husk-containing foods per day. FDA considers four servings per day to be a reasonable estimate of consumption for several reasons.

First, consumers who are looking for foods that are identified as useful in reducing risk of CHD need not seek only psyllium-husk containing foods. They will also be able to select from foods that use the health claims approved for foods low in saturated fat and cholesterol (§ 101.75 (21 CFR 101.75)); for fruits, vegetables, and grain products that contain fiber, particularly soluble fiber (§ 101.77); and for foods containing soluble fiber from whole oats (§ 101.81).

Second, many types of frequently-consumed foods will not offer psyllium husk-containing alternatives. For example, foods such as raw meat, fish, and poultry; eggs; fats and oils; nuts and seeds; and raw fruits and vegetables are not suitable candidates for the addition of psyllium husk. In addition, technological or organoleptic effects of the use of psyllium husk at levels needed to make a health claim will limit its use in other categories of foods.

Third, because the subject health claim is only allowed on foods that are low in fat, saturated fat, and cholesterol, not all foods to which psyllium husk could be feasibly be added would be eligible to bear a health claim. Thus, there would be no incentive for a manufacturer to add psyllium husk to such foods, other than at the small amounts that may be used for technological purposes (e.g., emulsifiers or binders).

Lastly, most of the new psyllium husk-containing foods that are expected to be developed are grain-based and as such are often used as alternates for one another in usual dietary patterns (e.g., cereals, breakfast bars, toaster pastries, rolls, biscuits, pancakes, or waffles served at breakfast).

For the mentioned reasons, FDA, in evaluating this health claim, considers the selection of four servings of psyllium husk-containing foods per day to be a reasonable expectation of consumption when considering the possible use of psyllium husk in all food categories.

Estimation of the potential daily intake of psyllium husk is also dependent upon the amount of the ingredient in each food. In the 1993 LSRO report, maximum levels of use were reported as designated by the Kellogg Co. at 7.5 percent by weight for bread-based products (e.g., bread, rolls, muffins, doughnuts, biscuits, tortillas, waffles, pancakes, pizza crust and stuffing), pasta, and toaster pastries. In addition, the maximum levels of use were reported to be 10 percent by weight for breakfast bars, and 15 percent by weight for ready-to-eat cereals (Ref. 39). Assuming the highest maximum level of use, 15 percent in ready-to-eat cereals, the consumption of four 30 g servings (i.e., the reference amount customarily consumed for high fiber cereals (§ 101.12(b) Table 2)) would result in a daily intake of 18 g (30 g multiplied by 15 percent = 4.5 g/serving, multiply by 4 servings = 18 g/d). Moreover, any technological uses of psyllium husk in foods are at such low levels (e.g., 0.5 percent in frozen desserts) that they are not likely to have a notable impact on total daily intake.

A total daily intake of 18 g is within the range of intakes considered safe in the 1993 LSRO report (i.e., up to 25 g/d) (Ref. 39). However, FDA expects that actual consumption will be less than this amount because the maximum use levels were designated prior to the agency's establishment of the health claim qualifying level. FDA expects that manufacturers who develop new psyllium husk-containing foods would do so to make use of the health claim. As such, the health claim qualifying level (i.e., 2.6 g per reference amount) would be a major factor in determining the amount of psyllium husk to include in new psyllium husk-containing foods.

Based on these considerations, the agency disagrees with the comments that argued that limits should be placed on permissible levels of psyllium husk in foods or on the types of foods to which psyllium husk may be added. Therefore, no changes are being made to § 101.81(c)(iii)(A)(2) that describes the nature of the food.

As noted in the psyllium husk proposed rule (62 FR 28234 at 28235), a preliminary review of the petitioner's GRAS affirmation petition revealed that it contains significant evidence supporting the safety of the consumption of up to 25 g/d of psyllium husk in a variety of food categories (i.e., types of foods). This amount is well in excess of the levels necessary to justify a health claim (i.e., 10.2 g/d) and the amounts that would reasonably be expected to be consumed in a day. Accordingly, based on the totality of the evidence, FDA is not at this time taking issue with the petitioner's view that the use of psyllium husk is safe and lawful. Therefore, the agency concludes that the petitioner has provided evidence that satisfies the requirements in § 101.14(b)(3)(ii) that psyllium seed husk at the levels necessary to justify a claim is safe and lawful.

(Comment 14)

Several comments discussed evidence from animal studies suggesting that the relationship between effects of dietary fiber on rodent colonic mucosal proliferation and the development of neoplasia is unclear. These comments stated that colonic epithelial cell proliferation is not a significant issue relative to the safety of psyllium seed husk as there is no consensus as to whether epithelial cell proliferation in rodent colonic mucosa is relevant to risk of colon cancer. Some comments noted that colonic epithelial cell proliferation is an issue of concern that needs additional research.

The agency agrees that colonic epithelial proliferation is not sufficiently validated as a reliable endpoint for prediction of colon tumorigenesis. While the rate of epithelial cell proliferation in the rodent gastrointestinal tract has been reported to be increased by some soluble dietary fibers and decreased by some insoluble dietary fibers, there is no evidence upon which to conclude that the influence of dietary fiber on the rate of epithelial proliferation is either adverse or beneficial. Whether psyllium husk influences colonic epithelial cell proliferation in humans as it does in rodents is unknown. Although enhanced cellular proliferation is associated with the neoplastic process, proliferation rates have been reported to be variably influenced by a number of dietary constituents and other exogenous and endogenous factors, and a significant overlap in proliferation rates between subjects at high and low risk of colon cancer has been observed (Ref. 40). Therefore, the agency concludes that the issue of epithelial cell proliferation is not a basis on which to deny this health claim.

2. Allergic Potential of Psyllium Husk

In the psyllium husk proposed rule, the agency acknowledged reports of allergic reactions from consumption of psyllium husk-containing food. The majority of these reports involved ingestion of a cereal made with psyllium husk of less than 95 percent

purity. Because information provided by the petitioner suggested that the purity of the psyllium husk is inversely related to its allergenicity, FDA proposed a purity criterion for psyllium husk to be eligible for the claim. Under comment 8 in section II.D.1 of this document, the agency stated that psyllium husk purity specifications of proposed § 101.81(c)(2)(ii)(B)(*1*) are being adopted in the final rule.

(Comment 15)

Two comments stated that the declaration of an ingredient in the ingredient list of the food label is sufficient labeling to alert consumers to the presence of allergenic components in foods and that additional labeling is unnecessary. Other comments stated that in consideration of the allergic potential of psyllium, the presence of psyllium husk in a food should be declared on the principal display panel in addition to the ingredient declaration.

Some comments agreed with the proposed husk purity specifications as an adequate means of reducing the potential for allergic responses. One comment explained that the major source of allergenic proteins in psyllium seed husk is from residual portions of the whole seed. The comment stated that the removal of the inner seed portions leaves a very low level of residual protein in 95 percent purity psyllium husk and thus, the potential for serious allergic reactions would be rare. However, the comment also suggested that a label statement with an appropriate caution as to the risk for allergic reactions would provide added assurances for consumers. Still other comments argued that the proposed purity standards for psyllium seed husk will not eliminate the risk for allergic reactions to psyllium husk-containing foods and as such, a cautionary statement alerting consumers to the risk of allergic reactions should be required labeling. None of the comments provided data.

The agency is not convinced by these comments that labeling, other than declaration in the ingredient statement when psyllium husk is added as a food ingredient, is necessary because of psyllium's allergic potential. The agency recognizes the possibility of isolated cases of allergic reactions to ingested allergenic substances in foods or food components, including psyllium seed husk. However, the agency believes that the declaration of the allergenic substance in the ingredient list on the food label provides adequate information for consumers regarding the presence of allergenic ingredients in food products. Psyllium seed husk is required to be declared in the ingredient statement of a food to which it is added. The agency has no basis for concluding that additional labeling requirements for the use of this health claim would have an impact on reducing the potential for allergic reactions from consumption of psyllium husk-containing foods. The agency would not object to any additional truthful, nonmisleading information regarding allergenicity that a manufacturer may wish to include on the food label.

3. Gastrointestinal Obstruction

In the psyllium proposed rule, the agency discussed the potential for esophageal and gastrointestinal obstructions to occur following consumption of psyllium seed husk when not consumed with sufficient liquid (62 FR 28234 at 28236). The agency noted that the LSRO expert panel (Ref. 39) reported that esophageal and gastrointestinal obstruction due to psyllium seed husk was associated almost exclusively with consumption without proper hydration of bulk-forming fiber laxatives and not with consumption of psyllium-containing cereal consumed with milk (62 FR 28234 at 28236). Comments were requested on whether psyllium husk-containing foods should carry a statement advising that the product be consumed with liquids, or whether the potential for blockage is not an issue of concern for psyllium husk-containing food (62 FR 28234 at 28236).

(Comment 16)

Several comments discussed the potential for esophageal and gastrointestinal obstructions from consumption of psyllium husk without sufficient liquid. These comments recommended that the agency adopt labeling requirements for psyllium husk-containing foods advising consumers to drink adequate fluids when consuming such foods. Some of these comments suggested that such statements be similar to those required under § 201.319 (21 CFR 201.319) (Warning Statements Required for Over-the-Counter Drugs Containing Water-Soluble Gums as Active Ingredients (58 FR 45194, August 26, 1993)) for OTC products to ensure consumers are aware of the consequences of inadequate hydration. In general, these comments justified their recommendations on the basis that authorization of the proposed health claim would encourage incorporation of psyllium seed husk into additional types of foods, and that these new food products containing significant amounts of psyllium seed husk will not necessarily be intended to be consumed with liquids. One comment asserted that a label statement advising the consumption of the psyllium husk-containing food with liquids is unnecessary because psyllium husk-containing foods would be consumed at meals when it is likely that sufficient liquid would also be consumed. The comment argued that the soluble fiber in psyllium husk-containing foods is already hydrated, which would reduce its ability to swell in the gastrointestinal tract. This comment further noted that the 1993 LSRO report on the safety of using psyllium seed husk as a food ingredient (Ref. 39) found no safety issues in this regard. None of the comments provided data.

The agency agrees with comments suggesting that authorization of a claim for soluble fiber from psyllium husk and risk of CHD may lead to an increase in the number and type of foods containing psyllium husk. Moreover, the agency agrees that there are no assurances that new psyllium husk-containing foods are likely to be consumed at meals or with liquids. Foods such as cookies, breakfast bars, and toaster pastries may be consumed as snacks at times when a liquid is not consumed. Psyllium husk could also be incorporated into dietary supplement products that may be consumed apart from meals. The comment that stated that the psyllium seed husk in foods is already hydrated, which would affect its ability to swell in the gastrointestinal tract, provided no data to document or with which to evaluate differences in the swell volume and rate of swelling of different psyllium husk-containing foods.

The LSRO expert panel that considered the safety of psyllium seed husk used as a food ingredient (Ref. 39) concluded that the moderate amounts of psyllium seed husk that are likely to be used in toaster pastries, bread-based products, breakfast bars, pasta, and cereals would not be expected to cause gastrointestinal obstruction. However, this panel further concluded that the possibility of obstruction would be reduced by suitable suggestions that these products be consumed with fluids.

The agency addressed the risk of esophageal obstruction by water soluble gums (including psyllium husk) in an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and antiemetic drug products (40 FR 12902, March 21, 1975). The agency discussed in the final rule the evidence of at least 191 cases of esophageal obstruction and 8 cases of asphyxia, resulting in 18 deaths, associated with orally-administered OTC laxative and weight control products containing a variety of

water soluble gums (58 FR 45194 at 45195). The agency concluded that there is a risk that these types of products will swell to form a viscous adhesive mass (i.e., viscous gel) that can block the throat or esophagus. Because of this risk, the agency requires warning and direction statements for OTC drug products containing water soluble gums, including psyllium husk, as active ingredients when these products are marketed in a dry or partially hydrated form (§ 201.319). Fully hydrated water soluble gums were acknowledged to not pose any significant risk of causing esophageal obstruction (58 FR 45194 at 45196).

In the final rule on "Warning Statements Required for OTC Products Containing Water-Soluble Gums as Active Ingredients," the agency stated that it will continue to evaluate the use of water-soluble gums in any product marketed for human consumption, food or drug, and appropriate warnings will be proposed if a need to do so is found (58 FR 45194 at 45196).

The agency anticipates that authorization of a health claim for soluble fiber from psyllium husk may result in an increase of both the type and number of foods containing psyllium husk, and that foods eligible to bear the psyllium husk health claim will contain amounts of psyllium husk comparable to that commonly found in OTC laxative drugs. However, the agency recognizes that there are inherent differences between foods in conventional food form, which contain other food ingredients such as salt, sugar, and flour in addition to psyllium husk, and OTC drug products that would influence the likelihood of esophageal obstruction occurring from the ingestion of psyllium husk-containing foods. For example, drug products are formulated in tablets, capsules, and powders that are usually intended to be ingested and swallowed as a single bolus, whereas a serving of food is not swallowed as a single bolus, but eaten in several bites, chewed, and swallowed over a period of time. Psyllium husk-containing conventional foods also differ from drug products in that the psyllium husk in a food in conventional food form is dispersed within a larger volume of other food components (e.g., sugars, salt, wheat flour, egg). Dispersion in other ingredients prevents the soluble fiber of psyllium husk from physically associating to form a gel network (i.e., a viscous adhesive mass) (Refs. 41 and 42). Because a strong gel network is not formed due to the presence of these other ingredients, the food product will swell and thicken in a similar fashion to other high fiber foods (e.g., ready-to-eat cereals), without forming a viscous mass capable of causing obstruction (Ref. 42). The agency believes that, because the composition and manner of consumption of psyllium husk-containing conventional foods, unlike OTC products, inhibit the formation of a viscous gel in the esophagus, the label requirements for OTC drug products may not be applicable to certain foods containing psyllium husk that bear a health claim.

Section 201(n) of the act (21 U.S.C. 321(n)) states that, in determining whether labeling is misleading, the agency shall take into account not only representations made about the product, but also the extent to which the labeling fails to reveal facts material in light of such representations made or suggested in the labeling or material with respect to consequences which may result from use of the article to which the labeling relates under the conditions of use as are customary or usual (see 21 CFR 1.21). Thus, the omission of certain material facts from the label or labeling on a food causes the product to be misbranded within the meaning of sections 403(a)(1) and 201(m) of the act (21 U.S.C. 343(a)(1)).

As discussed out in the final rule on warning statements for OTC products (58 FR 45194), esophageal obstruction and asphyxiation are potential health risks associated with the oral consumption of dry or incompletely hydrated psyllium husk when these products are ingested without adequate fluid or when they are used by individuals with esophageal narrowing or dysfunction, or with difficulty swallowing. There is the possibility that esophageal obstruction and choking from ingestion of psyllium husk-containing food would be a consequence of extending the food use of psyllium husk to certain types of food products, such as those that are predominately composed of psyllium husk. Therefore, FDA has determined that the potential for esophageal blockage from not consuming adequate amounts of fluids when consuming certain types of dry or incompletely hydrated psyllium husk-containing food is a material fact.

The agency concludes that it would be misleading under section 201(n) of the act for certain foods to contain dry or incompletely hydrated psyllium husk without a label statement relative to potential risks and concerns for adequate fluid intake. Therefore, in this final rule FDA is amending its regulations to require a statement (hereinafter "label statement") to inform consumers of the potential consequence if the psyllium husk-containing food is not consumed appropriately, to inform consumers of the action necessary to avoid the consequence, and to advise persons with swallowing difficulties to avoid consumption of the product.

Because the concern for esophageal obstruction exists whether or not the food bears a health claim, FDA is codifying the need for the required label statement in § 101.17 *Food labeling warning and notice statements* (21 CFR 101.17) rather than in the health claim regulation. The required label statement is also reflected in § 101.81(c)(1). Accordingly, FDA is adding paragraph (f)(1) to § 101.17 to specify that when dry or incompletely hydrated psyllium husk is present in a food and the food bears a health claim, the label must include a statement such as:

> The food should be eaten with at least a full glass of liquid. Eating this product without enough liquid may cause choking. Do not eat this product if you have difficulty swallowing.

In the psyllium proposed rule, the agency had specifically requested comments on whether psyllium husk-containing foods should carry a statement advising that the product be consumed with liquids. However, the agency had not suggested that it was considering requiring labeling for all psyllium husk-containing foods regardless of whether the food label bears a health claim statement. Therefore, FDA is not attempting, in this final rule, to extend the required statement to psyllium husk-containing foods not subject to this rulemaking, i.e., foods not bearing a health claim. Instead, the agency plans to propose, in a separate rulemaking, that the required label statement be extended to other psyllium husk-containing foods that do not bear a health claim.

However, as discussed previously, the agency recognizes that there are factors that suggest that the formation of a viscous adhesive mass, which is associated with a risk of choking, does not result from consumption of certain psyllium husk-containing foods that are in a conventional food form. Therefore, the agency believes that certain dry or incompletely hydrated conventional food products, i.e., those that do not form a viscous adhesive mass under usual conditions of use, would not require the label statement. The agency believes that an exemption from the label statement should be available to firms when a viscous adhesive mass is not formed when the product is exposed to fluids so that the product poses no greater risk to the consumer than a comparable product without psyllium husk. The agency does not currently

have data or information on which it could base such an exemption for specific conventional food products. Moreover, because FDA, under § 101.70(j)(4)(i), is obligated to publish this final rule within the time limitation established for issuing final rules for health claim proceedings, the agency is unable, in this final rule, to specify the conditions under which exemptions to the label statement for certain conventional food products are warranted. Consequently, the agency will provide firms that seek such an exemption with guidance as to what would be necessary to demonstrate that such an exemption to the label statement is warranted. The agency will further evaluate the need for the label statement on specific types of psyllium husk-containing foods that bear a health claim in the separate rulemaking that will address the extension of the label statement to psyllium husk-containing foods that do not bear a health claim. If the agency challenges a firm's determination that its conventional food product is entitled to the exemption in § 101.17(f)(1), and as a result is not misbranded within the meaning of section 201(n) of the act without such label statement, the agency will evaluate the basis for the firm's exemption on a case-by-case basis.

Section 403(f) of the act requires that mandatory label information be prominently placed on the label with such conspicuousness (compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of use. FDA has generally considered the label information panel to be the appropriate location for notice and warning statements. As discussed in the agency's rulemaking requiring warning statements on iron-containing dietary supplements (62 FR 2218, January 15, 1997), consumer focus group studies establish that a warning statement need not be placed on the principal display panel (PDP) to be effective in informing consumers of the hazard. Participants in the focus groups reasoned that the front of the product package was used for marketing purposes and stated that they were accustomed to looking at the "back of products" for nutrition and factual information, including warning statements (Ref. 43). Consequently, in the case of iron-containing dietary supplements, the agency required that the warning statement appear on the information panel.

The agency believes that for the required label statements on psyllium husk-containing products, the requirement for prominence and conspicuousness would similarly be met if the statements appeared on the information panel. However, the agency would not object to firms placing the required statement on the PDP, because the PDP would provide even greater prominence. Accordingly, FDA is requiring in § 101.17(f)(2) that the required statement for psyllium husk-containing foods appear either on the product information panel or on the PDP.

The requirement in the act for prominent display means that the required label statement must appear in a manner that makes it readily observable and likely to be read. The agency notes that 21 CFR 101.2(c) requires that mandatory information appearing on the PDP and information panel, including information required by § 101.17, appear prominently and conspicuously in a type size no less than one-sixteenth inch.

In addition, current agency regulations that require a "warning" statement on the product label or in labeling (e.g., the statement required by § 101.17(e) on iron-containing dietary supplements in solid oral dosage form) or a label "notice" statement (e.g., the statement required by § 101.17(d)(3) on protein products that are not covered by the requirements of § 101.17(d)(1) and (d)(2)) require that the identifying term "WARNING" or "NOTICE" be capitalized and immediately precede the language of the applicable labeling statement. Based on FDA's experience in rulemaking pertaining to warning statements on protein products (47 FR 25379, June 11, 1982), as the severity of the consequences lessens, the severity of the warning may also lessen. Therefore, the agency considers the term "NOTICE" to be appropriate to alert consumers to the label statement. Accordingly, the agency is requiring in § 101.17(f)(2) that the capitalized word "NOTICE" immediately precede the required elements of the label statement.

4. Laxative effects

(Comment 17)

One comment noted that psyllium husk is primarily consumed for its laxative effect. This comment asserted that the label and labeling of psyllium husk-containing foods should inform consumers about the adverse effects of consuming excess amounts of psyllium by including a disclosure statement such as "Consumption of psyllium in excess of —— mg may cause diarrhea." Other comments noted that intake of psyllium-containing foods is self-limiting due to satiety and laxative effects.

FDA disagrees that the possible effects on bowel function of consuming 10 g/d of psyllium seed husk in foods would be considered as causing diarrhea or an adverse health consequence. Diarrhea is characterized by loose, watery bowel movements. The water-holding capacity and bulking effect of undigested soluble fiber from psyllium husk softens colonic contents and stimulates peristalsis, both of which facilitate movement of the colonic contents. Ingestion of psyllium husk does not lead to diarrhea. The expected effect of the use of bulk-forming fiber laxatives is an increase in stool volume and frequency of bowel movements. There is no reason to consider that a daily intake of 10 g of psyllium seed husk as a component of food would have any effect on the bowel other than to promote normal functioning by softening fecal contents and increasing fecal volume. Because the daily intake of psyllium seed husk that is approved for this health claim is the same customary daily intake when used as a laxative, amounts in excess of that required for laxation are not needed to obtain potential benefits, in reduced risk of CHD, from consumption of psyllium seed husk. Moreover, consumption in excess of 10.2 g/d of psyllium seed husk would not be expected to result in diarrhea because intake of psyllium husk increases stool volume and frequency of bowel movements. Softening of fecal contents is not diarrhea and does not represent an adverse health effect as suggested by the comment. Therefore, the agency finds that there is no basis on which to require, as suggested by the comment, a warning statement to alert consumers about possible adverse effects from consuming psyllium husk-containing foods.

H. General Health Claim Issues

1. Health claims for substances with OTC drug uses.

(Comment 18)

One comment stated that approving a claim on a product that incorporates an OTC drug into a food would set a precedent for allowing claims on "functional foods," foods consumed primarily for their purported ability to prevent or treat disease. The comment stated that this was not the intent of Congress when it passed the 1990 amendments.

FDA notes that bran, as well as psyllium husk, are listed as effective bulk-forming laxative active ingredients in the tentative final monograph on laxative drug products for OTC human use (50 FR 2124, January 15, 1985) and that oat bran is also an eligible source of soluble fiber from whole oats for this

health claim. The fact that a substance also has uses as an OTC drug does not bear on its recognized status as a food. FDA notes that psyllium seed husk is a recognized source of dietary fiber and an established food ingredient. Therefore, the comment is not relevant to this rulemaking.

2. Food-Specific Health Claims

(Comment 19)

Some comments stated that the proposed claim for a specific soluble fiber should not be authorized because claims for specific foods create the false impression that consumption of those foods is a more important factor than is the overall diet in reduction of risk of CHD. Other comments asserted that allowing health claims for individual substances portrays specific foods as panaceas or functional foods and undermines the purpose of the 1990 amendments. One comment expressed concern that claims about individual sources of dietary fiber are inconsistent with the important dietary guidance of choosing diets high in fruits, vegetables, whole grain foods, and other good sources of fiber. One comment stated that the proposed claim does not inform the consumer that frequent, long-term consumption of soluble fiber from psyllium husk is necessary to lower cholesterol levels.

FDA addressed the issue of the appropriate subject of health claims in rulemaking leading to, and including, the January 6, 1993, final rule on general requirements for health claims (see 56 FR 60537 at 60542, November 27, 1991; 58 FR 2478 at 2479, January 6, 1993). While some comments to proposed rulemaking maintained that health claims should only be permitted for nutrients listed in nutrition labeling, others argued that Congress intended claims to be authorized for foods as well as nutrients. Comments quoted private and public health organizations' testimony before Congress that health claims should reflect dietary recommendations about foods and "should assist the public to integrate specific food products into a well balanced diet" (58 FR 2478 at 2479). After extensive discussion, final rules implementing the 1990 amendments defined health claims as claims characterizing the relationship of any substance to a disease or health-related condition, and defined "substance" as a specific food or component of food (§ 101.14(a)(1) and (a)(2)). This permitted health claims to be established for both nutrients and foods.

In the soluble fiber from whole oats final rule, the agency addressed comments that expressed concern that a claim on whole oat foods would portray the specific food as a "magic bullet" in reducing heart disease risk. This concern was ameliorated when the scientific evidence supported changing the subject of the claim to soluble fiber from whole oats. In addition, the importance of a total diet low in saturated fat and cholesterol to the nutrient/disease relationship was emphasized (62 FR 3584 at 3585 and 3590). FDA noted that diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk. The agency stated that while soluble fiber from whole oats contributes to this effect, its role is generally recognized as being of smaller magnitude (62 FR 3584 at 3590 and 3594).

Likewise, the agency concludes that the concerns described previously that were raised in comments to the psyllium husk proposed rule are adequately addressed by the fact that a health claim on psyllium-containing foods will be required to state the subject of the claim as "soluble fiber from psyllium husk" and to describe the nutrient/disease relationship in the context of a diet low in saturated fat and cholesterol. The comment provided no evidence to suggest that health claims about specific foods or food ingredients will not encourage consumers to follow dietary recommendations to eat a varied diet containing other foods that are also good sources of fiber.

FDA notes that the subject health claim, as is the case for all authorized health claims, requires that the claim be stated in the context of a daily diet. This is accomplished through specific requirements describing the nature of the claim, i.e., the relationship of the substance to the disease or health-related condition in paragraph (c)(2)(i) of each health claim regulation. These requirements are intended to show the nature of the relationship between the subject of the claim and the disease or health condition and to prevent any misunderstanding that health benefits will accrue from single or infrequent consumption of the subject nutrient or adherence to the suggested dietary regimen. Examples of such wording include "throughout life" in the calcium/osteoporosis claim (21 CFR 101.72), "daily" in the folate/neural tube defect claim (21 CFR 101.79), "diets low in fat * * *" in health claims pertaining to cancer (21 CFR 101.73, 101.76, and 101.78) and "diets low in saturated fat and cholesterol * * *" in health claims pertaining to heart disease (§§ 101.75, 101.77, and 101.81). Therefore, the agency is making no changes in response to this comment.

The preamble of the soluble fiber from whole oats health claim final rule considered the impact of the health claim on consumer perception of food label references to oats (62 FR 3584 at 3596). A comment had suggested that as consumers become aware of the relationship between soluble fiber from whole oats and reduced risk of CHD, statements such as "made with oat bran" would be an implied nutrient content or health claim. In response to this comment, FDA stated that it did not have information from which to conclude that terms such as "oat bran," "rolled oats," or "whole oat flour" are always in a context that constitutes an implied nutrient content or health claim, and as such FDA would continue its policy to evaluate the context of label statements on a case-by-case basis (62 FR 3584 at 3597). The agency further noted that if experience with label statements about oat ingredients or other information persuades FDA that additional regulatory controls are needed, the agency can take action to establish appropriate regulations. The agency does not have reason at this time to change this policy.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the psyllium husk proposed rule (62 FR 28234). The proposed rule incorrectly cited a claim of categorical exclusion under previous 21 CFR 25.24(a)(11). The agency has determined, based on information contained in an environmental assessment prepared under previous 21 CFR 25.31a(b)(5), that this action has no significant impact on the environment and that an environmental impact statement is not required. No new information or comments have been received that would affect this determination. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of the final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential

economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a rule is significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this rule is not a significant rule as defined by Executive Order 12866.

In addition, FDA has determined that this rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995 requiring cost-benefit and other analyses. A significant rule is defined in section 1531(a) as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year * * *."

Finally, in accordance with the Small Business Regulatory Enforcement Fairness Act, the administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this final rule is not a major rule for the purpose of Congressional review.

The authorization of health claims about the relationship between soluble fiber from psyllium seed husk and CHD results in either costs or benefits only to the extent that food manufacturers elect to take advantage of the opportunity to use the claim. The authorization of the health claim will not require that any labels be redesigned, or that any product be reformulated. However, the labels of foods containing whole oats and bearing the health claim will require revision to specify the daily dietary intake of β-glucan soluble fiber from whole oats necessary to achieve the claim effect. Because FDA is allowing firms to wait to incorporate this change with other regularly scheduled changes, this provision will not result in additional costs.

This final health claim will allow manufacturers to highlight the benefits of soluble fiber from psyllium seed husk in addition to other eligible food sources of soluble fiber for which FDA has already approved a health claim. The benefit of establishing this health claim is to provide for new information in the market regarding the relationship between soluble fiber from psyllium seed husk and risk of heart disease and to provide consumers with the assurance that this information is truthful, not misleading, and scientifically valid.

B. Small Entity Analysis

FDA has examined the impacts of the final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of that rule on small entities.

Small entities will incur costs only if they opt to take advantage of the marketing opportunity presented by this regulation. FDA cannot predict the number of small entities that will choose to use the claim. However, no firm, including small entities, will choose to bear the cost of redesigning labels unless they believe that the claim will result in increased sales of their product. Therefore, this rule will not result in either a decrease in revenues or a significant increase in costs to any small entity. Accordingly, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

In the psyllium proposal, FDA stated its tentative conclusion that the proposed rule contained no information collection provisions necessitating clearance by the Office of Management and Budget (OMB) and asked for comments on whether the proposed rule imposed any paperwork burden. No comments addressing the question of paperwork burden were received. FDA has evaluated the final rule and concludes that it contains no information collection provisions. Although the final rule would amend § 101.17 to require a label statement on foods containing psyllium husk and bearing a health claim, FDA is supplying the information that must be disclosed in the label statement. Therefore, the label statement is a "public disclosure of information originally supplied by the Federal government to the recipient for purpose of disclosure to the public" (5 CFR 1320(c)(2)); as such, it is not a "collection of information" subject to OMB review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.17 is amended by adding paragraph (f) to read as follows:

§ 101.17 Food labeling warning and notice statements.

* * * * *

(f) *Foods containing psyllium husk.* (1) Foods containing dry or incompletely hydrated psyllium husk, also known as psyllium seed husk, and bearing a health claim on the association between soluble fiber from psyllium husk and reduced risk of coronary heart disease, shall bear a label statement informing consumers that the appropriate use of such foods requires consumption with adequate amounts of fluids, alerting them of potential consequences of failing to follow usage recommendations, and informing persons with swallowing difficulties to avoid consumption of the product (e.g., "NOTICE: This food should be eaten with at least a full glass of liquid. Eating this product without enough liquid may cause choking. Do not eat this product if you have difficulty in swallowing."). However, a product in conventional food form may be exempt from this requirement if a viscous adhesive mass

is not formed when the food is exposed to fluids.

(2) The statement shall appear prominently and conspicuously on the information panel or principal display panel of the package label and any other labeling to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. The statement shall be preceded by the word "NOTICE" in capital letters.

3. Section 101.81 is amended by revising the section heading, the heading for paragraphs (a) and (b), and paragraphs (a)(3), (b)(2), (c)(1), (c)(2)(i) introductory text, (c)(2)(i)(A), (c)(2)(i)(E), (c)(2)(i)(F), (c)(2)(iii)(A), (d)(2), (d)(3), and (e); by adding paragraphs (c)(2)(i)(G) and (c)(2)(ii)(B); and by removing paragraph (d)(6) and redsignating paragraph (d)(7) as (d)(6) and paragraph (d)(8) as (d)(7) to read as follows:

§ 101.81 Health claims: Soluble fiber from certain foods and risk of coronary heart disease (CHD).

(a) *Relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and the risk of CHD.* * * *

* * * * *

(3) Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soluble fiber from certain foods to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD.

(b) *Significance of the relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and the risk of CHD.* * * *

* * * * *

(2) Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and an average of 30 percent or less of total calories from all fat. Recommended daily cholesterol intakes are 300 milligrams (mg) or less per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total- and LDL-cholesterol levels. Soluble fiber from certain foods, when included in a low saturated fat and cholesterol diet, also helps to lower blood total- and LDL-cholesterol levels.

(c) *Requirements.* (1) All requirements set forth in § 101.14 shall be met. The label and labeling of foods containing psyllium husk shall be consistent with the provisions of § 101.17(f).

(2) *Specific requirements.* (i) Nature of the claim. A health claim associating diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim states that diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods "may" or "might" reduce the risk of heart disease.

* * * * *

(E) The claim does not attribute any degree of risk reduction for CHD to diets that are low in saturated fat and cholesterol and that include soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section; and

(F) The claim does not imply that consumption of diets that are low in saturated fat and cholesterol and that include soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section is the only recognized means of achieving a reduced risk of CHD.

(G) The claim specifies the daily dietary intake of the soluble fiber source that is necessary to reduce the risk of coronary heart disease and the contribution one serving of the product makes to the specified daily dietary intake level. Daily dietary intake levels of soluble fiber sources listed in paragraph (c)(2)(ii) of this section that have been associated with reduced risk coronary heart disease are :

(*1*) 3 g or more per day of B-glucan soluble fiber from whole oats.

(*2*) 7 g or more per day of soluble fiber from psyllium seed husk.

(ii) * * *

(B)(*1*) Psyllium husk from the dried seed coat (epidermis) of the seed of *Plantago* (*P.*) ovata, known as blond psyllium or Indian psyllium, *P. indica*, or *P. psyllium*. To qualify for this claim, psyllium seed husk, also known as psyllium husk, shall have a purity of no less than 95 percent, such that it contains 3 percent or less protein, 4.5 percent or less of light extraneous matter, and 0.5 percent or less of heavy extraneous matter, but in no case may the combined extraneous matter exceed 4.9 percent, as determined by U.S. Pharmacopeia (USP) methods described in USP's "The National Formulary," USP 23, NF 18, p. 1341, (1995), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(*2*) FDA will determine the amount of soluble fiber that is provided by psyllium husk by using a modification of the Association of Official Analytical Chemists' (AOAC's) method for soluble dietary fiber (991.43) described by Lee et al., "Determination of Soluble and Insoluble Dietary Fiber in Psyllium-containing Cereal Products," *Journal of the AOAC International*, 78 (No. 3):724–729, 1995, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(iii) * * *

(A) The food product shall include:

(*1*) One or more of the whole oat foods from paragraph (c)(2)(ii)(A) of this section, and the whole oat foods shall contain at least 0.75 gram (g) of soluble fiber per reference amount customarily consumed of the food product; or

(*2*) Psyllium husk that complies with paragraph (c)(2)(ii)(B) of this section, and the psyllium food shall contain at least 1.7 g of soluble fiber per reference amount customarily consumed of the food product;

* * * * *

(d) * * *

(2) The claim may state that the relationship between intake of diets that are low in saturated fat and cholesterol and that include soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section and reduced risk of heart disease is through the intermediate link of "blood cholesterol" or "blood total- and LDL-cholesterol;"

(3) The claim may include information from paragraphs (a) and (b) of this section, which summarize the relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and coronary heart disease and the significance of the relationship;

* * * * *

(e) *Model health claim.* The following model health claims may be used in food labeling to describe the

relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and reduced risk of heart disease:

(1) Soluble fiber from foods such as [name of soluble fiber source from paragraph (c)(2)(ii) of this section and, if desired, the name of food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of food] supplies _____ grams of the [grams of soluble fiber specified in paragraph (c)(2)(i)(G) of this section] soluble fiber from [name of the soluble fiber source from paragraph (c)(2)(ii) of this section] necessary per day to have this effect.

(2) Diets low in saturated fat and cholesterol that include [_____ grams of soluble fiber specified in paragraph (c)(2)(i)(G) of this section] of soluble fiber per day from [name of soluble fiber source from paragraph (c)(2)(ii) of this section and, if desired, the name of the food product] may reduce the risk of heart disease. One serving of [name of food] provides _____ grams of this soluble fiber.

Dated: February 10, 1998

William B. Schultz,

Deputy Commissioner for Policy.

Note: The following table will not appear in the Code of Federal Regulations.

TABLE 1.—SUMMARY OF CLINICAL TRIALS WITH HYPERCHOLESTEROLEMICS: PSYLLIUM AND CORONARY HEART DISEASE

Study	Duration Treatment	Number of Subjects	Supplements (Psyllium, Placebo) Soluble Fiber g/d	Diet Intake of groups: Sat fat % E; CHOL mg/d	Magnitude of PSY Effect[1]	Magnitude of Placebo Effect
Anderson et al. (Ref. 13)	Base: 8 wk Step 1; Tx: 26 wk Step 1+supplement	PSY: 131 C: 28	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*Sat fat*: PSY- 8.3%; C- 7.7% *CHOL*: PSY- 164 mg; C- 146 mg	*CHOL*: -5 mg/dL (2.1%)[1] *LDL-C*: -5 mg/dL (2.9%)[1]	*CHOL*: +5 (2.6%) *LDL-C*: +6 (3.9%) *HDL-C*: no sig dif (grps)
Bell et al. (Ref. 14)	Base: 12-wk Step 1; Tx: 8-wk Step 1+supplement	PSY: 40 (20 men) Pla: 35 (18 men)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*Sat fat*: PSY- 8–10%; C- 7.7–8.6% *CHOL*: PSY- 168 mg; C- 206 mg	*CHOL*: -9 mg/dL (4.2%) *LDL-C*: -12 mg/dL (7.7%)	*CHOL*: 0 *LDL-C*: -0.2% *HDL-C*: no sig dif (grps)
Davidson et al. (Ref. 15)	Base: 8-wk Step 1; Tx: 24-wk Step 1 + PSY or control food (3 servings/d)	PSY 1 56 (31 men) PSY 2 40 (24 men) PSY 3 43 (28 men) C 59	3.4 g, 6.8 g, 10.2 g/d; incorporated into foods: C foods: no PSY PSY 1: ~2.3 g SF, PSY 2: ~4.6 g; PSY 3: ~7 g	*SAT fat*: PSY- 7–8.6%; C- 7–8.6% *CHOL*: PSY 1- 151 mg; PSY 2- 181; PSY 3- 169 C- 145 mg	*CHOL*: —3% (PSY 3) *LDL-C*: —5% (PSY 3)	*CHOL*: +1.7%; LDL-C: +3% *HDL-C*: No sig dif (grps)
Everson et al. (Ref. 16)	Regular diet; 5-d Base; 2 40-d periods; 11-d washout; crossover	20 men	15.3 g/d bulk laxative, cellulose PSY: ~10 g SF	*SAT fat*: PSY- 12%; C- 13.2 % *CHOL*: PSY- 296 mg; C- 274 mg	*CHOL*: -14 mg/dL (-5%) *LDL-C*: -15 mg/dL (8%)	*CHOL*: -1.9%; LDL-C: -2.7% *HDL-C*: No sig dif (grps)
Keane et al. (Ref. 18)	Base: 12 wk Step 1; Tx: 26 wk Step 1+supplement	PSY: 40 (18m, 24f) C: 39 (7m, 32f)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*SAT fat*: PSY- 5%; C- 5.3% *CHOL*: PSY- 145.2 mg; C- 151.1 mg	*CHOL*: -8.7 mg/dL (3%) *LDL-C*: -11.5 mg/dL (5.9%)[1]	*CHOL*: +2 (1%) *LDL-C*: 0 *HDL-C*: no sig dif (grps)
Levin et al. (Ref. 19)	Base: 8-wk Step 1; Tx: 16-wk Step 1+supplement	PSY: 30 (26 men) Pla: 28 (23 men)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*SAT fat*: PSY- 6.7%; C- 6.3% *CHOL*: PSY- 166 mg; C- 135 mg	*CHOL*: -13 mg/dL (5.6%) *LDL-C*: -13 mg/dL (8.6%)	*CHOL*: 0; LDL-C -2.2%; HDL-C: ~+6% (sig from PSY)
Stoy et al. (Ref. 23)	4-wk Step 1; Step 1 + (8x5x5 wks): Grp 1: PSY-Pla-PSY; Grp 2: Pla-PSY-Pla	23 men	Estimated 11.6 g/d PSY from cereal: ~8 g SF; Wheat cereal: ~3 g SF	*SAT fat*: PSY: 5.1% (Grp 1) and 5.1% (Grp 2) Wheat: 4.5% (Grp 1) and 5.0% (Grp 2) *CHOL*: PSY 141–165 mg Wheat: 164 mg (Grp 1), 117–170 (Grp 2)	*CHOL*: -10 mg/dL (4%) *LDL-C*: -11 mg/dL (6%)	*HDL-C*: No sig dif (grps)
Stoy et al. (Ref. 24)	4-wk Step 1; Step 1 + (8x5x5 wks): Grp 1: PSY-Pla-PSY; Grp 2: Pla-PSY-Pla	22 men	Estimated 11.6 g/d PSY from cereal: ~8 g SF; Wheat cereal: ~3 g SF	*SAT fat*: PSY: 4.8 (Grp 1) and 5.2% (Grp 2) Wheat: 4.7% (Grp 1) and 5.6% (Grp 2) *CHOL*: PSY 155–163 mg Wheat: 133 mg (Grp 1), 169–172 (Grp 2)	*CHOL*: -10 mg/dL (4%) *LDL-C*: -11 mg/dL (6%)	*HDL-C*: No sig dif (grps)

TABLE 1.—SUMMARY OF CLINICAL TRIALS WITH HYPERCHOLESTEROLEMICS: PSYLLIUM AND CORONARY HEART DISEASE—Continued

Study	Duration Treatment	Number of Subjects	Supplements (Psyllium, Placebo) Soluble Fiber g/d	Diet Intake of groups: Sat fat % E; CHOL mg/d	Magnitude of PSY Effect[1]	Magnitude of Placebo Effect
Weingand et al. (Ref. 26)	Base: 12 wk Step 1; Tx: 8 wk Step 1+supplement, crossover	23 (16m, 7f)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*SAT fat*: PSY- 8.7%; C- 9% *CHOL*: PSY- 162 mg; C- 203–261 mg	*CHOL*: -9 mg/dL (3.8%) *LDL-C*: -11 mg/dL (6.2%)[1]	*HDL-C*: sig higher in PSY group
Jenkins et al. (Ref. 30)	Base: 2 mo controlled Step 2 diets; Tx: 2- 1 mo Step 2 diets+ cereal, crossover	Study 1: 32 (15m, 17f)	Study 1: 11.4 g/d PSY in cereal (~7.8 g SF), wheat bran	Study 1: *SAT fat*: PSY- 4.6%; C -4.6% *CHOL*: PSY- 31 mg; C- 29 mg *MUFA*: PSY- 6%; C- 6%	Study 1: *CHOL*: -27 mg/dL[1] (9.8%) *LDL-C*: -24 mg/dL[1] (12.6%) *HDL-C*: -6.6 mg/dL (11.3%)[1]	Study 1: *CHOL*: -13.6 (5%)[2] *LDL-C*: -10 (5.5%) *HDL-C*: -2 (3.3%)
		Study 2: 27 (12m, 15f)	Study 2: 12.4 g/d PSY in cereal (~8.4 g SF), wheat bran	Study 2: *SAT fat*: PSY- 6%; C- 6% *CHOL*: PSY- 22 mg; C-22 mg *MUFA*: PSY- 12%; C- 12%	Study 2: *CHOL*: -34 mg/dL[1] (12.6%) *LDL-C*: -27.9 mg/dL[1] (14.9%) *HDL-C*: -4.3 mg/dL[1] (8%)	Study 2: *CHOL*: -29.5 (10.7%)[2] *LDL-C*: -17 (9%)[2] *HDL-C*: -1.4 (2.6%)

[1] Significant differences between treatment and placebo groups unless otherwise indicated.
[2] Significant change across the diet phase.

Abbreviations Used in Table 1

C	Control
CHOL	Blood total cholesterol
d	Day
E	Energy
g	Gram
grp	Group
HDL-C	High density lipoprotein cholesterol
LDL-C	Low density lipoprotein cholesterol
m/f	Number of males, number of females
mg/dL	Milligrams per deciliter
Pla	Placebo
PSY	Psyllium
Sat fat	Saturated fat
SF	Soluble fiber
Sig Dif	Statistically significant difference
Step 1	≤ 30% kcals fat, < 10% kcals sat fat, < 300 mg cholesterol
TDF	Total dietary fiber
Tx	Treatment
wk	Week
~	Approximately
%	Percent

[FR Doc. 98–4074 Filed 2–12–98; 4:18 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 529

Certain Other Dosage Form New Animal Drugs; Isoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Rhone-Poulenc Chemicals, Ltd. The ANADA provides for use of isoflurane, USP, as an inhalant for induction and maintenance of general anesthesia in horses and dogs.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center For Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc Chemicals, Ltd., P.O. Box 46, St. Andrew's Rd., Avonmouth, Bristol BS11 9YF, England, UK, filed ANADA 200–237 that provides for inhalant use of isoflurane, USP, for induction and maintenance of general anesthesia in horses and dogs. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of ANADA 200–237 for Rhone-Poulenc Chemicals, Ltd.'s isoflurane is as a generic copy of Ohmeda Pharmaceutical Products Division, Inc.'s NADA 135–773 AErrane® (isoflurane, USP). The ANADA is approved as of December 19, 1997, and the regulations are amended in 21 CFR 529.1186(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, the sponsor has not been previously included in the list of sponsors of approved applications in § 510.600 (21 CFR 510.600). The regulations are amended in § 510.600(c)(1) and (c)(2) to reflect the the new sponsor.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20855, between 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "Rhone-Poulenc Chemicals, Ltd.," and in the table in paragraph (c)(2) by numerically adding an entry for "059258" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * * *
Rhone-Poulenc Chemicals, Ltd., P.O. Box 46, St. Andrews Rd., Avonmouth, Bristol BS11 9YF, England, UK	059258
* * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * *
059258	Rhone-Poulenc Chemicals, Ltd., P.O. Box 46, St. Andrews Rd., Avonmouth, Bristol BS11 9YF, England, UK.
* * *	* * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 529.1186 is amended by revising paragraph (b) to read as follows:

§ 529.1186 Isoflurane.

* * * * *

(b) *Sponsors.* See Nos. 000074, 010019, 012164, and 059258 in § 510.600(c) of this chapter.

* * * * *

Dated: January 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–3983 Filed 2–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Difloxacin Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Animal Health. The NADA provides for oral use of difloxacin tablets for management of diseases in dogs associated with bacteria susceptible to difloxacin.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Tania D. Woerner, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Home Products, 800 Fifth St. NW., P.O. Box 518, Fort Dodge, IA 50501, filed NADA 141–096 that provides for oral use of Dicural® (difloxacin) tablets for management of diseases in dogs associated with bacteria susceptible to difloxacin. The drug is limited to use by or on the order of a licensed veterinarian. The NADA is approved as of November 20, 1997, and the regulations are amended by adding new § 520.645 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iv) of the Federal Food, Drug, and Cosmetic Act

(the act), this approval, which is solely for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning November 20, 1997, because the applicant has elected to waive section 512(c)(2)(F)(i) of the act.

FDA has determined under 21 CFR 25.33(d) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.645 is added to read as follows:

§ 520.645 Difloxacin.

(a) *Specifications.* Each tablet contains 11.4, 45.4, or 136 milligrams (mg) of difloxacin hydrochloride.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 to 10 mg per kilogram (2.3 to 4.6 mg/pound) of body weight.

(ii) *Indications for use.* For management of diseases in dogs associated with bacteria susceptible to difloxacin.

(iii) *Limitations.* Use once a day for 2 to 3 days beyond cessation of clinical signs of disease up to a maximum of 30 days. Federal law prohibits the extra-label use of this drug in food-producing animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: January 21, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–3984 Filed 2–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–023–FOR]

Oklahoma Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Oklahoma abandoned mine land reclamation plan (hereinafter referred to as the "Oklahoma plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise the Oklahoma plan to allow the State to assume responsibility for administering an emergency response reclamation program in Oklahoma on behalf of OSM.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Plan

On January 21, 1982, the Secretary of the Interior approved the Oklahoma plan. Background information on the Oklahoma plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 21, 1982, **Federal Register** (46 FR 2989). Subsequent actions concerning the Oklahoma plan and amendments to the plan can be found at 30 CFR 936.25.

II. Submission of the Proposed Amendment

Section 410 of SMCRA authorizes the Secretary to use funds under the abandoned mine land reclamation (AMLR) program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982, (47 FR 42729) OSM invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on behalf of OSM. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contracts.

Under the provisions of 30 CFR 884.15, any State may submit proposed amendments to its approved AMLR plan. If the proposed amendments change the scope or major policies followed by the State in the conduct of its AMLR program, OSM must follow the procedures set out in 30 CFR 884.14 in reviewing and approving or disapproving the proposed amendments.

The proposed assumption of the AMLR emergency program on behalf of OSM is a major addition to the Oklahoma AMLR plan. Therefore, to assume the emergency program, Oklahoma must either revise the Oklahoma plan to include conducting the AMLR emergency program, or demonstrate that its plan currently includes provisions for assuming and conducting the emergency program.

By letter dated November 3, 1997 (Administrative Record No. OAML–77), Oklahoma submitted a proposed amendment to its plan pursuant to SMCRA. Oklahoma submitted the proposed amendment on its own initiative. The amendment was intended to demonstrate Oklahoma's capability to effectively perform the AMLR emergency program on behalf of OSM. A brief description of the amendment is presented below.

A. The proposed amendment would allow Oklahoma to assume the administration of the AMLR emergency program in Oklahoma on behalf of OSM. In its formal submittal, Oklahoma stated that in 1982, as part of its approved State Abandoned Mine Land Program, the Oklahoma Conservation Commission (OCC) incorporated the necessary language to assume responsibility of the AMLR emergency program at a later date. The following information, taken from the approved Oklahoma plan, was included in Oklahoma's formal submission to OSM to verify that the authority already exists for the OCC to assume AMLR emergency program responsibilities:

1. A letter from the Governor that designates the OCC as the agency responsible for the Abandoned Mine Land Reclamation Program in Oklahoma.

2. A legal opinion from the Attorney General that the OCC has the power to

administer the Abandoned Mine Land Reclamation Program in Oklahoma.

3. A copy of the Oklahoma Abandoned Mine Reclamation Act (45 O.S., sections 740.1 through 740.7).

Section 740.7(A) authorizes OCC to spend monies from the State Abandoned Mine Reclamation Fund for emergency restoration, reclamation, abatement, control or prevention of adverse effects of coal mining practices on eligible land if it finds that an emergency exists constituting a danger to the public health, safety or general welfare and no other person or agency will act expeditiously to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices. Section 740.7(B) authorizes the OCC to enter on any land where an emergency exists and any other necessary access land to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices and do all things necessary or expedient to protect the public health, safety or general welfare.

4. A copy of the Oklahoma Abandoned Mine Land Reclamation Program (Oklahoma Administrative Code (OAC) 155:15–1–1 through 155:15–1–16).

Oklahoma's regulations at OAC 155:15–1–8(e) provide procedures for emergency studies or reclamation.

5. A copy of section 884.13(c)(6) of the Oklahoma plan concerning entry for emergency study and reclamation.

6. A copy of section 884.13(e) of the Oklahoma plan concerning public participation in Oklahoma's AMLR program.

B. After assuming the emergency program, Oklahoma would conduct investigations of potential emergency sites, and following OSM concurrence that emergency situations exist, perform remedial reclamation.

OSM announced receipt of the proposed amendment in the December 15, 1997, **Federal Register** (62 FR 65632), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 14, 1998.

During its review of the amendment, OSM identified concerns relating to emergency contracting procedures, statutory authority and administrative procedures. OSM notified Oklahoma of these concerns by telefax dated December 19, 1997 (Administrative Record No. OAML–77.06). By letter dated December 19, 1997 (Administrative Record No. OAML–77.05), Oklahoma responded to OSM's concerns by submitting additional explanatory information regarding its proposed plan amendment. Because the additional information merely clarified certain provisions of Oklahoma's approved reclamation plan and program, OSM did not reopen the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

OSM's guidelines, published in the September 29, 1982, **Federal Register** (47 FR 42729), outline three requirements for state assumption of the AMLR emergency program. To be granted emergency authority by OSM, the State agency must demonstrate that it has the (1) Statutory authority to undertake emergencies, (2) technical capability to design and supervise the emergency work, and (3) administrative mechanisms to respond quickly to emergencies either directly or through contractors.

A. Statutory Authority

The OCC has had statutory authority to administer an emergency response program since approval of the original reclamation plan. In a letter dated September 25, 1978 (Administrative Record No. OAML–77), the Governor of Oklahoma designated the Oklahoma Conservation Commission (OCC) as the agency responsible for the Abandoned Mine Land Reclamation Program under Title IV, Pub. L. 95–87. Title IV of Pub. L. 95–87 covers both the regular AML program and the emergency reclamation program. The Oklahoma Attorney General issued an official opinion (78–267) on November 16, 1978 (Administrative Record No. OAML–77), which states that the "OCC and the Conservation Districts have the power to administer the state program aspects of Title IV of the Federal Surface Mining Control and Reclamation Act of 1977." A subsequent official opinion by the Oklahoma Attorney General (81–211) issued on August 13, 1981 (Administrative Record No. OAML–77.05), states that (1) "The OCC has express statutory authority to administer an abandoned mine land reclamation program within the contemplation of Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87," and (2) "The Conservation Districts are not authorized to administer the state program aspects of SMCRA pertaining to abandoned mine reclamation."

B. Technical Capability

The OCC has demonstrated through past performance that it has the technical capability to implement an AMLR emergency program. Oklahoma asserted in its November 3, 1997, submission of the formal amendment that, "For the last 4 years, the OCC AML Program has concentrated on the elimination of underground mine openings and subsidence problems (non emergency) in LeFlore County. With this work in LeFlore County and the close working relationship with OSM on past AML emergencies, the OCC AML staff believes it is time to assume responsibility for the AML Emergency Program."

Oklahoma has conducted an AMLR Program since 1982. Technical capabilities utilized for emergency reclamation projects are the same as those used for normal, high priority reclamation projects; usually, only the project schedule is different. OSM annual oversight reports for evaluation years 1991 to 1996 indicate that Oklahoma successfully implements the high priority AMLR program. The oversight reports indicate that closure of mine portals and shafts, and treament of subsidenace areas have been part of the high priority AMLIR program since at least 1991. As of the end of evaluation year 1996, OCC had closed 89 vertical openings and 140 open mine portals, and stabilized 8.1 acres of mine subsidence. These are the same types of abandoned mine land features that are likely to be encountered in the AMLR emergency program.

C. Administrative Mechanisms

On December 19, 1997, OSM requested by telephone and followed up by telefax, a description of the emergency response contracting procedures available to the OCC to respond to contract needs. OCC replied to OSM by letter dated December 19, 1997, outlining the emergency response contracting procedures. In summary, the OCC Executive Director has the authority to issue contracts for emergency work in amounts up to $25,000, the same day as an emergency problem is identified. Contracts larger than $25,000 may be issued after an emergency Board Meeting of the OCC Commissioners. OSM finds that the $25,000 limit is similar to the small purchase threshold for Federal agencies and will allow the OCC adequate flexibility to address emergency conditions. Other administrative processes required to implement the emergency program are the same as

those already in place for the Oklahoma AML Program.

OSM's review of Oklahoma's AMLR plan, Oklahoma's emergency response contracting procedures, and OSM's annual oversight reports for 1991 through 1996, found that OCC has developed and refined the in-house investigation, design and project administration abilities necessary to administer an AML program and an emergency response program.

In accordance with section 405 of SMCRA, the Director finds that Oklahoma has submitted an amendment to its AMLR plan and has determined, pursuant to 30 CFR 884.15, that:

1. The public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The proposed plan amendment meets all requirements of the OSM AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The amendment is in compliance with all applicable State and Federal laws and regulations.

Therefore, the Director finds that the proposed Oklahoma plan amendment allowing the State to assume responsibility for an emergency response reclamation program on behalf of OSM is in compliance with SMCRA and meets the requirements of the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 884.14(a)(2) and 884.15(a), the Director solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Oklahoma plan. The U.S. Army Corps of Engineers responded by letter dated December 24, 1997 (Administrative Record No. OAML–77.07), stating it had no comments. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Oklahoma's request to assume the AMLR emergency program as submitted by Oklahoma on November 3, 1997.

The Federal Regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma plan, are being amended to implement this decision. The final rule is being made effective February 18, 1998.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 884.15(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. In the oversight of the Oklahoma program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Oklahoma of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented.

In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 10, 1998.

Kathy Karpan,

Director, Office of Surface Mining.

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

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

2. Section 936.25 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 936.25 Approval of Oklahoma abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
. . .	. . .	.
November 3, 1997	February 18, 1998	Emergency response reclamation program.

[FR Doc. 98–3915 Filed 2–17–98; 8:45 am]
BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 946

Reimbursement for Sale of Abandoned Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Postal Service's disposition of evidence and abandoned property regulations to provide that a person submitting a valid claim for reimbursement of funds from the sale of such property must be reimbursed the last appraised value of the property prior to its sale.

EFFECTIVE DATE: This rule is effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Walter E. Ladick, Program Manager, Forfeiture Group, Postal Inspection Service, (202) 268–5475.

SUPPLEMENTARY INFORMATION: Postal Service regulations concerning the disposition of property acquired by the Postal Inspection Service for possible use as evidence are codified at 39 CFR part 946. Once the evidentiary need to retain the property no longer exists, the Postal Service returns the property to its rightful owner, unless the property is contraband or subject to a court order. If no one submits a timely claim for the property, it is considered abandoned and becomes the property of the Postal Service, which may retain or sell it. Such property, however, must be returned to the rightful owner if he or she files a valid claim within three years from the date the property became abandoned.

Under the current rule, a person filing a valid claim for property that has been sold must be reimbursed the amount of the proceeds realized from the sale of such property, less costs incurred by the Postal Service in selling the property and in returning or attempting to return such property to the owner. Experience has demonstrated, however, that efforts to valuate and dispose of low-value evidentiary and abandoned properties vested to the Postal Service are inefficient and not cost effective.

In the future, such property will be included in sales of unclaimed items that are held regularly at Postal Service mail recovery centers. Since many like items are sold in lots at these sales, it would present a problem to account for the sale price of each item. Therefore, this new rule provides that the person submitting a valid claim for the property that has been sold will be reimbursed the same amount as the last appraised value of the property prior to its sale.

List of Subjects in 39 CFR Part 946

Claims, Law enforcement, Postal Service.

Accordingly, 39 CFR part 946 is amended as set forth below.

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

1. The authority citation for part 946 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401(2), (5), (8), 404(a)(7), 2003, 3001.

2. Section 946.6(a)(2) is revised to read as follows:

(a) * * *

(2) Where property has been sold, a person submitting a valid claim under this section must be reimbursed the same amount as the last appraised value of the property prior to the sale of such property.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–3951 Filed 2–17–98; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0066; FRL–5963–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on December 8, 1997. The revision concerns a rule from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from architectural coatings. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, EPA's general rulemaking authority, plan submissions, and enforceability guidelines.

EFFECTIVE DATE: This action is effective on March 20, 1998.

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

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, 94109.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is BAAQMD Rule 8–3, Architectural Coatings. This rule was submitted by the California Air Resources Board to EPA on July 23, 1996.

II. Background

On December 8, 1997 in 62 FR 64543, EPA proposed to approve the BAAQMD's Rule 8–3, Architectural Coatings into the California SIP. Rule 8–3 was adopted by the BAAQMD on December 20, 1995 and was submitted by the California Air Resources Board to EPA on July 23, 1996. A detailed discussion of the background for this rule is provided in the proposed rulemaking cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rulemaking cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluation has been provided in 62 FR 64543 and in a technical support document (TSD) available at EPA's Region IX office (TSD dated November 10, 1997).

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 64543. EPA received no comments on the proposed rulemaking prior to the closing of the comment period on January 7, 1998.

IV. EPA Action

EPA is finalizing action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) of the CAA. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

SIP approvals under sections 110 and 301 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: January 23, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(E)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(E) * * *

(*3*) Rule 8–3, adopted on March 1, 1978, revised on December 20, 1995.

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[FR Doc. 98–4011 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TX89–1–7370; FRL–5967–4]

Clean Air Act Reclassification; Texas-Dallas/Fort Worth Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finding that the Dallas/Fort Worth (DFW) nonattainment area (Dallas, Tarrant, Collin, Denton Counties, Texas) has not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date in the Clean Air Act (Act) for moderate ozone nonattainment areas, November 15, 1996. The finding is based on EPA's review of monitored air quality data from 1994 through 1996 for compliance with the 1-hour ozone NAAQS. As a result of this finding, the DFW ozone nonattainment area will be reclassified by operation of law as a serious ozone nonattainment area on the effective date of this action. This **Federal Register** reclassification final rule does not subject the State to sanctions under section 110(m) of the Act. The effect of the reclassification will be to continue progress toward attainment of the 1-hour ozone NAAQS through the development of a new State Implementation Plan (SIP), due 12 months from the effective date of this action, addressing attainment of that standard by November 15, 1999.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Diggs or James F. Davis, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202, (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

Under sections 107(d)(1)(C) and 181(a) of the Act, the DFW area was designated nonattainment for the 1-hour ozone NAAQS and classified as "moderate." *See* 56 FR 56694 (November 6, 1991). Moderate nonattainment areas were required to show attainment by November 15, 1996 (section 181(a)(1)).

Pursuant to section 181(b)(2)(A) of the Act, EPA has the responsibility for determining, within six months of an area's applicable attainment date, whether the area has attained the 1-hour ozone NAAQS.[1] Under section 181(b)(2)(A), if EPA finds that an area has not attained the 1-hour ozone NAAQS, it is reclassified by operation of law to the next higher classification or to the classification applicable to the area's design value at the time of the finding. Section 181(b)(2)(B) of the Act requires EPA to publish a notice in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified by operation of law.

If a state does not have the data necessary to show attainment of the NAAQS, it may apply, under section 181(a)(5) of the Act, for a one-year attainment date extension. Issuance of an extension is discretionary, but EPA can exercise that discretion only if the state has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone NAAQS at any monitoring site in the nonattainment area in the year preceding the extension year.

A complete discussion of the statutory provisions and EPA policies governing findings of whether an area failed to attain the ozone NAAQS and extensions of the attainment date can be found in the proposal for this action at 62 FR 46238 (September 2, 1997).

II. Proposed Action

On September 2, 1997, EPA proposed to find that the DFW ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date (62 FR 46238). The proposed finding was based upon ambient air quality data from the years 1994, 1995, and 1996. These data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on average more than one day per year over this three-year period. Attainment of the 1-hour NAAQS is demonstrated when an area averages one or less days per year over the standard during a three-year period (40 CFR 50.9 and Appendix H). The EPA also proposed that the appropriate reclassification of the area was too serious, based on the area's 1994–1996 design value of 0.139 ppm. This **Federal Register** reclassification final rule is not an action subjecting the State to sanctions described in section 110(m) of the Act. The sanctions provisions of the Act would only apply if the State failed to submit a revised DFW SIP or submitted a revised DFW SIP that was disapproved by the EPA. For a complete discussion of the DFW ozone data and method of calculating both the average number of days over the ozone standard and the design value, see 62 FR 46238.

Finally, EPA proposed to require submittal of the serious area SIP revisions no later than 12 months from the effective date of the area's reclassification. The requirements for serious ozone nonattainment areas are outlined in section 182(c) of the Act.

III. Response to Comments

The EPA received 156 comment letters in response to its September 2, 1997 proposal. The EPA wishes to express its appreciation to each of these individuals and organizations for taking the time to comment on the proposal. Each raised important issues to which EPA welcomes the opportunity to respond.

As described above, EPA's proposal was composed of two elements: (1) a finding of failure to attain by the statutory deadline of November 15, 1996, (2) a 12-month schedule for submittal of the revised SIP.

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[1] On July 18, 1997 (62 FR 38856), EPA revised the ozone NAAQS to establish an 8-hour standard; however, in order to ensure an effective transition to the new 8-hour standard, EPA also retained the 1-hour NAAQS for an area until such time as it determines that the area meets the 1-hour standard. *See* revised 40 CFR 50.9 at 62 FR 38894. As a result of retaining the 1-hour standard, the Act part D, subpart 2, *Additional Provisions for Ozone Nonattainment Areas,* including the reclassification provisions of section 181(b), remain applicable to areas that are not attaining the 1-hour standard. Unless otherwise indicated, all references in this document are to the 1-hour ozone NAAQS.

The EPA received comment letters from 147 citizens supporting the reclassification action and/or requiring further improvements in air quality. One additional citizen commented that EPA should focus on sources of pollution other than motor vehicles such as aircraft, power plants and diesel engines. The Environmental Defense Fund commented in support of requiring further improvements in air quality. The Lone Star Chapter of the Sierra Club sent in a letter supporting EPA's proposal for reclassification of the DFW area to facilitate improvements in air quality. Two citizen commenters expressed some qualified concerns about the proposed action. The Greater Dallas Chamber requested EPA to reconsider the action in view of improvements in air quality, and the City of Plano requested a cost/benefit analysis and assessment on whether new control standards are achievable. The City of Dallas commented that programs should be required to be implemented across the entire nonattainment area, and that the nonattainment area should be expanded to the entire metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA). The City of Dallas also commented on flexible implementation times, on compliance with the Unfunded Mandates Reform Act, Regulatory Flexibility Act, and on Executive Order 12866. The Mayor of Fort Worth, the Honorable Kenneth Barr, expressed concern that counties adjacent to the metroplex are not being required to participate in the overall abatement program and urged EPA to expand the program to all areas contributing to the ozone problem. The City of Grand Prairie commented that the 1999 attainment date is virtually unattainable, that the nonattainment area should include the entire urbanized region, with control strategies applied fairly throughout the entire area, and the EPA ensure sufficient resources are available for technical assistance and public outreach. The Texas Natural Resource Conservation Commission (TNRCC) commented that it will continue to work in a results oriented way to improve air quality in the DFW area, but expressed procedural and legal concerns with the action. The EPA also received comments and questions from U.S. Representative Martin Frost and from Texas State Representative Lon Burnam regarding the timeframes associated with the reclassification SIP due date in view of the extension of the comment period. Specific comments along with EPA's responses are described below.

A. Comments on Air Quality Data

Comments: The Greater Dallas Chamber commented that while the area has not met the air quality standards specified by EPA, since 1990 emissions have been reduced 15 percent while population has increased 13 percent. The City of Plano also made the comment that significant progress has been made. The Environmental Defense Fund concurred with EPA's assessment of the air quality data that the area did not attain the ozone NAAQS by November 1996 and commented that little if any progress has been made since 1994.

Response: The EPA recognizes that over the very long term some improvements in the DFW air quality have been made and that programs have been put in place to improve air quality at a Federal, State, and local level. However, these programs have not been adequate to meet the health-based ozone standard or make the area eligible for an extension of the 1996 attainment date. Between 1994 and 1996, based on the number of exceedance days DFW had the eighth worst air quality in the nation (28 days). In the same time period based on air quality design value, DFW had the tenth worst air quality in the nation (0.139 ppm). In 1990, twenty-two areas had worse air quality than DFW based on air quality design value (DFW design value in 1990 was 0.140 ppm). Over a ten year period the area's design value has not shown a downward trend, and continues to remain at unacceptable levels above the health-based standards.

B. Comments Related to the Area of Coverage and Regional Approach to Controls

Comments: The EPA received 11 comments from citizens supporting the inclusion of surrounding counties to the DFW nonattainment area, particularly Ellis County. Several commenters expressed specific concerns about air pollutants coming from large stationary point sources in Ellis County. Some of the comments were specifically directed towards the burning of hazardous waste.

Response: The EPA agrees that sources of pollution outside the four county nonattainment area must be taken into consideration in air quality planning. We anticipate that the revised air quality attainment modeling demonstration will include large stationary sources of pollution from an area beyond the four county nonattainment area. The control strategy included in the revised SIP may require emission reductions from sources outside the nonattainment area if the State determines they would be effective in achieving attainment for the DFW area. The EPA has not included additional counties in the nonattainment area at this time, since there has not been any air quality monitoring data showing exceedances of the ozone standard in these counties. Part of the additional monitoring requirements resulting from this action will be a monitor located south of the DFW nonattainment area. In addition, the EPA will be reevaluating the nonattainment area of coverage again when designations are made for the revised 8-hour ozone standard. Also, if the area does not meet its 1999 attainment deadline, EPA will consider expanding the nonattainment area to additional counties in the CMSA or the entire CMSA in a reclassification of the area to severe ozone nonattainment. Regarding the burning of hazardous waste, EPA's proposal for reclassification was strictly an action that applied to the ozone standard and not related to this issue.

Comments: The Greater Dallas Chamber stated that it is important to equally apply all standards and regulations among all four counties in the nonattainment area and that a truly Regional approach to improve air quality should be taken. The Greater Dallas Chamber also requested EPA reconsider the proposed reclassification and work with all parts of the nonattainment area to expand air quality control efforts. The City of Dallas and City of Grand Prairie similarly commented that emission control requirements should apply to all segments of the nonattainment area. The City of Dallas specifically pointed to the growth in Collin and Denton County, and the air quality exceedances in these counties as reasons to include these counties in the emission control programs especially those directed towards mobile sources such as the vehicle inspection and maintenance program. They pointed to the inequity of the situation in which the commuter to Dallas from the northern two counties may drive 25 miles each way and not be subject to enhanced testing, while the commuter to Dallas from Oak Cliff may drive only 5 miles each way and be subject to enhanced I/M testing. The City commented that EPA should not accept any implementation plan which omits enhanced I/M in Denton and Collin Counties. The Mayor of Fort Worth expressed concern that counties adjacent to the metroplex are not being required to participate in the overall abatement program. The City of Dallas felt the current imbalance in application

of control programs raised questions of environmental justice.

Response: The EPA concurs that strategies that apply equally across the nonattainment area are normally in the best interest in air quality improvement efforts. The EPA has listed expansion of the vehicle inspection and maintenance program to Collin and Denton counties as a cost effective measure which the State should consider in its revised SIP. However, EPA cannot require I/M programs to be placed in areas outside the 1990 urbanized area. The State is planning to implement remote sensing testing for vehicles commuting into Dallas and Tarrant counties. The EPA will be evaluating the program to determine whether sufficient numbers of failing vehicles are being repaired to make up urbanized area coverage shortages stemming from the State decision to implement its core I/M program in only Dallas and Tarrant counties. The EPA's action to finalize the DFW reclassification is based upon the area's monitored air quality and will help to focus efforts on needed air quality improvements. Therefore, EPA does not believe it is in the best interest of air quality to reconsider its proposed reclassification. Furthermore, section 181(b)(2) of the Act mandates that the Administrator redesignate an area that has not attained the standard by the applicable attainment date.

Comments: The City of Dallas commented that EPA is required by operation of law, 42 U.S.C. section 7407(d)(4)(iv), to designate the entire MSA or CMSA as nonattainment with the serious classification. The CMSA includes Collin, Dallas, Denton, Ellis, Henderson, Hunt, Kaufman, Rockwall, Hood, Johnson, Parker and Tarrant counties. The City of Dallas also cited 57 FR 13514–13515 (April 16, 1992) which stated that when a moderate area is bumped up to serious this section of the Act requires that the boundaries reflect the MSA/CMSA unless the State notifies EPA of its intent to study the appropriate boundaries. In addition, the City commented that for the policy reason of addressing all emissions in the area the entire CMSA should be included.

Response: The City has correctly read EPA's interpretation cited in the 1992 proposed General Preamble for Implementation of Title 1 of the Clean Air Act (57 FR 13514–13515). However, since 1992 EPA has interpreted and implemented section 107(d)(4)(A)(iv) of the Act in a more flexible manner regarding reclassifications. This section of the Act can also be interpreted only to be required to apply to areas when they are initially classified and not necessarily when they are reclassified. This latter interpretation was applied in the Phoenix nonattainment area in its carbon monoxide reclassification (61 FR 39343–39347 (July 29, 1996)) and more recently in the moderate ozone area reclassification to serious (62 FR 60001–60013 (November 6, 1997)). However, if the DFW area does not meet its 1999 attainment deadline, EPA will consider expanding the nonattainment area to additional counties in the CMSA or the entire CMSA in a reclassification of the area to severe ozone nonattainment.

Comments: The EDF also commented that EPA should require Texas to consider the finding of the Ozone Transport Assessment Group (OTAG) and other studies which show ozone pollution is transported long distances and to consider the likely impact on the DFW nonattainment area from large point sources in Central and Northeast Texas.

Response: This comment is not relevant to the issues presented in this rulemaking. The EPA anticipates that the revised air quality modeling attainment demonstration will include emissions from large stationary sources of pollution long distances from the nonattainment area. The EPA agrees that looking at sources located at greater distances is an appropriate approach. This was the conclusion of the OTAG study. Although the OTAG results did not find that Texas was contributing to transport to the eastern United States, the results did conclude that transport is a factor in ozone formation.

C. Comments Related to the Timing of the Submission of the Revised SIP

Comments: U.S. Representative Martin Frost commented that he had been contacted by groups that the implementation plan stay on the original schedule in view of the 60-day extension of the comment period. Texas State Representative Lon Burnam also commented regarding the timeframes associated with the reclassification SIP due date in view of the extension of the comment period. Representative Burnam requested that the EPA stay on the original time frame for the final reclassification and SIP due date and was concerned about the impact of the 60-day time extension.

The EDF expressed concern that the proposed SIP submittal timing will pass before new actions to improve air quality are taken. One citizen also commented that a one-year SIP submittal window is too long, in view of the serious attainment deadline of November 1999, and requested EPA finalize a 6-month SIP submittal deadline. The citizen also requested that EPA require the State to have some control measures in place at May 1, 1998, and a second tier of measures in place by May 1, 1999. The TNRCC commented that if DFW is reclassified, the TNRCC should be given a minimum of one year from the effective date prior to the final reclassification action. The City of Dallas commented that assuming EPA approval of the SIP, the nonattainment area will have approximately one year from the time of SIP approval to achieve attainment and that this time period will likely not be sufficient to put in place many requirements to achieve meaningful results. The City urged EPA to exercise all discretion to extend timetables so the region has a reasonable chance to achieve compliance.

Response: The EPA believes that a 12-month schedule for submittal of the revised plan is appropriate because of the time needed for the State to develop and submit the revised SIP. This 12-month timeframe is consistent with actions EPA has taken with the ozone reclassifications of Phoenix and Santa Barbara. The 12-month timeframe will begin upon the effective date of this action. Since the attainment date for serious areas, November 15, 1999, is less than 2 years away, the State will need to expedite adoption and implementation of controls to meet that deadline. The EPA believes the two-tiered approach for the revised air quality improvement plan has merit, but it will be up to the State to determine when to implement the additional controls with the desired result of meeting the 1999 attainment date. The EPA does not have discretion to extend the attainment date, under section 182(I) of the Act. However, the Act does allow for extensions of the attainment date under section 182(a)(5), if in the attainment year the area has sufficiently improved air quality and has met its SIP requirements.

D. Comments on Future Control Requirements

Comments: One citizen commented that EPA should make it clear that the TNRCC has the "powers" to go beyond the required measures to come up with an appropriate compliance plan for DFW. The citizen also commented that EPA list the possible control options it has developed in the final reclassification. Another citizen commented that EPA should focus on sources of pollution other than motor vehicles such as aircraft, power plants and diesel engines.

Response: The State has always had the ability to implement air quality improvement programs that exceed the

Federal requirements. The control options the EPA is recommending for consideration in the revised SIP include: 1) expansion of the I/M program into Collin and Denton or additional counties, 2) enhancements to the I/M program such as loaded mode testing, 3) cleaner gasolines such as Phase II of the reformulated gasoline program, 4) adoption of Reasonably Available Control Technology for offset lithographers, 5) additional transportation control measures, 6) an effective clean fuel fleet program, 7) nitrogen oxide (NO_x) controls on utility sources, and 8) opting into the California Low Emitting Vehicle program. The EPA agrees that all sources of pollution have to be considered for additional controls. However, in the DFW area on-road mobile sources comprise about 41 percent of the emissions inventory with off-road mobile sources comprising about 18 percent. Stationary point sources account for about 12 percent of the area's volatile organic compound air pollution.

Comments: The City of Grand Prairie commented that the attainment date of 1999 is virtually unattainable due to the lateness of EPA's action. The TNRCC also commented that it will be all but impossible for the DFW area to implement controls in time prior to the proposed new attainment deadline of November 15, 1999, and that another reclassification would be likely in the same timeframe as EPA's new ozone NAAQS. The TNRCC recommended that if the DFW area is reclassified, EPA allow a three-year assessment period beyond the new attainment date prior to any other action and that the TNRCC be given a minimum of one year from the effective date for submittal of the revised SIP.

Response: The EPA believes the State needs to take a proactive approach in implementing measures to improve air quality, but agrees it will be a challenge to achieve all the reductions needed by the summer of 1999. The State has the option of extending the 1-hour ozone attainment date out to 2005 if it requests a voluntary reclassification to a severe ozone nonattainment area. If such an approach was taken, requirements in the Act for a severe area would apply. Another reclassification will not occur if the area has improved air quality by November 1999 such that it is eligible for an extension based on the monitored data, under section 182(a)(5) of the Act. The EPA does not have the discretion in the Act to allow the three year assessment period contemplated by the TNRCC. If the area is not eligible for the extension, the Act would require another reclassification six months after the November 15, 1999, attainment date. As stated earlier, the EPA is allowing the State up to one year from the effective date to submit its revised SIP.

E. Comments on Cost and Benefits

Comments: The City of Plano expressed concern about the costs related to the new standards and that the cost may surpass public health benefits. The City of Plano recommended that EPA perform a full cost-benefit analysis of its action to the DFW area, investigate whether new control standards are realistically achievable, and further test the health benefits of stricter air control standards for DFW before finalizing its proposed action.

Response: The EPA may not consider cost in the setting of air quality standards or reclassification of areas that fail to attain the standard. The decision whether or not to reclassify an area is solely based on air quality monitoring data compared with the national ambient air quality standard. The standards are required by the Act to be set at levels that protect public health without consideration of costs. However, we anticipate cost effectiveness will be considered by the State in the development of the revised SIP in the selection of what measures are best suited in achieving the standards.

Comments: The City of Grand Prairie commented that the EPA should ensure sufficient State resources are available since the State has failed in the past to provide sufficient or timely monitoring, modeling and technical assistance to the area due to a stated lack of funding. The City of Grand Prairie also requested a greater partnership with EPA in public outreach to persuade public opinion concerning participation in ozone reduction strategies since local entities do not have sufficient resources to undertake these efforts independently.

Response: The EPA can only require that the State meet the requirements of the serious areas which will include an attainment modeling demonstration, enhanced monitoring and control strategy to meet attainment. The financial and personnel resources needed to meet these requirements can only be determined by the State. Regarding partnership on public outreach, EPA agrees more can and should be done in communicating the need for improved air quality in the DFW area and the steps needed to achieve clean air. The EPA has been and is available for public outreach events and welcomes opportunities to participate. As part of this rulemaking action, EPA designed and implemented a communication plan which is intended to develop support for efforts to improve air quality.

F. Comments Related to the Promulgation of the New Ozone NAAQS

Comments: The TNRCC commented that it is inappropriate to maintain the current 1-hour standard when the 8-hour standard is considered by EPA to be more protective to human health and that this continued imposition of the 1-hour standard is diametrically different than what was originally proposed by EPA. The TNRCC recommended that EPA move now to impose the 8-hour standard so that DFW and the TNRCC will no longer be required to dedicate resources to the 1-hour standard. The TNRCC questioned the legal authority of how the EPA can hold an area such as DFW for two separate standards for the same criteria pollutant. The TNRCC also commented that in the Presidential Directive, the President stated he wanted to ensure that the new standards be implemented in a common sense, cost effective manner; that they be implemented in the most flexible, reasonable, and least burdensome manner; and that the Federal government work with the State and local governments towards this end. The TNRCC requested that EPA address each of these concepts and explain how the DFW reclassification meets this directive.

Response: The continued applicability of the 1-hour standard is not the subject of this rulemaking. The 8-hour ozone standard is likewise not the subject of this action. This rulemaking only concerns the finding that the DFW area failed to attain the 1-hour standard by the attainment deadline and the consequences of that failure. The issue of the continued applicability of the 1-hour standard was part of the rulemaking in which EPA promulgated an 8-hour ozone standard (62 FR 38856 (July 18, 1997)). In that rulemaking, EPA made it clear that the Act did not preclude EPA from simultaneously implementing both standards. Also, historically EPA has had more than one primary standard for criteria pollutants (e.g., annual and 24-hour PM10 and sulfur dioxide standards, and 8-hour and 1-hour CO standards)(62 FR 38885). That rulemaking, not this one concerning DFW, was the appropriate forum in which to raise issues concerning the continued applicability of the 1-hour standard.

The EPA concurs that the Presidential Directive does direct EPA to ensure that the new standards be implemented in a

common sense, cost effective manner and they be implemented in the most flexible, reasonable, and least burdensome manner. The EPA believes it has been working with the State and local governments towards this end. The EPA has participated and will continue to participate in numerous briefings at the request of local governments to discuss the reason for and implementation of the reclassification. The EPA will work with the State in meetings and by giving guidance on and commenting on the revised SIP as it proceeds through the State process. The Presidential Directive also directs EPA to continue the implementation of the 1-hour requirements until the 1-hour standard is achieved. The EPA believes it is reasonable and makes sense to implement measures to improve air quality prior to the 8-hour ozone SIPs due in 2003. The EPA allows a good deal of flexibility in the measures that are chosen for the revised SIP since the State may choose the measures it thinks are the least burdensome and most cost effective.

G. Comments Related to Consistency of EPA's Action With Other Marginal and Moderate Areas

Comments: The TNRCC questioned what it described as EPA's inconsistency with areas similar to DFW noting that to date only three moderate areas have been proposed for reclassification to serious (DFW, Phoenix, and Santa Barbara). The TNRCC stated that it was encouraged by recent news that St. Louis was not going to be reclassified to serious nonattainment if the area made significant progress in reducing emissions, and the TNRCC was interested in discussing a similar approach with respect to DFW. The TNRCC specifically questioned why other marginal and moderate areas have not been acted on for not meeting their attainment deadlines.

Response: In contrast with DFW, most marginal and moderate areas have either attained their air quality standards and been redesignated to attainment, or have been eligible for an extension under section 182(a)(5) of the Act. The EPA is proceeding with implementing the 1-hour standard for areas not falling into these categories and which were required to meet the ozone standard at the end of 1996. Both the Phoenix and Santa Barbara reclassifications to serious have been finalized. The EPA is intending to propose reclassification of the Beaumont/Port Arthur area to serious nonattainment in the absence of a convincing demonstration that the area is subject to overwhelming transport. The Manitowoc area was eligible for EPA's overwhelming transport policy, which recognizes that most of their air pollution is coming in from outside the area. In St. Louis, EPA is continuing to review the appropriate information, but the lack of final action with respect to St. Louis does not imply that EPA should determine that DFW should not be reclassified.

H. Comments Related to the Unfunded Mandates Reform Act, Regulatory Flexibility Act, and on Executive Order 12866

Comments: The City of Dallas commented that EPA is disregarding the requirements of the Unfunded Mandates Reform Act (UMRA), Executive Order 12866, and the Regulatory Flexibility Act in conducting the rulemaking. The City noted EPA's position that since the proposed reclassification is ordained by operation of law, no new requirements are placed on the parties which these laws and the Executive order seek to protect. The City argued that in reality new requirements, not currently in the SIP, will be imposed on the community.

Response: The EPA position regarding compliance of this action with the Regulatory Flexibility Act, Executive Order 12866, and the Unfunded Mandates Act is described in the Administrative Requirements section of this notice.

VI. Final Action

The EPA is finding that the DFW ozone nonattainment area did not attain the ozone NAAQS by November 15, 1996, the Act's attainment date for moderate ozone nonattainment areas. The submittal of the serious area SIP revision will be due no later than 12 months from the effective date of this action. The requirements for this SIP submittal are established in section 182 of the Act and applicable EPA guidance.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future action. Each finding of failure to attain, request for an extension of an attainment date, and establishment of a SIP submittal date shall be considered separately and shall be based on the factual situation of the area under consideration and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's action is a "significant regulatory action" within the meaning of the E.O., and therefore should be subject to Office of Management and Budget review, economic analysis, and the requirements of the E.O. *See* E.O. 12866, section 6(a)(3). The E.O. defines, in section 3(f), a "significant regulatory action" as a regulatory action that is likely to result in a rule that may meet at least one of four criteria identified in section 3(f), including, (1) have an annual effect on the economy of $100 million or more or 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; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA has determined that neither the finding of failure to attain the ozone standard, nor the establishment of a SIP submittal schedule would result in any of the effects identified in E.O. 12866 section 3(f). As discussed in the response to comments above, findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

A finding of failure to attain (and the consequent reclassification of the nonattainment area by operation of law under section 181(b)(2) of the Act) and the establishment of a SIP submittal schedule for a reclassified area, do not, in-and-of-themselves, directly impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply makes a factual determination and establishes a schedule to require the State to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA reaffirms its certification made in the proposal (62 FR 46233 (September 2, 1997)) that today's final action will not have a significant impact on a substantial number of small entities within the meaning of those terms for Regulatory Flexibility Act purposes.

C. Unfunded Mandates Reform Act

Title II of the UMRA, (Pub. L. 104–4), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates "any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more" in any one year. A "Federal mandate" is defined, under section 101 of UMRA, as a provision that "would impose an enforceable duty" upon the private sector or State, local, or Tribal governments," with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA "establish[es] any regulatory requirements that might significantly or uniquely affect small governments." Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and Tribal governments for EPA's "regulatory proposals" that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates "any rule for which a written statement is required under" (UMRA section 202), EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Generally, EPA has determined that the provisions of sections 202 and 205 of UMRA do not apply to this decision. Under section 202, EPA is to prepare a written statement that is to contain assessments and estimates of the costs and benefits of a rule containing a Federal Mandate "unless otherwise prohibited by law." Congress clarified that "unless otherwise prohibited by law" referred to whether an agency was prohibited from considering the information in the rulemaking process, not to whether an agency was prohibited from collecting the information. The Conference Report on UMRA states, "This section [202] does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule." *See* 141 Cong. Rec. H3063 (Daily ed. March 13, 1995). Because the Clean Air Act prohibits the Agency from considering the types of estimates and assessments described in section 202 when determining whether an area attained the ozone standard or met the criteria for an extension, UMRA does not require EPA to prepare a written statement under section 202. Although the establishment of a SIP submission schedule may impose a federal mandate, this mandate would not create costs of $100 million or more, and therefore, no analysis is required under section 202. The requirements in section 205 do not apply because those requirements are for rules "for which a written statement is required under section 202." * * *"

Finally, section 203 of UMRA does not apply to today's action because the regulatory requirements finalized today—the SIP submittal schedule—affect only the State of Texas, which is not a small government under UMRA.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: February 4, 1998.

Lynda F. Carroll,

Acting Regional Administrator.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.344 the table for Texas—Ozone is amended by revising the entry for the Dallas-Fort Worth area to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type

TEXAS—OZONE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Dallas-Fort Worth Area:				
Collin County		Nonattainment	3/20/98	Serious
Dallas County		Nonattainment	3/20/98	Serious
Denton County		Nonattainment	3/20/98	Serious
Tarrant County		Nonattainment	3/20/98	Serious
* * *	*	*	*	*

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

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[FR Doc. 98–4005 Filed 2–17–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300609; FRL–5767–8]

RIN 2070–AB78

Dimethomorph; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerances for residues of dimethomorph in or on squash, cantaloupe, watermelon, and cucumber. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), authorizing use of the pesticide on squash, cantaloupe, watermelon, and cucumber. This regulation establishes a maximum permissible level for residues of dimethomorph in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on March 31, 2000.

DATES: This regulation is effective February 18, 1998. Objections and requests for hearings must be received by EPA on or before April 20, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300609], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300609], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300609]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide dimethomorph, in or on squash, cantaloupe, watermelon, and cucumber at 1.0 part per million (ppm). These tolerances will expire and are revoked on March 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104—170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (November 13, 1996; 61 FR 58135) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and

to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemptions for Dimethomorph on Squash, Cantaloupe, Watermelon, and Cucumber and FFDCA Tolerances

The effects of *Phytophthora capisci* range from reduced fruit size to totally rotted/blemished fruit which is unmarketable. Frequently large portions of infested fields are not harvestable even when only a small percentage of the fruits contain symptoms because of postharvest rot concerns. EPA has authorized under FIFRA section 18 the use of dimethomorph on squash, cantaloupe, watermelon, and cucumber for control of crown rot (*Phytophthora capsici*) in Georgia. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of dimethomorph in or on squash, cantaloupe, watermelon, and cucumber. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on March 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on squash, cantaloupe, watermelon, and cucumber after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether dimethomorph meets EPA's registration requirements for use on squash, cantaloupe, watermelon, and cucumber or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of dimethomorph by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Georgia to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for dimethomorph, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 7-12 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of dimethomorph and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of dimethomorph on squash, cantaloupe, watermelon, and cucumber at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by dimethomorph are discussed below.

1. *Acute toxicity.* An acute dietary risk endpoint was not identified and an acute dietary risk assessment is not required.

2. *Short - and intermediate - term toxicity.* OPP recommends use of the developmental toxicity study in rats for short-term, non-dietary risk calculations. The maternal NOEL was 60.0 mg/kg/day. At the LOEL of 160 mg/kg/day there was reduced food commodity consumption, body weights, and weight gain. Intermediate-term risk endpoints have also been identified. The NOEL of 15 mg/kg/day in the 90-day dog feeding study has been chosen as the intermediate-term toxicity endpoint. At the LOEL of 43 mg/kg/day, there were decreases in the absolute and relative weights of the prostrate and possible threshold liver effects.

3. *Chronic toxicity.* EPA has selected the RfD for dimethomorph of 0.01 milligrams/kilogram/day (mg/kg/day). This RfD is based on a NOEL of 10 mg/kg/day in a 2-year chronic rat study, using an uncertainty factor of 1,000. The

lowest-observed-effect level (LOEL) of 57.7 mg/kg/day was based on decreased body weight and increased incidence of liver "ground glass" foci in females. The additional 10-fold uncertainty factor was used to protect infants and children, since data gaps consisted of rat and rabbit developmental studies and the rat reproduction study.

4. *Carcinogenicity.* Dimethomorph has not been classified as to carcinogenic potential. No cancer risks have been identified in the available dimthomorph data evaluation records.

B. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances have been established (40 CFR 180.493) for the residues of dimethomorph, in or on potatoes and tomatoes. Risk assessments were conducted by EPA to assess dietary exposures and risks from dimethomorph as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure.

ii. *Chronic exposure and risk.* For the purpose of assessing chronic dietary exposure from dimethomorph, EPA assumed tolerance level residues and 100% of crop treated for published, pending, and this proposed use of dimethomorph. These conservative assumptions result in overestimation of human dietary exposures.

2. *From drinking water.* There is no entry for dimethomorph in the "Pesticides in Groundwater Data Base" (9/92). There is no established Maximum Concentration Level (MCL) for residues of dimethomorph in drinking water. No drinking water health advisory levels have been established for dimethomorph.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause dimethomorph to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with dimethomorph in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether dimethomorph has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethomorph has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

Chronic risk. Using the conservative TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to dimethomorph from food will utilize 34% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1-6 years old "discussed below." EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dimethomorph in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to dimethomorph residues.

Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of dimethomorph, EPA considered data from developmental toxicity studies in

the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies—Rats.* In the developmental study in rats, the maternal (systemic) NOEL was 60 mg/kg/day, based on decreased food consumption, decreased body weight and decreased weight gain at the LOEL of 160 mg/kg/day. The developmental (fetal) NOEL was not determined.

Rabbits. In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 300 mg/kg/day, based on increased abortions at the LOEL of 650 mg/kg/day. The developmental (pup) NOEL was not determined.

iii. *Reproductive toxicity study—Rats.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was 15 mg/kg/day, based on decreased body weight and weight gain at the LOEL of 50 mg/kg/day. The reproductive/developmental (pup) NOEL was 15 mg/kg/day, based.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for dimethomorph is not complete with respect to current data requirements. It can not be established whether dimethomorph does or does not demonstrate extra pre- or post-natal sensitivity for infants and children based on the results of the rat and rabbit developmental studies and the rat reproduction study. To compensate for the lack of acceptable studies, the RfD of 0.01 mg/kg/day was calculated using an uncertainty factor of 1,000. The additional 10-fold uncertainty factor was added because of the data gaps and in order to protect infants and children from possible pre- and post-natal, toxic risks from dietary exposure to dimethomorph.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to dimethomorph from food will utilize from 7% of the RfD for nursing infants less than one year old, up to 71% for children 1-6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dimethomorph in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dimethomorph residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of dimethomorph in squash, cantaloupes, watermelons, and cucumbers is adequately understood for the purposes of these tolerances. The residue of concern, for the purposes of these tolerances, is dimethomorph. The nature of the residue in ruminants is not adequately understood. However, there are no feed items associated with these uses.

B. Analytical Enforcement Methodology

An adequate method is available for detection of the residues of concern for the purpose of this FIFRA section 18 use. High Performance Liquid Chromotography/Ultra Violet (HPLC/UV) analytical method FAMS 002-02 is adequate for detecting residues of dimethomorph in/on these commodities. This method has undergone a successful Agency validation. This method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 119FF, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5229.

C. Magnitude of Residues

Residues of dimethomorph are not expected to exceed 1.0 ppm in/on squash, cantaloupe, watermelon, or cucumber as a result of this proposed use. Secondary residues are not expected in animal commodities as no feed items are associated with these uses.

D. International Residue Limits

No CODEX, Canadian or Mexican maximum residue levels (MRLs) have been established for residues of dimethomorph in/on squash, cantaloupes, watermelons, or cucumbers.

VI. Conclusion

Therefore, the tolerance is established for residues of dimethomorph in squash, cantaloupe, watermelon, and cucumber at 1.0 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 20, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's

contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300609] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 3, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

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

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

2. In § 180.493, in paragraph (b) in the table, by alphabetically adding the following commodities to read as follows:

§ 180.493 Dimethomorph; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Cantaloupe	1.0	3/31/00
Cucumber	1.0	3/31/00
* * *	* *	* *
Squash	1.0	3/31/00

Commodity	Parts per million	Expiration/Revocation Date
* * *	* *	* *
Watermelon	1.0	3/31/00

* * * * *

[FR Doc. 98–3883 Filed 2–17–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATION COMMISSION

47 CFR PART 0

[DA 98–53]

Freedom of Information Act

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's Rules that implements the Freedom of Information Act (FOIA) fee schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and § 0.460(e) or § 0.461 of the Commission's rules, unless such fees are restricted or waived in accordance with § 0.470. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 234, Federal Communications Commission, 1919 M Street, N. W., Washington, D.C. 20554, (202) 418–0210 or via Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: The FCC is modifying § 0.467(a) of the Commission's Rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1987. The instant revisions correspond to modifications in the rate of pay recently approved by Congress.

Regulatory Procedures

This rule has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Part 0 of title 47 of the Code of Federal Regulations is amended as follows:

Part 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, unless otherwise noted.

2. Section 0.467 is amended by revising the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * *

Grade	Hourly fee
GS–1	$9.06
GS–2	9.86
GS–3	11.11
GS–4	12.48
GS–5	13.96
GS–6	15.56
GS–7	17.29
GS–8	19.15
GS–9	21.16
GS–10	23.29
GS–11	25.58
GS–12	30.67
GS–13	36.47
GS–14	43.10
GS–15	50.70

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a) (1) of this section were computed at step 5 of each grade level based on the General Schedule effective January 1998 and include 20 percent for personnel benefits.

* * * * *

[FR Doc. 98–3926 Filed 2–17–98; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM–200; Amdt. No. 173–259]

RIN 2137–AB37

Hazardous Materials in Intrastate Commerce; Technical Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.
ACTION: Final rule; technical amendments.

SUMMARY: On January 8, 1997, RSPA published a final rule which amended the Hazardous Materials Regulations (HMR) to expand the scope of the regulations to all intrastate transportation of hazardous materials. The intended effect of the January 8, 1997 rule was to raise the level of safety in the transportation of hazardous materials by applying a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States. In this final rule, RSPA is: Correcting a date for States to develop legislation authorizing certain exceptions recognized in the HMR; clarifying packaging requirements for hazardous materials transported for agricultural operations; correcting size requirements for identification number markings; and clarifying that the provisions for use of non-specification cargo tanks apply to transportation of gasoline. The minor technical amendments made by this final rule will

not impose any new requirements on persons subject to the HMR.

DATES: *Effective dates:* This final rule is effective February 18, 1998. The effective date for the final rules published under Docket HM–200 on January 8, 1997 (62 FR 1208) and September 22, 1997 (62 FR 49560) remains October 1, 1997.

Compliance dates: Voluntary compliance with the January 8, 1997 final rule has been authorized since April 8, 1997.

Mandatory compliance with the HMR by intrastate motor carriers of hazardous materials is required beginning October 1, 1998, except that the HMR already apply to intrastate motor carriers of hazardous waste, hazardous substances, marine pollutants, and flammable cryogenic liquids in portable tanks and cargo tanks.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, (202) 366–8553, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, the Federal hazardous material transportation law was amended to require the Secretary to regulate hazardous materials transportation in intrastate commerce. (49 U.S.C. 5103(b)(1)) On January 8, 1997, RSPA issued a final rule under Docket HM–200 (62 FR 1208). The final rule amended the HMR by expanding the scope of the regulations to all intrastate transportation of hazardous materials in commerce. In the final rule, RSPA provided exceptions for agricultural operations (§ 173.5), materials of trade (§ 173.6), non-specification packagings used in intrastate transportation (§ 173.8) and for registered inspectors of small cargo tanks used exclusively for flammable liquid petroleum fuels (§ 180.409).

In a correction document published on September 22, 1997 (62 FR 49560), RSPA changed from July 1, 1998 to October 1, 1998 the deadline in §§ 173.5(a)(2) and 173.8(d)(3) for States to enact legislation that authorizes exceptions for agricultural operations and non-specification cargo tanks, for consistency with the mandatory compliance date of the final rule. This eliminated a potential problem of requiring compliance before a State has the opportunity to enact legislation to allow carriers in that state to take advantage of the exceptions. However, the date referenced in § 173.5(b)(3) was inadvertently missed when these changes were made. Therefore, this final rule revises the July 1, 1998 date referenced in § 173.5(b)(3) to October 1, 1998.

A possible misunderstanding has been brought to RSPA's attention by a State enforcement officer regarding the packaging authorizations adopted in § 173.5(b)(3) for agricultural products transported by farmers who are intrastate private motor carriers. To clarify RSPA's intention, this final rule amends the language in § 173.5(b) and (b)(3) to make it clear that agricultural products transported under the exception provided in § 173.5(b) are excepted from the packaging requirements of the HMR when the movement and packaging of the agricultural product conform to the requirements of the State in which it is transported and are specifically authorized by a State statute or regulation in effect prior to October 1, 1998.

In § 173.6, paragraph (c)(2) references identification number marking requirements for bulk packagings. The size requirements for each digit in these markings were incorrectly specified to be at least 25 mm (one inch) high and 6 mm (0.24 inch) wide. This paragraph is revised to provide that the size of the identification number markings must be as required by § 172.332(b)(1) or (c)(1), which state the identification number must be displayed in 100 mm (3.9 inches) black Helvetica Medium, Alpine Gothic or Alternate Gothic No. 3 numerals. RSPA is also clarifying that the identification number may be displayed on Class 9 placards.

In § 173.8, paragraph (b) authorizes non-specification cargo tanks for the transportation of flammable liquid petroleum products that are not hazardous wastes, hazardous substances or marine pollutants (when specifically authorized in State statute or regulation). RSPA overlooked the fact that leaded gasoline is a marine pollutant when transported in a bulk packaging by highway. Because RSPA intended that the provisions of this exception apply to the transportation of gasoline, RSPA is revising § 173.8(d)(5) to allow for the transportation of all gasoline, including leaded gasoline which is a marine pollutant.

This will eliminate any confusion regarding the type of petroleum product that is authorized for transportation in a non-specification cargo tank.

II. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation was prepared for the January 8, 1997 final rule and is available for review in the Docket. The regulatory evaluation was reviewed and determined not to require updating.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This rule concerns the packaging, marking, labeling, placarding and description of hazardous materials on shipping papers. This rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA determined that the effective date of Federal preemption for the requirements in this rule concerning covered subjects is October 1, 1998.

C. Regulatory Flexibility Act

The regulatory evaluation developed in support of the January 8, 1997 final rule includes a benefit-cost analysis that justifies its adoption, primarily due to the positive net benefits that may be realized by small entities under the materials of trade exception. RSPA has reviewed this regulatory evaluation and determined it was not necessary to update it.

D. Paperwork Reduction Act

There are no information collection requirements in this final rule.

E. Regulations Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR part 173 is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 173.5, the introductory text of paragraph (b) and paragraph (b)(3) are revised to read as follows:

§ 173.5 Agricultural operations.

* * * * *

(b) The transportation of an agricultural product to or from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of this subchapter and from the specific packaging requirements of this subchapter when:

* * * * *

(3) The movement and packaging of the agricultural product conform to the requirements of the State in which it is transported and are specifically authorized by a State statute or regulation in effect before October 1, 1998; and

* * * * *

3. In § 173.6, paragraph (c)(2) is revised to read as follows:

§ 173.6 Materials of trade exceptions.

* * * * *

(c) * * *

(2) A bulk packaging containing a diluted mixture of a Class 9 material must be marked on two opposing sides with the four-digit identification number of the material. The identification number must be displayed on placards, orange panels or, alternatively, a white square-on-point configuration having the same outside dimensions as a placard (at least 273 mm (10.8 inches) on a side), in the manner specified in § 172.332 (b) and (c) of this subchapter. Each digit in the identification number marking must be displayed in 100 mm (3.9 inches) black Helvetica Medium, Alpine Gothic or Alternate Gothic No. 3 numerals.

* * * * *

§ 173.8 [Amended]

4. In § 173.8, paragraph (d)(1) is amended by revising the date "July 1, 1998" to read "October 1, 1998".

5. In addition, in § 173.8, paragraph (d)(5) is revised to read as follows:

§ 173.8 Exceptions for non-specification packagings used in intrastate transportation.

* * * * *

(d) * * *

(5) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or a marine pollutant (except for gasoline); and

* * * * *

Issued in Washington, DC on February 9, 1998, under authority delegated in 49 CFR, part 1.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98–3789 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR–6; Notice No. 46]

RIN 2130–AA81

Random Drug and Alcohol Testing: Determination of 1998 Minimum Testing Rate

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Under §§ 219.602 and 219.608 of FRA's regulations on drug and alcohol testing (49 CFR Part 219), each year the Federal Railroad Administrator (Administrator) determines the minimum annual percentage rate for random drug and alcohol testing for the rail industry. Currently, the minimum rates for both drug and alcohol random testing are set at 25 percent.

After reviewing the rail industry drug and alcohol management information system (MIS) data for 1995 and 1996, as well as data from compliance reviews of rail industry drug and alcohol testing programs, the Administrator has determined that the minimum annual random drug and alcohol testing rates for the period January 1, 1998 through December 31, 1998 will remain at 25 percent of covered railroad employees.

DATES: This notice of determination is effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Operating Practices Division, Federal Railroad Administration, 400 7th Street, S.W., Room 8314, Washington, D.C. 20590, (Telephone: (202) 632–3378) or Patricia V. Sun, Trial Attorney (RCC–11), Office of Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: (202) 632–3183).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1998 Random Drug Testing Rate

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall violation rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this and other program data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR §§ 219.602 and 219.608, respectively).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program and the findings from program compliance reviews, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent

because 1992 and 1993 industry drug testing data indicated a random drug positive rate below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will continue to be 25 percent of covered railroad employees for the period January 1, 1998 through December 31, 1998, since the industry random positive rate for 1996 was 0.85 percent.

Administrator's Determination of 1998 Random Alcohol Testing Rate

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will remain at 25 percent.

Although the 1995 MIS report indicated an industry-wide positive rate of 0.29 percent and the 1996 MIS report indicates a positive rate of 0.24 percent, recent FRA audits of railroad programs revealed significant random testing program problems which may have skewed the data. The most critical deficiency uncovered in these audits was the failure to distribute testing throughout the duty day (e.g., testing only during a four hour period in the middle of the day or only on Thursdays, and/or never testing at night or on weekends), thus making the timing of random alcohol testing too predictable. FRA has alerted railroads to the need to conduct random alcohol tests at all times to achieve deterrence and more accurately capture the prevalence of alcohol abuse throughout the duty period.

Because of these systemic program deficiencies, FRA will not lower the minimum random alcohol testing rate further at this time. Instead, FRA will obtain at least one additional year of data and continue to audit industry testing programs. When FRA has confidence that rail industry data is derived from programs fully in compliance with random testing requirements, FRA will reevaluate whether to lower the minimum random alcohol testing rate to 10 percent.

Issued in Washington, D.C. on February 11, 1998.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 98–4068 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–3452]

RIN 2127–AG47

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard on lighting to permit white reflex reflectors designed to be mounted horizontally in trailer and truck tractor conspicuity treatments to be mounted vertically in upper rear corner locations if they comply with appropriate photometric requirements for off-axis light entrance angles. This action simplifies compliance with the standard.

DATES: The amendments are effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Safety Performance Standards, NHTSA (Phone 202–366–5265; fax 202–366–4329).

SUPPLEMENTARY INFORMATION: Paragraph S5.7 of Motor Vehicle Safety Standard No. 108 specifies conspicuity system requirements for truck tractors, and trailers of 80 or more inches overall width and a gross vehicle weight rating of more than 10,000 pounds. Part of the conspicuity treatment consists of two pairs of items of white material applied horizontally and vertically to the right and left upper contours of the rear of the body. This material may be either white retroreflective sheeting or white reflex reflectors.

NHTSA received a petition for rulemaking concerning white reflectors. Paragraph S5.7.2.1(c) requires white reflex reflectors to

> provide at an observation angle of 0.2 degree, not less than 1250 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 300 millicandelas/lux at any light entrance angle between 45 degrees left and 45 degrees right.

James King & Co wrote to NHTSA saying that white reflectors designed to give the required performance at 30 and 45 degrees right and left entrance angles when mounted horizontally cannot do so in the right and left directions when tested in the vertical position, i.e., when those reflectors are rotated 90 degrees. Consequently, when white reflex reflectors are molded in bars of multiple reflectors, the reflector bars required for the two upper rear vertical position must be different from the reflector bars that are used in horizontal positions to fulfill conspicuity requirements. King petitioned for rulemaking to allow use of horizontal bars meeting S5.7.2.1(c) in vertical directions.

NHTSA tentatively agreed with the petitioner, granted the petition, and published a notice of proposed rulemaking on May 14, 1997 (62 FR 26466) as Docket No. 97–30; Notice 1. As published, Standard No. 108 would be amended by adding a new paragraph "S7.5.2.2(c)" to read:

> (c) If white reflex reflectors comply with paragraph S7.5.2.1(c) when installed horizontally, they may be installed in all orientations specified for rear upper locations in paragraph S5.7.4.1(b) or paragraph SS5.7.1.4.3(b).

Some numerals were transposed in the proposed amendment. In actuality, NHTSA meant to propose adding a new paragraph S5.7.2.2(c). Further, the initial reference in this new paragraph should have been to S5.7.2.1(c). However, these transpositions did not create any conflict as there are no existing paragraphs S7.5.2.1(c) and S7.5.2.2(c). The proposal was justified on the basis that the upper rear conspicuity treatment, unlike the lower treatment, does not need to reflect light at large horizontal entrance angles to achieve its intended purpose, and that it is desirable for conspicuity reflectors to be interchangeable and simple to use. For further information, the reader is referred to the notice of May 14.

Ford Motor Company ("Ford"), Advocates for Highway and Auto Safety ("Advocates"), 3M Traffic Control Materials Division ("3M"), and Mr. G.J.M. Meekel commented on the proposed amendment. Ford concurred with the proposal because its adoption would remove a design restriction without compromising the need to improve the nighttime conspicuity of large vehicles. However, Advocates and 3M opposed the proposal because they believed it would reduce the effectiveness of the conspicuity material. Advocates also opposed the use of any reflex reflectors in conspicuity treatments, citing the

possibility of damage and the lack of interchangeability of vertical and horizontal reflectors.

NHTSA believes that this concern is unfounded. The upper and lower treatments have different relationships to conspicuity. The side of a trailer turning or backing across a road is often angled to the lane it blocks. Therefore, reflectors for trailer conspicuity are required to have very high reflective performance for light entrance angles up to 30 degrees and a lower level of performance up to 45 degrees. The red/white color scheme on the side identifies the single line of retroreflective material as the nighttime reflective image of the side of a trailer. Drivers approaching the long line of alternating red and white reflectors visible on the side of a trailer can presume their road speed to be their closing speed with the trailer.

However, drivers overtaking a moving trailer from the rear cannot make the same presumption. The white material for the upper conspicuity treatment provides a two-dimensional reflective image to improve the perception of closing speed. As the preamble for the final rule on truck tractor conspicuity stated (60 FR 413255),

> * * * The purpose of the upper material is to improve the distance perception of a driver of a faster vehicle approaching in the same lane. In this circumstance, the usual view of the truck tractor [or trailer] is close to orthogonal.

NHTSA emphasizes that, even when mounted vertically, a horizontal conspicuity reflex reflector retains excellent performance over the 20 degrees right to 20 degrees left range of horizontal light entrance angles, as required for the conventional reflex reflectors meeting SAE J594f that are used on trucks and cars. Advocates commented that NHTSA has no measurement of actual millicandela readings for upper rear corner treatments executed with horizontal bars for the vertical portions of the reflectorized right angle. In fact, NHTSA had reviewed a manufacturer's test data of a horizontal DOT–C reflex reflector bar used in a vertical position which showed that it greatly exceeded the performance specified by SAE J594f (at an observation angle of 0.2 degree) for conventional truck reflex reflectors which is limited to horizontal light entrance angles of 20 degrees. Performance at greater light entrance angles is necessary to highlight the side of a trailer blocking the road at an angle to the observer but not for the rear of a tractor or trailer being overtaken by an observer directly behind it. Thus, to assure that all horizontal conspicuity reflectors that could be mounted vertically achieve the necessary performance, the agency will require that the devices comply with SAE J594f when tested in the vertical position.

3M also commented that an amendment is unnecessary because there is no technological barrier to the design of reflex reflectors capable of meeting the DOT–C specification in both orientations.

NHTSA concurs that large reflex reflectors could be made incorporating facets for both orientations. However, this would negate the advantage of using existing reflectors and the new reflectors would be less cost competitive with retroreflective tape. NHTSA does not wish to place unnecessary burdens on either of the competing conspicuity material industries inasmuch as the product of each offers distinct advantages to users. Retroreflective tape is less likely to be compromised by harsh docking impacts, while the compactness of reflex reflector bars may be important to the practicability of the upper treatment on some truck tractors.

Mr. G.J.M. Meekel is the chairman of ECE–WP29–GRE (Economic Commission for Europe, Working Party 29 on the construction of vehicles, Groupe de Rapporteurs sur Eclairage), a United Nations committee that has facilitated a large degree of lighting device harmonization between European countries regarding safety standards for new vehicles. The Committee has discussed amending ECE–Regulation 48 in order to create a sufficiently broad "window of harmonization" so that vehicles manufactured in compliance with it can be sold worldwide. Mr. Meekel commented that the use of white reflex reflectors as conspicuity treatment is "not in line with the harmonization activities in GRE." NHTSA believes that the explanation for his remark lies in an artificial distinction that European regulations make between reflex reflectors, which are considered "lighting devices", and retroreflective sheeting, which is not. The only white "lighting devices" allowed on the rear of vehicles in Europe are backup and license plate lamps, thereby excluding white reflex reflectors. But white elements of retroreflective sheeting are allowed on the rear of vehicles because they are not considered to be "lighting devices." Standard No. 108, the U.S. conspicuity regulation, makes no distinction between types of retroreflective material because it requires the minimum retroreflective performance of both sheeting material and reflex reflectors to be identical. Both U.S. and European manufacturers are free to choose sheeting material rather than reflex reflectors. Mr. Meekel's general opposition to the use of reflex reflectors in conspicuity treatments is not relevant to the rulemaking action at hand because the NPRM dealt only with the interchangeability of horizontal and vertical reflectors.

In sum, the agency does not consider the arguments against the proposal to be compelling. However, the rule as amended will specify that the reflectors satisfy the test points of SAE J594f for other truck reflectors at an observation angle in the vertical position to guarantee continued satisfactory performance of future reflectors in the rotated position.

Thus, adopted paragraph S5.7.2.1(d) reads:

> A white reflex reflector complying with S5.7.2.1(a) and (c) when tested in a horizontal orientation may be installed in all orientations specified for rear upper locations in S5.7.1.4.1(b) or S5.7.1.4.3(b) if, when tested in a vertical orientation, it provides an observation angle of 0.2 degree not less than 1680 millicandelas/lux at a light entrance angle of 0 degree, not less than 1120 millicandelas/lux at any light entrance angle from 10 degrees down to 10 degrees up, and not less than 560 millicandelas/lux at any light entrance angle from 20 degrees right to 20 degrees left.

Effective Date

Because the amendment relieves a cost and testing burden and affords an optional means of complying with conspicuity requirements of 49 CFR 571.108, it is hereby found that an effective date earlier than 180 days after issuance of the final rule is in the public interest. Accordingly, the amendment effected by this notice is effective upon publication in the **Federal Register.**

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The final rule does not impose any additional burden upon any person. It will slightly reduce costs to both manufacturers and consumers. NHTSA believes that all horizontal reflex reflectors currently installed on trailers pursuant to S5.7 conform to SAE J594f. The effect of the final rule is to allow the same white reflex reflector bars to be used for vertical and horizontal locations on the rear of truck tractors

and trailers, rather than two different types of bars. Accordingly, NHTSA anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule does not have a mandatory effect upon any person. It provides manufacturers of truck tractors and large trailers an optional means of compliance with an optional requirement already in effect. If such manufacturers are installing white reflex reflectors in horizontal and vertical segments on the upper corners of these vehicles instead of retroreflective sheeting as a means of complying with paragraph S5.7, the final rule allows these manufacturers to use in vertical positions reflex reflectors designed to be mounted horizontally that meet horizontal photometric requirements. Before the final rule, manufacturers of vehicles covered by the requirements could not use horizontal reflex reflectors in vertical positions unless they also met the photometric requirements for reflex reflectors mounted vertically. The effect of the final rule, therefore, is to simplify compliance. The cost of white reflex reflectors and the costs of truck tractors and trailers on which they are installed should not be affected. Since there is no economic impact, let alone one that is significant, it is not necessary to determine formally whether the entities affected by the rules are "small businesses" within the meaning of the Regulatory Flexibility Act. In NHTSA's experience, manufacturers of truck tractors, trailers, and reflex reflectors are generally not "small businesses." Accordingly, no regulatory flexibility analysis has been prepared.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment as it does not affect the present method of manufacturing reflex reflectors.

Executive Order 12612 (Federalism)

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

Civil Justice

The final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C.30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended by adding new paragraph S5.7.2.1(d) to read as set forth below:

S5.7.2.1 * * *

(d) A white reflex reflector complying with S5.7.2.1(a) and (c) when tested in a horizontal orientation may be installed in all orientations specified for rear upper locations in S5.7.1.4.1(b) or S5.7.1.4.3(b) if, when tested in a vertical orientation, it provides an observation angle of 0.2 degree not less than 1680 millicandelas/lux at a light entrance angle of 0 degree, not less than 1120 millicandelas/lux at any light entrance angle from 10 degrees down to 10 degrees up, and not less than 560 millicandelas/lux at any light entrance angle from 20 degrees right to 20 degrees left.

Issued on: February 10, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–3904 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 2)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1998 Update

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Board adopts its 1998 User Fee Update and revises its fee schedule at this time to recover the cost associated with the January 1998 Government salary increases.

EFFECTIVE DATE: These rules are effective March 20, 1998.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1652. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board's regulations in 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's regulations in 49 CFR 1002.3(a) provide that the entire fee schedule or selected fees can be modified more than once a year, if necessary. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in Board or Interstate Commerce Commission fee policy.

Because Board employees received a salary increase of 2.45% in January 1998, we are updating our user fees to recover our increased personnel cost. With certain exceptions, all fees will be updated based on our cost formula contained in 49 CFR 1002.3(d).

The fee increases involved here result only from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services-1987 Update*, 4 I.C.C.2d 137 (1987). Therefore, we believe that notice and comment is unnecessary for this proceeding. *See Regulations Governing Fees For Services-1990 Update*, 7 I.C.C.2d 3 (1990), *Regulations Governing Fees For Services-1991 Update*, 8 I.C.C.2d 13 (1991), and *Regulations Governing Fees For Services-1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes, which are being adopted here, will not have a significant economic impact on a substantial number of small entities

because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from DC News & Data, Inc., Suite 210, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: February 9, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.1 is amended by revising paragraphs (a) and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for record search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Secretary, $11.00.

* * * * *

(e) * * *

(1) A fee of $45.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate	Grade	Rate
GS–1 ...	$7.55	GS–9 ...	$17.63
GS–2 ...	8.22	GS–10	19.41
GS–3 ...	9.26	GS–11	21.32
GS–4 ...	10.40	GS–12	25.56
GS–5 ...	11.63	GS–13	30.39
GS–6 ...	12.97	GS–14	35.92
GS–7 ...	14.41	GS–15 and over.	42.25
GS–8 ...	15.96		

* * * * *

2. In § 1002.2 paragraph (f) is revised to read as follows:

§ 1002.2 Filing fees.

(a) * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$2,800
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	1,300
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13706	17,900
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	3,000
(ii) Minor amendment	60
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	300
(6)–(10) [Reserved]	
PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	4,700
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	1,200
(iii) Petition for exemption under 49 U.S.C. 10502	8,100
(12) (i) An application involving the construction of a rail line	48,300
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	1,200
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	48,300
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	2,600
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902	4,000
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	1,200
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	4,300
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	1,100
(16)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments.	14,300
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	2,400
(iii) A petition for exemption under 49 U.S.C. 10502	4,100
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	300
(23) Abandonments filed by bankrupt railroads	1,200
(24) A request for waiver of filing requirements for abandonment application proceedings	1,100
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	1,000
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	14,600
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	150
(28)–(35) [Reserved]	
PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	12,300
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	6,600

Type of proceeding	Fee
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	966,700
(ii) Significant transaction	193,300
(iii) Minor transaction	5,000
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,100
(v) Responsive application	5,000
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	966,700
(ii) Significant transaction	193,300
(iii) Minor transaction	5,000
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	900
(v) Responsive application	5,000
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	966,700
(ii) Significant transaction	193,300
(iii) Minor transaction	5,000
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	800
(v) Responsive application	5,000
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	966,700
(ii) Significant transaction	193,300
(iii) Minor transaction	5,000
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	950
(v) Responsive application	5,000
(vi) Petition for exemption under 49 U.S.C. 10502	4,300
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	1,600
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	45,200
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	8,400
(ii) Minor amendment	60
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	500
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered	5,200
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	150
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	150
(49)–(55) [Reserved]	
PART V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1) except a complaint filed by small shipper.	27,000
(ii) A formal complaint involving rail maximum rates filed by a small shipper	1,000
(iii) All other formal complaints (except competitive access complaints)	2,600
(iv) Competitive access complaints	150
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	5,700
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	1,000
(ii) All other petitions for declaratory order	1,400
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	4,500
(60) Labor arbitration proceedings	150
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).	150
(62) Motor carrier undercharge proceedings	150
(63)–(75) [Reserved]	
PART VI: Informal Proceedings:	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	800
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	80
(78) (i) The filing of tariffs, including supplements, or contract summaries	$1 per page ($16 minimum charge.)
(ii) Tariffs transmitted by fax	$1 per page

Type of proceeding	Fee
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	50
(ii) Applications involving over $25,000	100
(80) Informal complaint about rail rate applications	350
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	50
(ii) Petitions involving over $25,000	100
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	150
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	26 per document
(84) Informal opinions about rate applications (all modes)	150
(85) A railroad accounting interpretation	700
(86) An operational interpretation	950
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(iii) Third Party Complaint	75
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	150
(88)–(95) [Reserved]	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	20 per delivery
(97) Request for service or pleading list for proceedings	15 per list
(98) (i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a **Federal Register** notice.	200
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a FEDERAL REGISTER notice.	400
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam	100
(ii) Practitioners' Exam Information Package	25
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	50
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor	10
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board	20
(iv) Public requests for *Source Codes* to the PC version URCS Phase III	500
(v) PC version or mainframe version URCS Phase II	400
(vi) PC version or mainframe version Updated Phase II databases	50
(vii) Public requests for *Source Codes* to PC version URCS Phase II	1,500
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—First Year	450
(ii) Requests for Public Use File on R–CD Each Additional Year	150
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year	650
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD	450
(v) Waybill—Surface Transportation Board or State proceeding on R–CD—Second Year on different R–CD	500
(vi) User Guide for latest available Carload Waybill Sample	50

[FR Doc. 98–3807 Filed 2–17–98; 8:45 am]

BILLING CODE 4915–00–P

Proposed Rules

Federal Register
Vol. 63, No. 32
Wednesday, February 18, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–42–AD]

RIN 2120–AA64

Airworthiness Directives; Superior Air Parts, Inc., Piston Pins Installed on Textron Lycoming Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Superior Air Parts, Inc., piston pins installed on Textron Lycoming reciprocating engines. This proposal would require removal from service of defective piston pins, and replacement with serviceable parts. This proposal is prompted by reports of numerous piston pin fractures. The actions specified by the proposed AD are intended to prevent the piston pin from puncturing the engine crankcase by the connecting rod, resulting in the loss of oil leading to total power failure and possible fire, or freeing the connecting rod, possibly puncturing the cylinder or jamming the engine crankshaft, resulting in catastrophic engine failure.

DATES: Comments must be received by March 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9–ad–engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Ft. Worth, TX 76137–4298; telephone (817) 222–4635, fax (817) 222–5785.

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 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 97–ANE–42–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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received numerous reports of fractured Parts Manufacturer Approval (PMA) Superior Air Parts, Inc. piston pins, Part Number (P/N) 13444–1, installed on Textron Lycoming IO–540, O–320, IO–720, LTIO–540, IGSO–540, IO–360, LO–360, and O–360 series reciprocating engines. The investigation reveals that some of these piston pins shipped from Superior Air Parts, Inc. between August 24, 1993, through April 22, 1996, may contain subsurface manufacturing imperfections, such as higher impurity levels, retained austenite, and grind burns. The higher impurity levels may provide a stress riser and grind burns or retained austenite may cause weaker material to give way to fatigue cracks, which may propagate to failure. Failure of the piston pin may cause puncturing of the engine crankcase by the connecting rod resulting in the loss of oil leading to total power failure and possible fire. Failure of the piston pin may free the connecting rod, possibly puncturing the cylinder or cause jamming of the engine crankshaft resulting in catastrophic engine failure.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require within 20 hours time in service after the effective date of this AD, removal from service of defective piston pins, and replacement with serviceable parts.

The FAA estimates that 19,000 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $200 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,640,000.

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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Superior Air Parts, Inc., Piston Pins Installed on Textron Lycoming Reciprocating Engines: Docket No. 97–ANE–42–AD.

Superior Air Parts, Inc. Parts Manufacturer Approval (PMA) piston pins, Part Number (P/N) 13444–1, installed on Textron Lycoming O–320–B1A, B1B, B2C, B2A, B2B, B3A, B3B, B3C, D1A, D1B, D1C, D2A, D2B, D2C, D1D, D1F, D2G, D2J, D3G, E2A, D2F, D2H, H1AD, H2AD, H1BD, H2BD, H3BD;
LIO–320–B1A, B2A
IO–320–B1A, B2A, C1A, B1C, D1A, B1B, D1B, D1AD, C1B, D2A, D2B, A2C, E2A;
AIO–320–B1B, C1B;
O–340–A
O–360–B2A, C1A, C1C, C1F, C2A, C2C, C2E, D2A, F1A6, A1A, A2A, A3A, A1C, A1D, A2D, A2E, C2D, D2B, A1AD, A1F6, A1F6D, A1G6, A1G6D, A1LD, A2F, A2G, A3AD, A4A, A4G, A4J, A4K, A4M, A3AD, C1G, A5AD, E1A6D, F1A6;
LO–360–A1C6D, C1A6D, E1AD, E1A6D, E2A6D, E1BD, E2BD;
IVO–360–A1A, VO–360–A1A, A1B, B1A, B1B;
LTO–360–E1A6D;
C1E6
TO–360–A1G6D, E1A6D, C1A6D;
HO–360–B1A, B1B, A1A;
HIO–360–A1A, A1B, B1A, C1A, C1B, D1A, E1AD, E1BD, F1AD;
IO–360–C1A, C1B, C1C, C1C6, C1D6, C1E6, C1E6D, C1F, A1A, A1B, A1B6, A1B6D, A1C, A1D6, A1D6D, A2A, A2B, A2C, A3B6D, A3D6D, B1A, B1B, B1C, B1D, B1E, B1F, B1F6, B2E, B2F, B2F6, B4A, D1A, E1A, F1A, J1AD, J1A6D, K2A, A1D;
AIO–360–A1A, A1B, A2A, A2B, B1B;
LHIO–360–C1A, C1B, F1AD;
LIO–360–C1E6;
TIO–360–A1B, C1A6D;
AEIO–360–A1E, B1G6, H1A, A1A, A1B, A1B6, A1C, A1D, A1E, A2A, A2B, A2C, B1B, B1D, B1F, B1F6, B2F, B2F6, B4A;
GO–480–B, B1A6, B1B, B1C, B1D, D1A, F6, F1A6, F2A6, F4A6, C1B6, C1D6;
G1A6, G1D6, G1H6, G1J6, G2D6, G2F6,G1B6, C2, G1E6, G1F6, G1G6, D1A, E1A6, F2D6, F3A6, F3B6, F4B6, C2C6, C2D6, C2E6, G1J6;
GSO–480–A1A6, A1C6, A2A6, B1A6, B1B6, B1C6, B1E6, B1F6, B1G6, B1J6, B2C6, B2D6, B2G6, B2H6 B1B3;
IGSO–480–A1A6, A1B6, A1C6, A1D6, A1E6, A1F6, A1G6;
IGO–480–A1B6, A1A6;
O–540–B2B5, B2C5, B4B5, E4A5, E4B5, E4C5, G1A5, H1A5D, H1A5, H2A5, H1B5D, H2B5D, A1A, A1A5, A1B5, A1C5, A1D, A1D5, A2B, A3D5, A4A5, A4B5, A4C5, A4D5, B4A5, A1D5, A2B, A3D5, B1A5, B2A5, E4B5, E4C5, F1A5, F1B5, B2B5, G2A5, B1B5, D1A5, L3C5D;
IO–540–A1A5, B1A5, B1B5, B1C5, C2C, C1B5, C1C5, C4B5, C4C5, D4A5, D4B5, D4C5, E1A5, E1B5, E1C5, G1A5, G1B5, G1C5, G1D5, G1E5, G1F5, J4A5, K1A5, K1B5, K1C5, K1D5, K1E5, M1A5, M1A5D, N1A5, P1A5, R1A5, K1E5D, D4A5, K1A5D, K1B5D, K1F5, K1F5D, K1G5, K1G5D, K1H5, K1J5, K1J5D, L1A5, S1A5, T4A5D, T4B5D, L1C5, C4D5D, U4A5D, T4C5D, U1A5D, U1B5D;
TIO–540–A1A, A1B, A2A, A2B, A2C, C1A, E1A, G1A, H1A, J2B, F2BD, J2BD, N2BD, R2AD, S1AD, AA1AD, AB1AD, U2A, C1AD, AF1A, AE2A;
LTIO–540–J2B, F2BD, J2BD, N2BD, R2AD, U2A;
IGO–540–A1A, A1C, B1A, B1C, A1B, B1B;
IGSO–540–A1A, A1C, A1D, A1E, A1H, B1A, B1C, A1H;
AEIO–540–L1B5, L1B5D, D4B5, D4A5, D4C5;
VO–540–A1A, A2A, B1A, B2A, B1B3, B1C, B2C, D1D, B2D, B2G, B1F, B1B, B1E, B2E, C1A, C2A, C1B, C1C3, B1H3, C2C;
TIVO–540–A2A;
TIO–541–A1A, E1A4, E1B4, E1C4, E1D4;
TIGO–541–E1A, B1A, C1A, D1A, D1B, G1AD; and
IO–720–A1A, A1B, B1B, C1B, D1B, B1BD, D1CD series reciprocating engines, and which were overhauled or had cylinder head maintenance performed by a repair facility other than Textron Lycoming after August 24, 1993. These engines are installed on but not limited to the following aircraft: Aero Bero AB–180;
Aero Commander;
Aero Lark 100;
Aero Victa R–2;
Aromot P–56;
Aviolight P66D;
Beagle A–109, Airedale D5–160, Husky D5–180, J1–U;
Raytheon Beech 76, 95, B–95, M–23;
Bellanca 8GCBC FP;
Bolkow 207, K1–107C;
C.A.A.R.P. S.A.N. M–23III;
Center Regente DR–253;
Cessna 172, 172RG, 177;
Champion Citabria;
Christen Husky A–1;
Daetwyler MD3–160;
DeHavilland DHA–3MK3;
Dinfia (1A–51);
Doyn-Cessna (170, 170A, 170B, 172, 172A, 172B);
Earl Horton Pawnee (Piper PA–25);
FFA Bravo AS–202/15;
Fuji F–200;
General Aviation Pinguino;
Grob G115;
Grumman AA–5;
GY–100–135;
Gyroflug Speed Canard;
Hi Sheer Wing;
Hughes 269A;
Hughes Tool YH–2HU;
InterMntn. Call Air A–6;
Kingsford-Smith J5–6;
Lake C–2, LA–4, 4A, 4P;
Malmo MF, –10, –10B;
Maule MX–7–180;
MBB BO–209C;
Mooney 20B (M20B, M20D, M20E);
Nash Petrel;
Neifa 1PD–5901;
Norman Aeroplace NAC–1 Freelance;
The New Piper, Inc. PA–44; PA–23, PA–22, PA–22S, PA–24, PA–28, PA–28S, PA–30, PA–30T, PA–39;
Partenavia (P–66) P–66, P–66B, P–66C, 131APM;
Pezetel 150;
Procaer F–15–A;
Regente N–591;
Robin DR400–140B, DR400–180, –180R, DR–340, DR–360, R–1180T, R–3140, R–3170;
Robinson R–22;
SAAB 91–D;
SOCATA. TB9, TB10, MS–886, MS–892, MS–893, Rallye 180Gt, RS–180;
Siai-Marchetti S, –202, –205;
Slingsby T67, T67C, T67M;
Societe Aero. Normande Mousquetaire (D–140), Jodel D–140C;
Std. Helicopter;
Sud Gardan GY–180, GY80–160;
Teal III TSC 1A3;
Uirapuru Aerotec 122;
Valmet PIK–23;
Wassmer WA–50A, –40, 52;

Note 1: Shipping records, engine logbooks, work orders, and parts invoices check may allow an owner or operator to determine if this AD applies.

Note 2: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the

request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the piston pin from puncturing the engine crankcase by the connecting rod, resulting in the loss of oil leading to total power failure and possible fire, or freeing the connecting rod, possibly puncturing the cylinder or jamming the engine crankshaft, resulting in catastrophic engine failure, accomplish the following:

(a) If an engine has not had a piston pin installed after August 23, 1993, or if an engine has had a piston pin installed after August 23, 1993, but it was installed by Textron Lycoming, then no action is required.

(b) For engines that had a piston pin installed after August 23, 1993, by an entity other than Textron Lycoming, within 20 hours time in service (TIS) after the effective date of this AD, determine if a suspect PMA Superior Air Parts, Inc. piston pin, P/N 13444–1, could have been installed. If unable to verify that a suspect piston pin was not installed using a records check, disassemble the engine in accordance with the applicable Maintenance Manual or Overhaul Manual, visually inspect or verify for suspect piston pins, and accomplish the following:

(1) If it is determined that suspect PMA Superior Air Parts, Inc. piston pins, P/N 13444–1, could have been installed, remove from service defective piston pins and replace with serviceable piston pins.

(2) If it is determined that suspect PMA Superior Air Parts, Inc. piston pins, P/N 13444–1, could not have been installed, no further action is required.

(c) For the purpose of this AD, a serviceable piston pin is any piston pin that has been verified not to be a PMA Superior Air Parts, Inc. piston pin, P/N 13444–1, shipped from Superior Air Parts, Inc., from August 24, 1993, through April 22, 1996. Installation of a PMA Superior Air Parts Inc. piston pin, P/N 13444–1, that cannot be verified to be outside of the suspect shipping period range, is prohibited after the effective date of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Special Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection may be performed.

Issued in Burlington, Massachusetts, on February 6, 1998.

James C. Jones,

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

[FR Doc. 98–3797 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–5]

Proposed Establishment of Class E Airspace; Delano, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish a Class E airspace area at Delano, CA. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing departure procedures at Delano Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Delano Municipal Airport, Delano, CA.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–5, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AWP–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish a Class E airspace area at Delano, CA. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing departures procedures at Delano Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing IFR operations at Delano Municipal Airport, Delano, CA. Class E airspace

designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significantly 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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragaph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 DeLANO, CA [NEW]

Tracy Municipal Airport, CA

(Lat. 35°44'44"N, long. 119°14'11" W)

That airspace extending upward from 700 feet above the surface with a 6.5-mile radius of Delano Municipal Airport, excluding the Bakersfield, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on January 21, 1998.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–3956 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–8]

Proposed Modification of Class E Airspace; Globe, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify the Class E airspace area at Globe, AZ. Additional controlled airspace extending upward from 700 feet or more above the surface of the Earth is needed to contain aircraft executing the Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 27 at Globe-San Carlos Regional Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Globe-San Carlos Regional Airport, Globe, AZ.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–8, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261 telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AWP–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the Class E airspace area at Globe, AZ. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft

executing the GPS RWY 27 SIAP at Globe-San Carlos Regional Airport. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Globe-San Carlos Regional Airport, Globe, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Globe, AZ [Revised]

Globe-San Carlos Regional Airport, AZ
(Lat. 32°21'10" N. long. 110°39'51" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Globe-San Carlos Regional airport and that airspace bounded by a line beginning at lat. 33°25'00" N, long. 110°34'30" W; to lat. 33°25'00" N, long. 110°09'00" W; to lat. 33°09'00" N, long. 110°20'00" W; to lat. 33°15'30" N, long. 110°35'00" W, thence clockwise along the 6.5-mile radius of the Globe-San Carlos Regional airport, to the point of beginning.

* * * * *

Issued in Los Angeles, California, on January 26, 1998.

Alton D. Scott,

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

[FR Doc. 98–3957 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–2]

Proposed Modification of Class E Airspace; Porterville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify the Class E airspace area at Porterville, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 12 and a GPS SIAP to RWY 30 at Porterville Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the Earth is needed to contain aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP to Porterville Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Porterville Municipal Airport, Porterville, CA.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–2, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AWP–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal

Aviation Administration, Airspace Branch, 1500 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the Class E airspace area at Porterville, CA. The establishment of a GPS RWY 12 SIAP and GPS RWY 30 SIAP at Porterville Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach and departure procedures at Porterville Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP at Porterville Municipal Airport, Porterville, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Porterville, CA [Revised]

Porterville Municipal Airport, CA
(Lat. 36°01'48" N., long. 119°03'46" W.)

That airspace extending upward from 700 feet above the surface with a 6.5-mile radius of the Porterville Municipal Airport and within an area bounded by a line beginning at lat. 35°58'00" N., long. 118°57'30" W.; to lat 35°48'30" N. long. 118°51'00" W.; to lat. 35°47'30" N., long. 119°01'00" W.; to lat. 35°55'30" W., long. 119°02'00" W., thence counterclockwise along the 6.5-miles radius of the Porterville Municipal Airport to the point of beginning.

* * * * *

Issued in Los Angeles, California, on January 22, 1998.

John G. Clancy,

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

[FR Doc. 98–3958 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209476–82]

RIN 1545–AE41

Loans to Plan Participants; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (REG–209476–82), which was published in the **Federal Register** Friday, January 2, 1998 (63 FR 42), relating to loans made from a qualified employer plan to plan participants or beneficiaries.

FOR FURTHER INFORMATION CONTACT: Vernon Carter (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections is under sections 72(p) of the Internal Revenue Code.

Need for Correction

As published, REG–209476–82 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–209476–82), which was the subject of FR Doc. 97–33983, is corrected as follows:

1. On page 43, column 2, in the preamble under the paragraph heading "*Explanation of Provisions*", the first full paragraph in the column, line 18, the language "However, a special rule applies if a plan" is corrected to read "In addition, a special rule applies if a plan".

2. On page 43, column 2, in the preamble under the paragraph heading "*Explanation of Provisions*", the first full paragraph in the column, line 26, the language "increase in basis thereafter is less than" is corrected to read "increase in basis thereafter (e.g., from after-tax contribution) is less than".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–3927 Filed 2–17–98; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 111

Elimination of Mixed BMC/ADC Pallets of Packages of Flats

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This notice presents proposed revisions to Domestic Mail Manual (DMM) sections M041 and M045 to eliminate the options for mailers to

place packages and bundles of Periodicals Mail on mixed ADC pallets and to place packages and bundles of Standard Mail (A) and Standard Mail (B) on mixed BMC pallets. Mailers will continue to have the options to place sacks, trays, or parcels on mixed ADC or mixed BMC pallets, as appropriate for the class of mail.

DATES: Comments must be received on or before April 6, 1998.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, 475 L'Enfant Plaza SW, Room 6801, Washington, DC 20260–6808. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: Since the implementation of Classification Reform in July 1996, mailers have had the options to prepare mixed ADC pallets of Periodicals and mixed BMC pallets of Standard Mail. Although these options offer some benefits in the manufacturing and distribution handling processes of mailers by reducing sack usage, they have had a negative impact on service and mailpiece integrity for packages and bundles of flats placed on mixed ADC/BMC pallets.

Mixed pallets of packages and bundles are labeled to the origin BMC or ADC serving the 3-digit prefix of the entry office for processing. These pallets may consist of carrier route, 5-digit, 3-digit, ADC, or mixed ADC packages. Studies indicate that more than 90 percent of the packages on mixed pallets are prepared to the carrier route, 5-digit, and 3-digit levels. When the mixed pallets are worked at origin, each package that is for delivery outside the service area of that facility must be handled and sorted individually to the appropriate downstream ADC or BMC facility for further processing and distribution. In many cases, the packages on these pallets could have been placed, by the mailer, in sacks containing multiple packages sorted to the carrier route(s), 5-digit, or 3-digit level. The sacks could have been processed at the origin facility, generally on a sack sorter, to the appropriate downstream facility avoiding the individual package handlings at origin, thus providing greater opportunities to improve service and maintain piece integrity for the mail contained in those packages. Pieces in mixed ADC packages are distributed at an origin ADC or concentration center.

Packages of Standard Mail that are placed on mixed BMC pallets are required to meet BMC machinability standards to facilitate processing on BMC parcel sorters. However, in many instances, packages of flat-size mail on these pallets are being handled manually at origin and downstream BMCs and ADCs because they do not maintain their integrity on the parcel sorting equipment. This manual sortation drives more costs and processing time into the system.

For the past year, the Postal Service has been advising the mailing industry that the delays in delivery, damage to mailpieces, and additional processing costs to the Postal Service that may result from preparation of these optional mixed pallet levels outweigh the mail production benefits to mailers. The Postal Service was planning to eliminate this option in the future once it expected that a sufficient quantity of sacks would be available on a regular basis to handle any volume that would shift from mixed pallets to sacks. Through the purchase of additional plastic sacks, we are confident that we will have a sufficient quantity of sacks available to handle all volume shifts that are likely to result from this change. Moreover, the implementation of the Mail Transport Equipment Service Centers (MTESC) over the next 24 months will ensure the continued availability of sacks.

It should be noted that there are several other efforts under way, including the work being conducted by the Mailers' Technical Advisory Committee (MTAC) Presort Optimization Workgroup, to explore opportunities for reducing the need for mixed pallets without necessarily moving all the mail on these pallets back into sacks. However, for the reasons described above, the Postal Service has decided to go forward at this time with its proposal to eliminate the mixed pallets for packages and bundles.

Discussions with many mailers have revealed that concerns about delivery times have caused them to voluntarily eliminate the preparation of optional mixed BMC and mixed ADC pallets. They were able to do so because most software used by mailers to palletize mail already allows them to turn off the optional mixed BMC/ADC sorts and to sack the packages that would have been placed on these pallets. Accordingly, in most instances, software will not require modification to accommodate the proposed changes.

The Postal Service proposes that the revised standards become effective 45 days from the date that the final rule is published.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)), regarding proposed rulemaking by 39 U.S.C. 401(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Amend the Domestic Mail Manual as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M020 Packages and Bundles

* * * * *

1.0 BASIC STANDARDS

[Amend the third sentence in 1.4 by removing the reference to mixed BMC pallets to read as follows:]

1.4 Palletization

* * * Packages and bundles on BMC pallets must be shrinkwrapped and machinable on BMC parcel sorters; machinability is determined by the USPS * * *.

M040 Pallets

M041 General Standards

* * * * *

5.0 PREPARATION

5.1 Presort

[Amend 5.1 by revising the last sentence and adding new sentences to read as follows:]

For sacks, trays, or machinable parcels on pallets, the mailer must prepare all required pallet levels before any mixed ADC or mixed BMC pallets are prepared for a mailing or job. Packages and bundles prepared under M045 must not be placed on mixed ADC or mixed BMC pallets. Packages and bundles that cannot be placed on pallets must be prepared in sacks under the standards for the rate claimed.

5.2 Required Preparation

[Amend 5.2 by removing the second and third sentences and revising the fourth sentence to read as follows:]

Mixed pallets of sacks, trays, or machinable parcels must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager

* * *

* * * * *

5.6 Sacked Mail

[Amend 5.6 by revising the first sentence to read as follows:]

Mail that is not palletized (e.g., the mailer chooses not to prepare BMC pallets, or the packages do not meet the machinability standards in M020) must be prepared under the standards for the rate claimed.

* * * * *

M045 Palletized Mailings

* * * * *

2.0 PACKAGES OF FLATS

2.1 Standards

[Amend 2.1 by revising the second sentence to read as follows:]

The palletized portion of a mailing may not include packages sorted to mixed ADC or to foreign destinations.

* * * * *

2.4 Size—Standard Mail (B)

* * * * *

[Amend 2.4c by revising the second sentence to read as follows:]

Packages at other rates must be sorted to 5-digit, 3-digit, optional SCF, and ADC destinations, as appropriate.

* * * * *

3.0 OPTIONAL BUNDLES—PERIODICALS AND STANDARD MAIL (A)

3.1 Standards

[Amend 3.1 by revising the second sentence to read as follows:]

The palletized portion of a mailing may not include bundles sorted to mixed ADC or to foreign destinations.

* * * * *

4.0 PALLET PRESORT AND LABELING

4.1 Packages, Bundles, Sacks, or Trays

* * * * *

e. As appropriate:

[Amend the beginning of (1) by adding "(sacks and trays only)" to read as follows:]

(1) Periodicals (sacks and trays only): mixed ADC: optional; * * *

[Amend the beginning of (2) by adding "(sacks and trays only)" to read as follows:]

(2) Standard Mail (sacks and trays only): mixed BMC: optional; * * *

* * * * *

5.0 PALLETS OF PACKAGES, BUNDLES, AND TRAYS

* * * * *

[Amend 5.3 to eliminate references to mixed BMC pallets to read as follows:]

5.3 BMC and Mixed BMC Pallets

Packages and bundles placed on BMC pallets must be machinable on BMC parcel sorting equipment. Line 2 on pallet labels must reflect the processing category of the pieces. A BMC or mixed BMC (trays only) pallet may include pieces that are eligible for the DBMC rate and others that are ineligible if the mailer provides documentation showing the pieces that qualify for the DBMC rate.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–3952 Filed 2–17–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–35–1–6659b; A–1-FRL–5968–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval/limited disapproval of a State Implementation Plan (SIP) revision and full approval of two other SIP revisions submitted by Massachusetts. This revision establishes and requires the implementation of reasonably available control technology (RACT) for major stationary sources of nitrogen oxides (NOx). The intended effect of this action is to propose a limited approval/limited disapproval of a regulation and the full approval of two source-specific NOx RACT determinations. This action is being taken under the Clean Air Act (CAA). Public comments on this document are requested and will be considered before taking final action on this SIP revision.

DATES: Comments must be received on or before March 20, 1998.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Massachusetts Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, at (617) 565–2773, or by e-mail at: Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: On July 15, 1994, October 4, 1996, and December 2, 1996, the Massachusetts Department of Environmental Protection (Massachusetts or MA DEP) submitted revisions to its SIP. The revisions added 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx)," as well as source-specific NOx RACT determinations for Specialty Minerals, Incorporated in Adams and Monsanto Company's Indian Orchard facility in Springfield on the above dates, respectively.

I. Background

The CAA requires States to develop RACT regulations for all major stationary sources of NOx in areas which have been classified as "moderate," "serious," "severe," and "extreme" ozone nonattainment areas, and in all areas of the Ozone Transport Region (OTR). EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the CAA. These sections, taken together, establish the requirements for Massachusetts to submit a NOx RACT regulation for all major stationary sources of NOx statewide.

These CAA NOx RACT requirements are further described by EPA in a document entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). The November 25, 1992 document, also known as the NOx Supplement, should be referred to for

more detailed information on NOx requirements. Additional EPA guidance memoranda, such as those included in the "NOx Policy Document for the Clean Air Act of 1990," (EPA–452/R–96–005, March 1996), should also be referred to for more information on NOx requirements.

Section 182(b)(2) requires States located in areas classified as moderate ozone nonattainment areas to require implementation of RACT with respect to all major sources of volatile organic compounds (VOC). Additionally, section 182(f) states that, "The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen." This RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications.

Section 302 of the CAA generally defines "major stationary source" as a facility or source of air pollution which has the potential to emit 100 tons per year or more of air pollution. This definition applies unless another provision of the CAA explicitly defines major source differently. Therefore, for NOx, a major source is one with the potential to emit 100 tons per year or more in marginal and moderate areas, as well as in attainment areas in the OTR. However, for serious nonattainment areas, a major source is defined by section 182(c) as a source that has the potential to emit 50 tons per year or more. The entire Commonwealth of Massachusetts is classified as a serious nonattainment area for ozone. Thus, in Massachusetts, NOx RACT is required from all sources with the potential to emit 50 tons per year or more of NOx.

A. Regulatory Background

Massachusetts was notified in a January 23, 1991 letter from Region I that "The CAAAs mandate that within 2 years of enactment, states submit a SIP revision which requires the implementation of RACT and NSR requirements with respect to oxides of nitrogen (NOx) for all major stationary sources * * * "

On August 10, 1992, Massachusetts submitted a draft of 310 CMR 7.19 to EPA for comment. Region I met with MA DEP on August 26, 1992 and provided informal oral comments on the draft. On January 5, 1993, EPA Region I received proposed revisions to the Massachusetts SIP, including 310 CMR 7.19. On February 8, 9, 10, and 12, 1993, Massachusetts held public hearings on these proposed SIP changes. Region I provided formal comments to Massachusetts on February 19, 1993.

In April 1994, Massachusetts proposed a number of minor changes to 310 CMR 7.19 and held a public hearing on those changes on May 6, 1994. EPA submitted written comments on these changes on May 19, 1994. The regulations were signed by the Secretary of State on July 1, 1994, and became effective on that date. MA DEP submitted its adopted regulation as a formal SIP submittal to EPA on July 15, 1994. After reviewing the regulation for completeness, EPA sent a letter on July 15, 1995 stating that Massachusetts' rule had been found to be administratively and technically complete.

Additionally, in April 1994, Massachusetts proposed a number of amendments to 310 CMR 7.19 and 310 CMR 7.00 Appendix B(4) concerning emissions averaging. Public hearings were held on May 6 and 10, 1994. EPA provided written comments to Massachusetts on May 19, 1994. These changes were signed by the Secretary of State on January 11, 1995 and became effective on January 27, 1995. These adopted changes were received by EPA on April 14, 1995. On September 11, 1995, EPA sent a letter to Massachusetts deeming the submittal of these changes administratively and technically complete. On August 8, 1996, EPA approved these changes as part of the emissions averaging, banking, and trading program (see 61 FR 41371).

On February 7, 1995, MA DEP proposed approval of the NOx RACT emission control plan which defined NOx RACT for two lime kilns at Specialty Minerals, Inc., in Adams, Massachusetts. The two kilns are subject to the miscellaneous RACT provisions of 310 CMR 7.19(12). On March 9, 1995, a public hearing was held on the proposed approval. EPA submitted written comments to the public record on March 3, 1995 concerning this proposal. On June 16, 1995, MA DEP issued a final approval of the NOx RACT emission control plan (transmittal ı65843). On October 4, 1996, the final approval of the plan was submitted to EPA for approval into the Massachusetts SIP. On February 6, 1997, EPA deemed the submittal administratively and technically complete.

Similarly, on May 19, 1995, MA DEP proposed approval of the NOx RACT emission control plan for Monsanto Company's Indian Orchard facility in Springfield, Massachusetts. On June 16, 1995, a public hearing was held concerning the proposed approval. The proposed plan approval defined NOx RACT for the stoker fired coal burning boiler at Monsanto which is subject to the miscellaneous NOx RACT provisions of 310 CMR 7.19(12). EPA submitted written comments to the public record on June 9, 1995. MA DEP proposed a final approval on September 12, 1996, and held a second hearing on the proposal on October 4, 1996. MA DEP issued a final NOx RACT plan approval on October 28, 1996 and submitted the final plan approval to EPA on December 2, 1996 for approval into the Massachusetts SIP. On February 6, 1997, EPA deemed the submittal administratively and technically complete.

B. Description of Submittal

Massachusetts' Regulation 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx)," is divided into fifteen sections. Section (1) defines the applicability of the overall rule to a NOx emitting facility, although the applicability of the rule to an individual emission unit is further determined in each section, based on a unit's type and size. Basically, an emissions unit is subject to the rule if it exceeds a minimum capacity rating and is located at a major source.

Section (2) describes the general provisions of the regulation, including the general criteria for source specific alternative RACT limits, as well as general requirements for seasonal fuel-switching.

Section (3) describes the general applicability, notification, elements, prohibitions, and approval of emission control plans for certain types of RACT subject sources.

Section (4) describes the NOx RACT requirements for large boilers. Large boilers are defined as having an energy input capacity of 100 million British thermal units (Btu) per hour or greater. This section further defines NOx RACT emission limitations for the following types of large boilers: dry bottom boilers burning coal, both tangentially and face-fired; stoker fired boilers burning other solid fuels; boilers burning either oil or oil and gas; and boilers burning only gas. Section (4) also sets out the requirements for any large boiler owners choosing to repower, as well as the emission rate limitations that the repowered units must meet. Additionally, section (4) includes the requirements for large boilers seeking alternative NOx RACT determinations, procedures for determining the NOx standard when multiple fuels are burned, and testing, monitoring, record keeping, reporting, and emission control plan requirements. Also, section (4) sets a carbon monoxide emission limitation for large boilers.

Section (5) describes the requirements for medium boilers. Medium boilers are defined as boilers with energy input capacities of greater than 50 million Btu per hour but less than 100 million Btu per hour. This section sets NOx standards for the following types of boilers: tangential, face fired, or stoker fired boilers burning solid fuels; tangential or face fired boilers burning gas only, distillate oil or distillate oil and gas, and residual oil or residual oil and gas; and boilers which cofire multiple fuels. Additionally, section (5) sets a carbon monoxide emission limitation for medium boilers.

Section (6) describes the NOx RACT requirements for boilers with energy input capacities of less than 50 million Btu per hour and greater than or equal to 20 million Btu per hour, i.e., small boilers. Basically, this section describes the tune-up procedures which must be followed for these boilers, as well as the applicable emissions record keeping and reporting requirements.

Section (7) of the rule deals with stationary combustion turbines having energy input capacities of 25 million Btu per hour or greater. This section sets NOx emission standards for simple and combined cycle stationary combustion turbines burning gas, oil, or gas and oil.

Section (8) of the rule describes the requirements for stationary reciprocating internal combustion (IC) engines with energy input capacities greater than or equal to 3 million Btu per hour. This section exempts engines which do not operate for more than 300 hours per year and are not operated as load-shaving units, peak power units, or standby engines in an energy assistance program. This section sets emission standards for reciprocating internal combustion engines which have operated for 1000 hours or more during a 12 month period since 1990. The specific standards apply to the following engine types: rich burn, gas-fired; lean burn, gas-fired; and lean burn, oil-fired or dual fueled. Section (8) requires ignition timing retard to be performed on engines which have not operated more than 1000 hours per year since 1990.

Section (9) is reserved for NOx RACT requirements for incinerators. Section (10) is also reserved.

Section (11) describes the requirements for glass melting furnaces that have maximum production rates of 14 tons or greater of glass removed per day.

Section (12) describes NOx RACT requirements for miscellaneous emission units, i.e., emissions units with potential emissions of NOx greater than or equal to 25 tons per year, before the application of control equipment, at facilities having potential emissions greater than or equal to 50 tons per year of NOx, for which 310 CMR 7.19 does not set specific NOx emission standards. This section exempts emissions units already subject to BACT or LAER. Section (12) requires that the emission control plans for these miscellaneous NOx RACT sources be approved by EPA as well as the State.

Section (13) establishes testing, monitoring, record keeping, and reporting requirements for sources subject to sections 7.19(2)(b), (4), (5), (7), (8), (9), (10), (11), (12), or (14). This section requires certain sources to demonstrate compliance with NOx emission standards by using continuous emission monitoring systems (CEMS). These sources include: boilers with energy input capacities greater than 250 million Btu per hour, units involved in emissions averaging, combined cycle combustion turbines with energy input capacities of greater than or equal to 100 million Btu per hour, sources currently using CEMS, and sources determined to need a CEMS as part of a miscellaneous or alternative RACT plan. Section (13) also describes the specific CEMS requirements. For other types of sources, section (13) describes the stack-testing and record keeping requirements which must be met.

Section (14) deals with the averaging of emissions from multiple units to achieve compliance. Massachusetts previously submitted this section as part of the regulations concerning emissions averaging as specified in 310 CMR 7.00 Appendix B(4). These regulations were approved in a separate rulemaking action.

Section (15) specifies the proration formula for determining the applicable emission limitation when different fuels are burned either simultaneously or during the same hour or same day if a 24 hour averaging time is used (i.e., cofiring).

Additionally, Massachusetts submitted two case specific RACT determinations for facilities with NOx emitting units that are subject to the miscellaneous RACT provisions of 310 CMR 7.19(12). First, the NOx RACT emission control plan for Specialty Minerals, Inc. specifically defines NOx RACT for two lime kilns at the facility located in Adams, Massachusetts. Similarly, the NOx RACT emission control plan for Monsanto Company's Indian Orchard facility in Springfield, Massachusetts specifically defines NOx RACT for the facility's stoker fired coal burning boiler.

EPA's evaluation of the submitted regulations and source specific RACT determinations is detailed in a memorandum, dated May 13, 1997, entitled "Technical Support Document for Massachusetts' Regulation 310 CMR 7.19, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx), and Case-Specific NOx RACT for Monsanto Company's Indian Orchard Plant in Springfield, and Specialty Minerals, Inc. in Adams." Copies of the document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the ADDRESSES section of this document.

II. Issues

There are two issues associated with this rulemaking action. The first issue is related to the miscellaneous RACT provisions of 310 CMR 7.19(12). Massachusetts proposed NOx RACT emission control plans for four sources with processes subject to the miscellaneous NOx RACT provisions of the rule: Lee Lime Corporation in Lee; Specialty Minerals, Inc., in Adams; Indeck Energy Services of Turners Falls, Inc. in Turners Falls; and, Monsanto Company, in Springfield. To date, however, EPA has only received SIP submittals for Specialty Minerals, Inc. and Monsanto Company. Therefore, Massachusetts must still submit final NOx RACT emission control plans for the units subject to miscellaneous NOx RACT provisions at Lee Lime and Indeck Energy.

Second, the July 15, 1994 SIP submittal for 310 CMR 7.19 did not contain any emission limitations for incinerators with the potential to emit greater than 50 tons of NOx per year, including municipal waste combustors. According to the Massachusetts emissions inventory and EPA's database in the Aerometric Information Retrieval System (AIRS), however, there are a number of incinerators of this size currently operating in Massachusetts. Therefore, Massachusetts must either revise section 7.19(9) to include a NOx emission limit for these categories of units, or consider these units as subject to the miscellaneous RACT section (i.e., 310 CMR 7.19(12)) of the rule and define source-specific NOx limits for them. As miscellaneous RACT units, 310 CMR 7.19(12) requires sources to submit emission control plans to MA DEP; subsequently, the plan approvals must be submitted to and approved by EPA as source-specific SIP revisions.

III. EPA Proposed Action

EPA's review of this material indicates that Massachusetts has defined NOx RACT emission limitations or technology standards for a number of source categories and individual sources. However, not all major stationary sources of NOx have been covered by the regulations and case specific determinations. Thus, by incorporating 310 CMR 7.19 and the submitted RACT determinations into the Massachusetts SIP, the SIP is strengthened but does not meet the requirements of sections 182(b)(2) and 182(f) of the CAA.

Therefore, EPA is proposing a limited approval/limited disapproval of the Massachusetts SIP revision for 310 CMR 7.19, which was submitted on July 15, 1994. In light of the deficiencies discussed in the issues section above, EPA cannot grant full approval of this rule under section 110(k)(3) and part D of the CAA. However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) and EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also includes a limited disapproval. EPA is also proposing full approval of the source specific RACT determinations for Monsanto Company in Springfield, and Specialty Minerals, Inc. in Adams, Massachusetts.

To receive full approval of 310 CMR 7.19, Massachusetts must submit final emission control plans for Lee Lime Corporation in Lee and Indeck Energy Services in Turners Falls, Massachusetts. Additionally, Massachusetts must either revise section 7.19(9) to include NOx emission limits for incinerators, or consider these units as subject to the miscellaneous RACT section (i.e., 310 CMR 7.19(12)) of the rule and define source-specific NOx limits for them. For full approval of 310 CMR 7.19, all of these limits must be approved by EPA.

As stated, EPA is also proposing a limited disapproval of this rule under sections 110(k)(3) and 301(a) of the CAA because the rule does not meet the requirements of sections 182(b) and 182(f) of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency is corrected within 18 months of the disapproval. Section 179(b) makes two sanctions available to the Administrator: highway funding and offsets. The 18-month period referred to in section 179(a) will begin at the effective date established in this limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

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

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

B. Regulatory Flexibility Act

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

Limited SIP approvals and disapprovals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP limited approval/limited disapproval does not impose any new requirements, it does not have a significant impact on any affected small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed limited approval/limited disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 4, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–4004 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 414

Notice of Public Hearing on Proposed Rule and Draft Programmatic Environmental Assessment for Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearing.

SUMMARY: The Bureau of Reclamation (Reclamation) published a notice of proposed rulemaking on December 31, 1997 (62 FR 68491), which included the text of a proposed rule titled, "Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States." Reclamation also published a notice of availability of a draft programmatic environmental assessment on December 31, 1997 (62 FR 68465). The notice of proposed rulemaking stated that Reclamation would hold public hearings upon request made no later than 4 p.m. Pacific time on January 30, 1998. In response to that notice, Reclamation received one request for a public hearing in Ontario, California and has scheduled a public hearing.

DATES: The public hearing will be held on February 23, 1998, at 1 p.m., Ontario, California.

ADDRESSES: The public hearing will be held at the Doubletree Hotel Ontario, 222 North Vineyard, Ontario, California. Address comments/requests to testify to Mr. Dale Ensminger, Boulder Canyon Operations Office, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006–1470.

FOR FURTHER INFORMATION CONTACT: Any person wishing to testify at this public hearing can also contact Mr. Dale Ensminger at telephone (702) 293–8659 or fax (702) 293–8402.

SUPPLEMENTARY INFORMATION: The hearing will commence at 1 p.m. and will continue until all persons wishing to testify have had an opportunity to do so. In order to allow an opportunity to everyone who wishes to testify, initial oral statements will be limited to 10 minutes. After all persons wishing to testify have had a chance to be heard, Reclamation will consider allowing additional time to those who request it.

In order to assist the transcriber and to ensure an accurate record, Reclamation requests that each person who testifies at the hearing give the transcriber a copy of that oral testimony.

Any person, whether or not that individual attends the public hearing or submits oral testimony at the hearing, may submit written comments on the proposed rule and the draft programmatic environmental assessment. There is no limit to the length of written comments. However, written comments should be specific, confined to the issues pertinent to the proposed rule or the draft programmatic environmental assessment, and should explain the reason for any recommended change. Reclamation will accept written comments through March 2, 1998, in accordance with the criteria set forth in the notice of proposed rulemaking published in the **Federal Register** on December 31, 1997 (62 FR 68491).

Dated: February 11, 1998.

John E. Redlinger,

Deputy Area Manager, Boulder Canyon Operations Office.

[FR Doc. 98–3979 Filed 2–17–98; 8:45 am]

BILLING CODE 4310–94–P

Notices

Federal Register
Vol. 63, No. 32
Wednesday, February 18, 1998

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

Animal and Plant Health Inspection Service

[Docket No. 98–009–1]

Pioneer Hi-Bred International, Inc.; Receipt of Petition for Determination of Nonregulated Status for Corn Genetically Engineered for Male Sterility and Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Pioneer Hi-Bred International, Inc., seeking a determination of nonregulated status for corn lines designated as 676, 678, and 680, which have been genetically engineered for male sterility and tolerance to the herbicide glufosinate as a marker. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk.

DATES: Written comments must be received on or before April 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–009–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–009–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8761. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On December 8, 1997, APHIS received a petition (APHIS Petition No. 97–342–01p) from Pioneer Hi-Bred International, Inc. (Pioneer), of Johnston, IA, requesting a determination of nonregulated status under 7 CFR part 340 for male sterile, glufosinate-tolerant corn lines designated as 676, 678, and 680 (lines 676, 678, and 680). The Pioneer petition states that the subject corn lines should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, corn lines 676, 678, and 680, have been genetically engineered to contain an adenine methylase, or *dam* gene derived from *Escherichia coli*. The *dam* gene expresses a DNA adenine methylase enzyme in specific plant tissue, which results in the inability of the transformed plants to produce anthers or pollen. The subject corn lines also contain the *pat* selectable marker gene isolated from the bacterium *Streptomyces viridochromogenes*. The *pat* gene encodes a phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into a plant cell, confers tolerance to the herbicide glufosinate. Linkage of the *dam* gene, which induces male sterility, with the *pat* gene, a glufosinate tolerance gene used as a marker, enables identification of the male sterile line for use in the production of hybrid seed. The subject corn lines were transformed by the particle gun process, and expression of the introduced genes is controlled in part by gene sequences derived from the plant pathogen cauliflower mosaic virus (CaMV).

Corn lines 676, 678, and 680 are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences derived from the plant pathogen CaMV. The subject corn lines have been evaluated in field trials conducted since 1995 under APHIS notifications. In the process of reviewing the permit applications for the U.S. field trials of these corn lines, APHIS determined that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the

regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, the EPA must approve the new or different use. In conducting such an approval, the EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide. The herbicide glufosinate is registered for use on corn in the United States. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA. The EPA has granted an exemption from the requirement of a tolerance for phosphinothricin acetyltransferase and the genetic material necessary for its production in corn and on all raw agricultural commodities.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Pioneer has begun consultation with FDA on the subject corn lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of the Pioneer's male sterile and glufosinate-tolerant corn lines 676, 678, and 680, and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17. 2.51, and 371.2(c).

Done in Washington, DC, this 12th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4037 Filed 2–17–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on March 3 at the Riverside Motel at 971 SE Sixth St. Grants Pass, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Coordinated watershed restoration between federal and non-federal land managers; (2) Province monitoring priorities; (3) Forest health issues; (4) Report from local BLM and Forest Service on local issues; and (5) public comment. All Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone 541–858–2322.

Dated: February 9, 1998.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 98–3924 Filed 2–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Beef Cattle Pesticide Use Survey.

DATES: Comments on this notice must be received by April 24, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Beef Cattle Pesticide Use Survey.

Type of Request: Intent to seek approval to conduct an information collection.

Abstract: Producers of beef cattle in 12 Western States will be surveyed. The survey asks for information about pesticides used to treat beef cattle to control external parasites, pesticides used in and around beef cattle facilities, and beef cattle pest management practices. Data collected will help provide quality information to fulfill certain requirements of the Food Quality Protection Act of 1996. The Environmental Protection Agency (EPA) must make regulatory decisions affecting many pesticide products. In order to do an effective risk assessment, accurate pesticide use information is essential. A Pesticide Benefit Assessments report will be produced by the United States Department of Agriculture (USDA). With the information, EPA and USDA together can evaluate the risks and the benefits of pesticide use. Presently, there is very little information on pesticides used on beef cattle.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by

Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Beef cattle producers in 12 Western States.

Estimated Number of Respondents: 2,000.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., January 22, 1998.

Rich Allen,

Acting Administrator, Nutional Agricultural Statistics Service.

[FR Doc. 98–4035 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–20–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Commerce Secretary's 2000 Census Advisory Committee. The meeting will convene on March 19–20, 1998, at the Inn and Conference Center, University of Maryland University College, University Boulevard and Adelphi Road, College Park, MD 20742. The Committee will discuss Census 2000 issues including address lists, methodology, plans for Census 2000 Dress Rehearsal data, and other related topics.

The Committee is composed of a Chair, Vice Chair, and up to thirty-five member organizations, all appointed by the Secretary of Commerce. The Committee will consider the goals of Census 2000 and user needs for information provided by that census. The Committee will provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Committee shall consider all aspects of the conduct of the 2000 census of population and housing and shall make recommendations for improving that census.

DATES: On Thursday, March 19, 1998, the meeting will begin at 8:30 a.m. and adjourn for the day at 4:30 p.m. On Friday, March 20, 1998, the meeting will begin at 8:30 a.m. and adjourn at 4 p.m.

ADDRESSES: The meeting will take place at the Inn and Conference Center, University of Maryland University College, University Boulevard and Adelphi Road, College Park, MD 20742.

FOR FURTHER INFORMATION CONTACT: Anyone wishing additional information about this meeting, or who wishes to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Building 3, Washington, DC 20233, telephone: 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: A brief period will be set aside on Friday afternoon for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301–357–2308, TDD 301–457–2540.

Dated: February 10, 1998.

Lee Price,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 98–3928 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF COMMERCE

International Trade Administration

Centers for Disease Control Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–094. *Applicant:* Centers for Disease Control, Morgantown, WV 26505–5288. *Instrument:* Electron Microscope, Model JEM–1220. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 62 FR 62288, November 21, 1997. *Order Date:* September 11, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–4071 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–001. *Applicant:* University of Texas at Austin, Materials Science & Engineering Center, MS&E—Building, ETC. Room 9.102, M/C C2201, 26th & Dean Keaton Streets, Austin, TX 78712. *Instrument:* IR Image Furnace, Model SC–M35HD. *Manufacturer:* NEC Nichiden Machinery Ltd., Japan. *Intended Use:* The instrument will be used in an ongoing research project that includes growth of transition-metal oxide crystals with the objectives of providing highly reliable data to study the electronic behavior at the crossover from itinerant to localized electrons in transition-metal oxides. Application accepted by Commissioner of Customs: January 12, 1998.

Docket Number: 98–002. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* HD Collector Upgrade for Mass Spectrometer. *Manufacturer:* Pro-Vac Services, United Kingdom. *Intended Use:* The instrument is an accessory which will upgrade the analytical capabilities of an existing mass spectrometer to analyze stable isotope abundance of H in natural materials for a variety of environmental, biological and ecological research projects. In addition, the instrument will be used for educational purposes in the course Environmental Isotope Geochemistry for student practice of what is learned during the lecture part of the course. Application accepted by Commissioner of Customs: January 21, 1998.

Docket Number: 98–003. *Applicant:* University of Vermont, Department of Medicine, Given Building C–247, Burlington, VT 05405. *Instrument:* (40 each) HV Stopcock (Laboratory Glassware). *Manufacturer:* Louwers Hapert Glasstechnics BV, The Netherlands. *Intended Use:* The instruments are components assembled from tubes that will be used in the reduction of water to hydrogen by the zinc reduction method. Experiments will be conducted involving the use of double labeled water to determine metabolic rates of research subjects. Application accepted by Commissioner of Customs: January 21, 1998.

Docket Number: 98–004. *Applicant:* University of California at Los Angeles, Plasma Physics Laboratory, 405 Hilgard Avenue, P.O. Box 951547, Los Angeles, CA 90095–1547. *Instrument:* YAG Pumped Dye Laser. *Manufacturer:* Spectron Laser Systems, United Kingdom. *Intended Use:* The instrument will be used as the illuminator on a resonant lidar system. It will be used to excite sodium at 90 km altitude for the purposes of monitoring density during auroral conditions. The density will be monitored by tuning the dye laser to the sodium resonance wave length at 590 nm and measuring the strength of the return. Application accepted by Commissioner of Customs: January 26, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–4072 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021098F]

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's Dogfish Technical Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, March 5, 1998, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA; telephone: 215–492–0400.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331

SUPPLEMENTARY INFORMATION: Agenda items include overview of current stock status, definition of overfishing, discussion of possible management actions necessary including reductions in F and possible rebuilding schedule, and discard issues and required analyses.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 11, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4045 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021098C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Bottomfish Task Force.

DATES: The meeting will be held on March 5, 1998, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Western Pacific Regional Fishery Management Council, Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Bottomfish Task Force will review a draft amendment for the Mau Zone bottomfish fishery limited entry program in the Northwestern Hawaiian Islands. The Task Force will discuss new entry criteria for the limited entry program and consider other business as needed.

Although other issues not contained in this agenda may come before this Task Force for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: February 11, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4044 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021198A]

Marine Mammals

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that on February 10, 1998, Permit No. 827 (P278D), issued to Dr. Brent Stewart, Hubbs-Sea World Research Institute, 1700 South Shores Road, San Diego, California 92109, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson (301/713–2289).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the regulations of the governing the taking and importing (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The amendment authorizes the continuation of research under Permit No. 827 (P278D) for an additional year. The permit will now expire March 31, 1999.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 11, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4043 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.# 021098H]

Marine Mammals; File No. P771#74

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the Alaska Fisheries Science Center, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070, has requested an amendment to scientific research Permit No. 977.

DATES: Written or telefaxed comments must be received on or before March 20,1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001); and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070 (206/526–6150).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 977, issued on September 14, 1995 (60 FR 49260) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 977 authorizes the permit holder to: take up to 250,410 California sea lions, 9,275 Northern fur seals and 21,650 Northern elephant seals in the course of conducting four research projects over a 3 to 5-year period which will focus on several aspects of California sea lion biology: 1) annual at-sea distribution, foraging behavior, and food habits of adult females, mother-pup activity patterns and weaning behavior; 2) identification of diseases in the population and the effects of diseases on survival of individuals and weaning parameters of pups; 3) assessment of vital parameters; and 4) assessment of population trends and pup mortality: live and dead pup

counts. Research will take place on San Miguel Island, the Channel Islands and haul-out sites along the entire coast of California. Research will be initiated in September 1995.

The permit holder requests authorization to: extend the 3-year project to 5 years; extend the duration of the permit to December 31, 2000; and increase the number of pups by 1500 over the next three field seasons.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 11, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4049 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

February 11, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: February 18, 1998.

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 these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In exchange of notes, the Governments of the United States and Indonesia agreed to further revise the 1998 Group II and Wool Subgroup limits for integration.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 67625, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 11, 1998.

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 19, 1997, 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 Indonesia and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on February 18, 1998, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing and exchange of notes between the Governments of the United States and Indonesia:

Category	Twelve-month limit [1]
Group II 201, 218, 220, 222–224, 226, 227, 237, 239pt. [2], 332, 333, 352, 359–O [3], 362, 363, 369–O [4], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [5], 464, 469pt. [6], 603, 604–O [7], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [11], as a group.	90,410,650 square meters equivalent.
Subgroup in Group II 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group.	3,010,294 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt.).

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[7] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–4012 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 10:00 a.m., Tuesday, February 24, 1998.
PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule Enforcement review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98–4216 Filed 2–13–98; 2:38 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 2:00 p.m., Thursday, February 26, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98–4217 Filed 2–13–98; 2:38 pm]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Acquisition and Technology), Defense Information Systems Agency, Defense Technical Information Center.
ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Acquisition and Technology), Defense Information Systems Agency, Defense Technical Information Center (DTIC) announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 20, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: ATTN: DTIC–BCS, Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call Ms. Diana Roane at (703) 767—8238 or DSN 427–8238.

TITLE, ASSOCIATED FORM, AND OMB NUMBER: Registration for Scientific and Technical Information Services, DD Form 1540, OMB Number 0704–0264.

NEEDS AND USES: The data that the Defense Technical Information Center (DTIC) handles is controlled, either because of distribution limitations or security classification. For this reason, all potential users are required to register for service. The registration procedure is mandated by DOD Directive 5200.21, Dissemination of DOD Technical Information. Federal Government agencies and their contractors are required to complete the DoD Form 1540, Registration for Scientific and Technical Information Services (OMB Number 0704–0264). The contractor community completes a separate DD Form 1540 for each contract or grant and registration is valid until the contract expires.

Affected Public: Businesses or other for-profit, Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Annual Burden Hours: 208.

Number of Respondents: 500.

Responses Per Respondent: 1.

Average Burden Per Response: 25 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DoD Scientific and Technical Information Program (STIP) requires the exchange of scientific and technical information within and among Federal Government agencies and their contractors. The DD Form 1540 serves as a registration tool for Federal Government agencies and their contractors to access DTIC services. The contractors, subcontractors, and potential contractors are required to obtain certification from designated approving officials. Federal Government agencies need certification from approving officials and security offices only when requesting access to classified data. All collected information is verified by DTIC's Registration Branch.

Dated: February 11, 1998.

Patricia L. Toppings,
Alternate OSD Federal Register, Liaison Officer, Department of Defense.
[FR Doc. 98–3916 Filed 2–17–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Records Declassification Advisory Panel

AGENCY: Department of Defense, Historical Advisory Committee.
ACTION: Notice.

SUMMARY: Notice is hereby given of the upcoming meeting of the Historical Records Declassification Advisory Panel. The purpose of this meeting is to discuss recommendations to the Department of Defense on topical areas of interest that, from a historical perspective, would be of the greatest benefit if declassified. The OSD Historian will chair this meeting.
DATES: Friday, March 6, 1998.
TIME: The HRDAP morning session will be closed to the public from 9 a.m. until 12 p.m. due to the necessity to hear classified and sensitive reports in accordance with 5 U.S.C., Sec 552(c)(1) (1982). The afternoon session will be open to the public from 1 p.m. to 3:30 p.m.
ADDRESSES: The National Archives Building, Room 105, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.
FOR FURTHER INFORMATION CONTACT: Cynthia Kloss, Room 3C281, Office of the Deputy Assistant Secretary of Defense (Intelligence & Security), Office of the Assistant Secretary of Defense (Command, Control, Communications

and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 695–2289/2686.

Dated: February 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3917 Filed 2–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Coalition Warfare

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Coalition Warfare will meet in closed session on March 3–4, 1998 at the US Army War College, Carlisle, Pennsylvania; and on March 24–26, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address how best to make future U.S. military capabilities, embodied by JV2010, coalition compatible.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1994)) it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: February 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3918 Filed 2–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Notice

AGENCY: I Corps, Fort Lewis, WA.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) announcement is made of the following committee meeting:

Name of Committee: Yakima Training Center Cultural and Natural Resources Committee—Policy Committee.

Date of Meeting: March 12, 1998.

Place of Meeting: Yakima Training Center Headquarters, New Conference Room, Yakima, Washington.

Time: 1:30 p.m.

Proposed Agenda: Cultural and Natural Resources Management Plan; Post-Implementation Progress Report; Overview of training and land management activities. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Stephen Hart, Chief, Civil Law, (253) 967–0793.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–4002 Filed 2–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Storm Damage Reduction and Beach Erosion Control Project at Fenwick Island, Sussex County, DE

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is an evaluation of the alternatives for storm damage reduction and the control of further erosion at Fenwick Island, Delaware. The purpose of any consequent work would be to provide shore property protection and to stabilize the shoreline at a predetermined width.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DEIS should be addressed to Mr. Steve Allen, (215) 656–6559, U.S. Army Corps of Engineers, CENAP–PL–E, Wanamaker Building, 100 Penn Square East, Pennsylvania, PA 19107–3390.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The proposed document evaluates a study area approximately 1.5 miles in length and includes nearshore and offshore areas along the Fenwick Island coastline. This area is subject to daily and storm wave action, which creates severe beach erosion problems.

b. The authority for the proposed project is the resolution adopted by the U.S. Senate Committee on Environment and Public Works dated 23 June 1988.

2. Alternatives

In addition to the no action alternative, the alternatives considered for storm damage reduction and erosion control will fall into structural and non-structural categories. The structural measures being considered for beach erosion control and storm damage reduction include, but will not be limited to bulkheads, seawalls, revetments, offshore breakwaters, groins, beach (berm and dune) restoration/nourishment, beach sills, or combinations thereof. Non-structural measures being considered are development regulations, and land acquisition.

3. Scoping

a. This study is the third of three interim feasibility studies addressing long-term storm damage reduction along the Atlantic Ocean Coast of Delaware from Cape Henlopen to Fenwick Island. The Fenwick Island area was identified in the Reconnaissance Report: Delaware Coast From Cape Henlopen to Fenwick Island (September 1991), as one of the primary areas to be recommended for further study in the feasibility phase.

b. The scoping process is on-going and has involved preliminary coordination with Federal, State, and local agencies. Participation of the general public and other interested parties and organizations will be invited by means of a public notice. Based on the input of these agencies and the interested public, a decision to have a formal scoping meeting will be made.

c. The significant issues and concerns that have been identified include the impacts of the project on aquatic biota, water quality, intertidal habitat, shallow water habitat, cultural resources, and socio-economics.

4. Availability

It is estimated the DEIS will be made available to the public in August 1999.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–4001 Filed 2–17–98; 8:45 am]

BILLING CODE 3710–GR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Whitney Point Lake Reallocation, Susquehanna River Basin Water Management Feasibility Study and Integrated Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers is initiating the Whitney Point Lake Reallocation, Susquehanna River Basin Water Management Feasibility Study and Integrated Environmental Impact Statement. The purpose of the study is to develop a low flow augmentation plan for the Eastern New York sub-basin (below Whitney Point Lake) in Broome, Cortland, and Tioga Counties, New York. This study will determine the feasibility of reallocating reservoir storage at the U.S. Army Corps of Engineers' Whitney Point Lake for the purpose of aquatic habitat restoration. Specifically, the study will evaluate the aquatic habitat benefits to stream reaches below the reservoir as a result of various low flow augmentation releases. The feasibility study will involve the collection of existing conditions data; identification of problems, needs and opportunities; development and evaluation of plan alternatives; documentation of potential effects; comparison of plan alternatives; and selection of a recommended plan for implementation that is environmentally, economically, and engineeringly sound.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be addressed to Mr. Richard R. Starr, Study Team Leader, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–4633. E-mail address: richard.r.starr@nab02.usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. The Whitney Point Lake Reallocation Study was authorized in Section 721(a) of the Water Resources Development Act (WRDA) of 1986.

2. The study area is located in the Eastern New York sub-basin and is the headwaters to the Susquehanna River. The study will focus on the area around the U.S. Army Corps of Engineers' Whitney Point Lake and approximately 60 miles downstream to Waverly, New York, along the Otselic, Tioughnioga, Chennago, and Susquehanna Rivers. The study area has experienced continued impacts to aquatic habitat during low flow periods. Specifically, the physical aquatic habitat within the study area's riverine channels fluctuates throughout the river from deep, free flowing conditions during high and normal flow periods, to much shallower, restricted conditions during low-flow conditions or times of dewatering. It is the dewatered habitats, specifically riffles and back water areas, for which this study will be addressing. Aquatic habitat, under extended periods of these conditions, have been stressed, and established benthic and other small fish species populations have been impacted. Consequently, this condition has resulted in an impact on other riverine species populations higher in the food chain. In addition, riverine water quality problems have been exacerbated by low-flow conditions, further stressing the fishery resource.

3. In July 1997, the U.S. Army Corps of Engineers, Baltimore District and the Susquehanna River Basin Commission (SRBC) executed a feasibility cost-sharing agreement for the Whitney Point Lake Reallocation, Susquehanna River Basin Water Management Feasibility Study. The planning goals of this study are to restore and protect water flows that can support healthy aquatic and riparian ecosystems and to promote environmental awareness and values necessary for the continual restoration of a stressed ecosystem. To achieve these goals the Corps and SRBC will: (1) conduct hydraulic, hydrologic, economic, cultural, and environmental analyses of the study area; (2) identify low flow conditions and available water storage in Whitney Point Lake; (3) select a range of low flow conditions that can be enhanced by the available reservoir storage; (4) prioritize low flow release scenarios for each reallocation alternative; (5) evaluate low flow augmentation release scenarios for each reallocation alternative; (6) identify which low flow release scenario, for each reallocation alternative, that has the greatest potential for increased habitat benefits; (7) conduct trade-off analysis; and (8) select the recommended plan. Three products will be produced upon completion of this study: (1) a feasibility report with an integrated environmental impact statement; (2) 65-percent complete designs; and (3) a Instream Flow Incremental Methodology model.

4. The feasibility study is in line with the Susquehanna River Basin Commission's ultimate goal of developing a Susquehanna River basinwide water management plan under the "pooled water" concept. The "pooled water" concept is based on the development of a reservoir water release system with water storage located in various reservoirs throughout the entire Susquehanna basin. The intent is to release small amounts of water from more than one reservoir to meet water use needs (environmental and human) while minimizing potential impact to reservoir resources. As each individual sub-basin water management plan is developed and implemented, the management plan becomes more effective in meeting basinwide water use needs.

5. The decision to implement these actions will be based on an evaluation of the probable impact of the proposed activities on the public. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable costs. The Baltimore District is preparing a DEIS that will describe the impacts of the proposed reallocation on environmental and cultural resources in the study area and the overall interest's of the public. The DEIS will be in accordance with NEPA and will document all factors that may be relevant to the proposal, including the cumulative effects thereof. Among these factors are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, recreation, water supply and conservation, water quality, energy needs, safety, and the general needs and welfare of the people. If applicable, the DEIS will also apply guidelines issued by the U.S. Environmental Protection Agency, under the authority of Section 404(b)(1) of the Clean Water Act of 1977 (Public Law 95–217).

6. The public involvement program will include workshops, meetings, and other coordination with interested private individuals and organizations, as well as with concerned Federal, state, and local agencies. Coordination letters and newsletters have been sent to appropriate agencies, organizations, and individuals on an extensive mailing list. Additional public information will be provided through print media, mailings, and radio and television announcements.

7. In addition to the Corps of Engineers and the Susquehanna River

Basin Commission, other participants that will be involved in the study and DEIS process includes the following: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Forest Service; U.S. Geological Survey; Natural Resource Conservation Service; and New York Department of Environmental Conservation. The Baltimore District invites potentially affected Federal, state, and local agencies, and other organizations and entities to participate in this study.

8. The DEIS is tentatively scheduled to be available for public review in April of 2000.

Dr. James F. Johnson,

Chief, Planning Division.

[FR Doc. 98–4000 Filed 2–17–98; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 20, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Title I State Plan for Vocational Rehabilitation Services and Title VI-Part C Supplemental for Supported Employment Services.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 82; Burden Hours: 1,002,050.

Abstract: The Rehabilitation Act of 1973, as amended, and its implementing regulations at 34 CFR parts 361 and 363 require each of the 82 State vocational rehabilitation agencies to submit a three-year State plan for vocational rehabilitation services and a supplement to the plan for supported employment services. Program funding is contingent on Departmental approval of the plan and its supplement.

Dated: February 11, 1998.

Linda Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. 98–3953 Filed 2–17–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Public Hearings on a Comprehensive National Energy Strategy

AGENCY: Office of Policy and International Affairs, U.S. Department of Energy.

ACTION: Notice of public hearing.

SUMMARY: On January 15, 1998 the Department of Energy published **Federal Register** Notice: 63 FR 2371 announcing a series of public hearings to solicit input from state and local officials, utility representatives, industry representatives, public interest groups and other interested parties in the development of a statutorily required national energy policy plan, hereinafter referred to as the "Comprehensive National Energy Strategy" or "CNES." This is a *supplemental notice* to provide additional information on the hearing locations, mechanisms, (i.e. website address and fax numbers), for obtaining a copy of the draft Comprehensive National Energy Strategy and deadline for public comments. The CNES is based on a framework of goals, objectives, and strategies that will enable the Nation to sustain an economically competitive, environmentally responsible, and secure energy sector into the next century. The Department also invites interested parties to submit written comments for use in developing the CNES.

DATES AND LOCATIONS:

Houston, Texas. February 12, 1998. 1:00 p.m. to 5:00 p.m., George Brown Convention Center, 1001 Avenida de las Americas, Hearing Chair—Elizabeth A. Moler, Deputy Secretary of Energy

Davis, California. February 13, 1998. 8:30 a.m. to 12:30 p.m., University of California at Davis, University Club Building, Club Room One, Hearing Chair—Ernest J. Moniz, Under Secretary of Energy

Washington, D.C. February 19, 1998. 1:00 p.m. to 5:00 p.m., U.S. Department of Energy—Main Auditorium, 1000 Independence Ave. SW., Hearing Chair—Federico F. Peña, Secretary of Energy

ADDRESSES: Written comments may be sent to the U.S. Department of Energy,

ATTN: CNES-Hearings (PO–4), 1000 Independence Avenue SW, Room 7B–044, Washington, D.C. 20585 or by fax to 202–737–0219 or 202–586–4025 or via the INTERNET at http://www.eren.doe.gov. COMMENTS MUST BE SUBMITTED NO LATER THAN FEBRUARY 27, 1998.

FOR FURTHER INFORMATION CONTACT: For questions regarding the public hearings, participation or written submissions, please visit the website at http://www.eren.doe.gov/nes.html or send fax inquiries to CNES-HEARINGS at 202–737–0219 or 202–586–4025.

SUPPLEMENTARY INFORMATION: Section 801 of the Department of Energy Organization Act of 1977 requires the President to submit a National Energy Policy Plan to Congress. The President plans to submit a National Energy Policy Plan to Congress in 1998. Section 801 also states that the President shall "seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan."

A copy of the proposed Comprehensive National Energy Strategy follows this notice.

The hearings are expected to elicit public input on any aspect of the framework, including suggestions for additional detail to accompany the strategies. The five basic goals in the proposed CNES are:

- Goal I. Improve the efficiency of the energy system—making more productive use of energy resources to enhance overall economic performance while protecting the environment and advancing national security.
- Goal II. Ensure against energy disruptions—protecting our economy from external threat of interrupted supplies or infrastructure failure.
- Goal III. Promote energy production and use in ways that reflect human health and environmental values—improving our health and local, regional, and global environmental quality.
- Goal IV. Expand future energy choices—pursuing continued progress in science and technology to provide future generations with a robust portfolio of clean and inexpensive energy sources.
- Goal V. Cooperate internationally on global issues—developing the means to address global economic, security, and environmental concerns.

Participants wishing to speak at the hearings must register on-site. The speaker registry will open one-half hour before each hearing. Although it is not necessary to confirm your attendance in advance, you may notify the Department of your intention to participate by fax or by mail at the address printed above.

Issued in Washington D.C. on February 9, 1998.

Robert W. Gee,

Assistant Secretary for Policy and International Affairs, U.S. Department of Energy.

[FR Doc. 98–3992 Filed 2–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation

DATES: Wednesday, March 4, 1998, 6:00 p.m.–9:30 p.m.

ADDRESSES: Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

A business meeting will be conducted with no technical presentation provided.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–0314.

Issued at Washington, DC on February 11, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–3991 Filed 2–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1677–000]

Arizona Public Service Company, Notice of Filing

February 11, 1998.

Take notice that on February 2, 1998, Arizona Public Service Company (APS), tendered for filing revised Service Agreements providing Network Integration Transmission Service under APS' Open Access Transmission Tariff to the Arizona Public Service Company—Merchant Group and Ajo Improvement Company.

A copy of this filing has been served on APS' Merchant Group, AJO Improvement Company and the Arizona Corporation Commission.

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, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18

CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4024 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1678–000]

Black Hills Corporation; Notice of Filing

February 11, 1998.

Take notice that on February 2, 1998, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Colorado Springs utilities.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective January 12, 1998.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4025 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1675–000]

Cinergy Services, Inc.; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff entered into between Cincergy and MidAmerican Energy Company (MidAmerican).

Cincergy and MidAmerican are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4022 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–2–000]

CLX Energy, Inc.; Notice of Petition for Adjustment

February 12, 1998.

Take notice that on February 9, 1998, CLX Energy, Inc. (CLX), successor in interest to Calvin Exploration, Inc. (Calvin), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to refund to Panhandle Eastern Pipe Line Company (Panhandle) the Kansas ad valorem tax refunds owed by CLX's royalty interest, overriding royalty interest, and other working interest owners, otherwise required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] CLX also requests Commission authorization to amortize its own refund obligtion over a 5-year period. CLX's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

CLX states that it became successor in interest to Calvin as a result of a March, 1993 merger with Calvin. CLX further states that Panhandle made a total of $57,731.80 in Kansas ad valorem tax distributions to Calvin, of which $12,956.03 was distributed to Calvin and $38,868.10 to the other working interest owners. Royalty owners received $5,503.83, and overriding royalty owners received $403.84.

CLX states that it notified the various interest owners of their respective refund obligations, but doubts that anyone will pay the specified amount by the March 9, 1998 deadline for making refunds. CLX also asserts that it is not in a financial position to pursue litigation against the other interest owners, and that paying the entire refund (which is approaching $200,000) would be financially devastating to CLX.

CLX's petition includes a copy of Securities and Exchange Commission Form 10–Q for the quarter ending December 31, 1997. CLX argues that it would not be fair, equitable, or reasonable to require CLX to pay the entire refund amount when it only received the benefit of a small portion

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[1] 15 U.S.C. § 3142(c) (1982)

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 94–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

of the total Kansas ad valorem tax reimbursements that were paid to Calvin by Panhandle. Therefore CLX requests: (1) to be relieved of its obligation to refund the Kansas ad valorem tax refunds owned by CLX's royalty interest, overriding royalty interest, and other working interest owners; and (2) Commission authorization to amortize its own refund obligation over a 5-year period.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 394.214, 385.211, 385.1105, and 385.1106). 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 participant as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4017 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL94–10–000 and QF86–177–001; Docket Nos. EL94–62–000 and QF85–102–005; Docket Nos. EL96–1–000 and QF86–722–003]

Order Granting Requests for Declaratory Order in Part and Denying Requests for Declaratory Order in Part, Denying Requests for Revocation of QF Status, and Announcing Policy Concerning the Regulatory Consequences and Remedies for Sales in Excess of Net Output

Issued February 11, 1998.

Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., Wheelabrator Environmental Systems Inc., Signal Environmental Systems, Inc., SES Claremont Company L.P., NH/VT Energy Corp., and Wheelabrator New Hampshire Inc., Carolina Power & Light Company v. Stone Container Corporation; Niagara Mohawk Power Corporation v. Penntech Papers, Inc.

I. Introduction

This order addresses three cases currently before the Commission: *Connecticut Valley Electric Company, Inc.* v. *Wheelabrator Claremont Company, L.P., et al.*, Docket Nos. EL94–10–000 and QF86–177–001; *Carolina Power & Light Company* v. *Stone Container Corp.*, Docket Nos. EL94–62–000 and QF85–102–005; and *Niagara Mohawk Power Corporation* v. *Penntech Papers, Inc.*, Docket Nos. EL96–1–000 and QF86–722–003. The three cases raise the following issues: (1) Whether a qualifying facility (QF), under the Public Utility Regulatory Policies Act of 1979 (PURPA) and the Commission's PURPA regulations, may sell its gross output, as opposed to its net output (gross output less station power needs and line loses to the point of interconnection), to the utility-purchaser; and (2) if not, what are the regulatory consequences and remedies if a facility sells more output than is permissible?

In this order the Commission:

(1) Reiterates its 1991 determination that a QF may not sell in excess of its net output;

(2) Announces a Commission policy regarding the regulatory consequences of past and future sales by QFs in excess of net output; and

(3) Finds that revocation of QF status is not warranted in the three cases addressed in this order.

II. Summary

The three cases arise because of a seeming conflict between a Commission regulation implementing PURPA and Commission precedent under PURPA. The Commission has a regulation called the "simultaneous buy-sell" rule (18 C.F.R. § 292.303(a)-(b) (1997)), which, the QFs argue, entities QF facilities to sell their gross output, and simultaneously buy station power needs from the utility-purchasers of QF power. A number of State regulatory authorities have drafted standard QF power sales contracts based on the apparent belief that the simultaneous buy-sell rule permits QFs to sell gross output to utilities and purchase back station power needs (often at a lower rate).

The utility-purchasers of QF power point to Commission precedent in stating that QFs may only sell net output. They argue that under the Commission precedent, a QF may only sell its net output; a facility that sells more than its net output cannot satisfy the ownership requirements for QF status under sections 3(17) and (18) of the Federal Power Act (FPA) and section 292.206 of the Commission's regulations unless the incremental capacity is *solely* from cogeneration or small power production facilities. *See Turners Falls Limited Partnership,*, 55 FERC ¶ 61,487 at 62,668 & n. 24 (1991) (*Turners Falls*).

The initial issue raised by the three cases is whether the QFs and the State regulatory authorities correctly have interpreted the simultaneous buy-sell rule in light of Commission precedent. In addressing this initial issue one of the questions that arises is the period of time over which a facility's output should be calculated. This question arises because a generation facility's actual output varies over time due to a number of external factors including temperature, humidity, and fuel quality. The QFs have argued that the Commission should not measure actual net output on a continuous basis but should allow QF facilities to sell up to their net capacity at any time.[1] This is because, if a QF buys back its station power needs, it is possible for the QF at times to sell more than its actual net output but still sell less than its certified net capacity. As a result, the period over which net output is measured will affect how much energy a QF may sell.

The second issue raised is what are the regulatory consequences and remedies if the Commission finds that a facility has sold more output than is permissible. This issue involves whether such a facility should be decertified as a PURPA QF. In addition, it presents how the Commission should calculate the rate under the FPA during any period of non-compliance and whether such rates should be applicable to all of the facility's sales during the period of non-compliance or just the incremental amount of the sale above the permissible level. Finally, we must consider whether, and if so under what circumstances, to revoke or permit the continuing applicability of PURPA regulatory exemptions (*see* 18 CFR §§ 292.601, .692 (1997)) during the period of noncompliance. A related question is whether to reform QF contracts with utilities for the sale of output above permissible levels.

Finally, there is an issue as to the effective date of any decision, first with respect to the three case-specific disputes before the Commission, and then with respect to any other QFs that may be selling in excess of permissible levels.

In this order, we announce that, as a legal matter, a QF may not sell in excess

[1] A QF's certified net capacity is the maximum net output of the facility which can be achieved safely and reliably under the most favorable conditions likely to occur over a period of several years.

of its net output. However, because of a lack of clarity in the Commission's simultaneous buy-sell rule, the Commission will not revoke the QF status of any facility which made sales in excess of net output pursuant to a contract entered into on or before the date of issuance of *Turner Falls*. We pick this date because that decision removed any ambiguity concerning the effect of such sales on a facility's QF status. We also find that a facility's net output should be measured on an hour-by-hour basis. We announce a policy regarding the regulatory consequences of past and future sales in excess of net output. Finally, in applying the legal and policy determinations announced in this order to the three cases pending before the Commission, we find that QF revocation is not warranted in any of the pending cases.

III. Background of Pending Cases

The three cases now before the Commission all involve allegations by a purchasing electric utility that a Commission-certified QF has made sales in excess of its net output and that, therefore, the QF no longer meets the ownership requirements for QF status contained in FPA section 3(17) (C) (ii) (for a qualifying small power production facility) and FPA section 3(18) (B) (ii) (for a qualifying cogeneration facility). Those sections of the FPA were added by PURPA. They provide that QFs must be owned "by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)." [2]

The three QFs with cases now before us claim, notwithstanding Commission precedent on the subject discussed below, that the Commission's rules permit the sale of gross output. They cite to the "simultaneous buy-sell" rule. Subsections 292.303(a) and (b) of our regulations provide as follows:

> Electric utility obligations under this subpart.
>
> (a) *Obligation to purchase from qualifying facilities.* Each electric utility shall purchase, in accordance with § 292.304 [3], any energy and capacity which is made available from a qualifying facility:
>
> (1) Directly to the electric utility; or
>
> (2) Indirectly to the electric utility in accordance with paragraph (d) of this section.
>
> (b) *Obligation to sell to qualifying facilities.* Each electric utility shall sell to any qualifying facility, in accordance with § 292.305 [4], any energy and capacity requested by the qualifying facility.

Below we discuss the particular facts and arguments raised in each of the cases.

A. Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., et al. (Docket Nos. EL94–10–000 and QF86–177–001)

Connecticut Valley Electric Company, Inc. (Connecticut Valley) filed a complaint against Wheelabrator Claremont Company, L.P. (Claremont).[5] Claremont owns and operates a biomass-fueled small power production facility in Claremont, New Hampshire. The order granting certification of the facility as a QF noted that it had an electric power production capacity of 4.5 MW. *See Signal Environmental Systems, Inc.—Claremont*, 34 FERC ¶ 62,212 (1986). Claremont's partners are all wholly-owned subsidiaries of Wheelabrator Environmental Systems, Inc., the successor in interest to Signal Environmental Systems, Inc.

The Claremont facility produces power for sale to Connecticut Valley using solid waste as an energy source. The facility began commercial operation in March 1987 and, pursuant to a Power Purchase Agreement approved by the New Hampshire Public Utilities Commission (New Hampshire Commission), has sold its entire output to Connecticut Valley. In addition, the Claremont facility has purchased sufficient electric energy from Connecticut Valley to serve its station power needs.

In its complaint, Connecticut Valley alleges that Claremont has been selling its entire gross output to Connecticut Valley, while purchasing back station power needs. Connecticut Valley claims that Claremont cannot operate as a QF in the manner specified in the Power Purchase Agreement. Connecticut Valley claims that it became aware in May 1993, that Claremont's sale of the facility's gross output of 4.5 MW to Connecticut Valley, rather than its net output of 3.9 MW, violated Commission precedent. For this reason, Connecticut Valley seeks revocation of the qualifying status of the Claremont facility, recision or reformation of the Power Purchase Agreement, a determination of the just and reasonable rates for what it claims is a wholesale power sale subject to this Commission's jurisdiction under the FPA, and refunds with interest. In the alternative, Connecticut Valley asks the Commission to reform the power sales contract to allow Claremont to sell only the net electrical output of the facility, and asks that Claremont be ordered to refund with interest all revenues it received for the sale of the incremental output between its net and gross output.[6]

Notice of Connecticut Valley's complaint was published in the **Federal Register**, 58 Fed. Reg. 64,301 (1993), with comments, protests, or motions to intervene due on or before January 5, 1994. Timely motions to intervene and notices of intervention were filed by Granite State Hydropower Association, Sullivan County Regional Refuse Disposal District and the Southern Windsor/Windham Counties Solid Waste Management District (collectively, the Districts), the New Hampshire Commission, National Independent Energy Producers, Southern California Edison Company, the Public Utilities Commission of the State of California, and the Center for Energy Efficiency and Renewable Technologies. An untimely motion to intervene was filed by the City of Vernon, California.

In its answer, Claremont admits that it sells its entire (gross) output to Connecticut Valley. It states that this arrangement is required by the terms of the Power Purchase Agreement and was approved by the New Hampshire Commission in settlement of litigation.[7] Claremont states that the simultaneous purchase and sale arrangement is fully consistent with this Commission's "simultaneous buy-sell" rule. Claremont points to the preamble to the Commission's rules implementing PURPA for the proposition that the

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[2] These sections are the basis of the Commission's QF ownership criteria codified in section 292.206 of the Commission's regulations. Section 292.206(a) specifies the Commission's general QF ownership rule:

> A cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities).

18 CFR § 292.206(a) (1997).

[3] 18 CFR § 292.304 (1997) provides for rates for QF sales to utilities.

[4] 18 CFR § 292.305 (1997) provides for rates for utility sales to QFs.

[5] The complaint was also filed against affiliates of Claremont, as well as against Signal Environmental Systems, Inc. (the original applicant for QF status for the facility) and its affiliates.

[6] Specifically, Connecticut Valley states that for the sale of the incremental output, Claremont should refund the difference between the avoided cost rate at which Claremont makes sales to Connecticut Valley, and the retail rate at which Claremont purchases station power.

[7] On February 23, 1983, Claremont's predecessor in interest, Connecticut Valley and the staff of the New Hampshire Commission entered into a settlement agreement which in part provided that Connecticut Valley would "purchase for twenty (20) years *all* energy and capacity of the [Facility] at a price of 9¢ per kilowatt hour. * * *" (emphasis added). The settlement agreement (attached as Appendix 3 to the complaint) was approved by the New Hampshire Commission on March 2, 1983. The Power Purchase Agreement (attached as Appendix 4 to the complaint) subsequently was executed by the parties on December 12, 1984.

Commission intended to allow the sale of a QF's gross output when it promulgated the simultaneous buy-sell rule. Claremont claims that it is entitled to rely on the simultaneous buy-sell rule until it is amended or rescinded by the Commission. Claremont further claims that amendments to Commission regulations may not be retroactive.

Claremont also claims that the arrangement is fully consistent with the New Hampshire Limited Electrical Energy Producers Act (LEEPA), which implements PURPA in New Hampshire, as well as the New Hampshire Commission's orders implementing PURPA and LEEPA.

Claremont claims that it, as well as many other developers, relied on the Commission's simultaneous buy-sell rule in developing QF projects. Claremont states that substantial inequities would result if the Commission were to require Claremont to operate in a manner different from what had been planned when it contracted with Connecticut Valley. It notes that revocation of its QF status would harm the sanitary districts which supply fuel (solid waste) to the facility. It also notes that Connecticut Valley's petition, if granted, would have the effect of jeopardizing the QF status of other facilities in New Hampshire that, pursuant to other power sales contracts approved by the New Hampshire Commission, sell their gross output pursuant to simultaneous buy/sell provisions.

B. Carolina Power & Light Company v. *Stone Container Corporation (Docket Nos. EL94–62–000 and OF85–102–005)*

Carolina Power & Light Company (CP&L) filed a complaint and motion for revocation of QF status against Stone Container Corporation (Stone Container). Stone Container owns and operates a topping-cycle cogeneration facility located at Stone Container's linerboard mill and manufacturing plant in Florence, South Carolina. The facility contains one steam generator and one extraction/condensing steam turbine-generator. The extracted steam is used in the linerboard manufacturing process. The primary fuel for the facility is pulverized coal, supplemented with wood waste.

In its initial application for certification, Stone Container identified its net power capacity as 64.5 MW. Stone Container stated that the gross power production capacity of the facility was 68 MW and the auxiliary power requirements would be 3.5 MW. The Commission granted Stone Container's application for QF status. *See Stone Container Corporation*, 31 FERC ¶ 62,036 (1985). Subsequently, Stone Container sought recertification for a QF with an amended capacity (74.8 MW net capacity, 79 MW gross capacity, 4.2 MW auxiliary load). The Commission granted recertification. *See Stone Container Corporation*, 55 FERC ¶ 62,205 (1991).

The electricity generated by the Stone Container facility is sold to CP&L pursuant to a 20-year "Electric Power Purchase Agreement" that was executed on December 17, 1984, and was subsequently amended on March 9, 1989, and on October 14, 1992. (The Power Purchase Agreement and the amendments are attached to the complaint as Attachment 1.)

Paragraph 10(b) of the original agreement gave Stone Container the option to switch to a "buy-all/sell-all" mode of operation. In the second amendment to the agreement, Stone Container exercised its option to switch to the buy-all/sell-all mode of operation.[8]

CP&L claims that the switch to the buy-all/sell-all mode of operation, "[b]ecause of the configuration of the interconnection between CP&L and the Stone Container facility" (Complaint at 4), has resulted in Stone Container's selling CP&L its gross output from the facility. CP&L states that the switch to the buy-all/sell-all operation has resulted in Stone Container's losing its QF status and becoming a public utility subject to this Commission's rate regulation under the FPA.

Notice of CP&L's complaint and motion for revocation was published in the Federal Register, 59 Fed. Reg. 24,491 (1994), with comments, protests or motions to intervene due on or before June 2, 1994. Timely motions to intervene were filed by Westinghouse Electric Corporation, Gelco Corporation, Granite State Hydropower Association, and Claremont. Additionally, a number of late-filed letters containing additional comments were filed. Motions to strike some of the motions to intervene were filed, and answers to those motions were filed. Finally, motions to hold the matter in abeyance, as well as a motion to expedite, were filed.

In its answer to CP&L's complaint and motion for revocation, Stone Container states that it *never* has sold power to CP&L in excess of the certified qualifying capacity of the facility. Stone Container states that it has thus always been in compliance with the requirements for QF status, as interpreted by the Commission in *Turners Falls* and related PURPA cases. Stone Container states that the essence of CP&L's complaint is that Stone Container has sold in excess of what Stone Container refers to as its "actual net output." Stone Container urges that CP&L's interpretation of *Turners Falls* is illogical because it would attribute no meaning to the certified qualifying capacity of a facility.

Stone Container further urges that its mode of operation has been consistent with this Commission's "simultaneous buy-sell" rule. It also states that CP&L's reference to the configuration of the interconnection is misguided, because CP&L is contractually entitled to control the configuration of the interconnection.

Finally, Stone Container argues that if it has not complied with the Commission's QF regulations in any respect, the Commission should exercise its equitable powers to grant waiver of any such violation. In this regard, Stone Container points out that any waiver would be for a limited time (beginning with the date of commencement of the buy-all/sell-all mode of operation). Stone Container alleges that CP&L should be equitably estopped from asserting that the facility has lost its QF status because CP&L proposed the simultaneously "buy-all/sell-all" provision in the contract (which Stone Container exercised) and understood what the mode of operation entailed. Stone Container further argues that any non-compliance with the Commission's regulations is the result of the Commission's departure from its PURPA regulations and precedents on which Stone Container reasonably relied.

C. Niagara Mohawk Power Corporation versus Penntech Papers, Inc. (Docket Nos. EL96–1–000 and OF86–722–003)

Niagara Mohawk Power Corporation (Niagara Mohawk) filed a petition for declaratory order revoking the QF status of the cogeneration facility operated by Penntech Papers, Inc. (Penntech Papers).[9] The Penntech Papers' facility is located in Johnsonburg, Pennsylvania. Extraction steam from the facility is used to supply the pulp and paper mill process requirements of Penntech Papers. The facility originally was certified as having 33.433 MW (net) capacity. *See Penntech Papers, Inc.*, 36

[8] Regardless of the mode of operation, paragraph 33(e) provides that the maximum amount which can be sold to CP&L is 68 MW.

[9] The Penntech Papers facility is now owned by Williamette Industries, Inc. (Willamette), which purchased the Penntech Papers plant and assumed the rights and obligations under the Power Purchase Agreement with Niagara Mohawk. While Penntech Papers is now an operating division of Williamette, we will refer to Penntech Papers as the facility owner in this order.

FERC ¶ 62,073 (1986). Subsequently, Penntech Papers sought recertification to reflect, among other things, an increase in generating capacity. The Commission granted recertification to reflect the increase in capacity, except to the extent that Penntech Papers proposed to sell its entire capacity (52 MW) to Niagara Mohawk and purchase its entire auxiliary load (5.1 MW) from West Penn Power Company. *See Penntech Papers, Inc.*, 48 FERC ¶ 61,120 (1989).[10]

Power from the Penntech Papers facility is transmitted over a 7-mile 115 kV line to the Ridgeway substation of Pennsylvania Electric Company (Penelec). The power is then wheeled by Penelec to Niagara Mohawk. Because Niagara Mohawk informed Penntech Papers that it would not "dynamically" schedule deliveries from Penntech Paper's facility,[11] but would require that actual deliveries from the facility equal Penntech Papers' previously scheduled deliveries with Niagara Mohawk on an hour-by-hour basis, the transmission agreement provides that Penelec will purchase from Penntech Papers inadvertent excess generation produced by the facility. The transmission agreement also provides that Penelec will sell Penntech Papers "make-up" power for delivery to Niagara Mohawk at times of inadvertent shortfalls or reductions in facility output.

According to Niagara Mohawk, this provision for the purchase and resale of make-up power by Penntech Papers means that Penntech Papers is selling Niagara Mohawk power from sources other than cogeneration or small power production facilities, and thus cannot satisfy the ownership requirements for QF status under the holding of *Turners Falls*.

[10] On February 8, 1993, Penntech Papers filed a notice of self-recertification to reflect its "as built" description of the facility. In its notice of self-recertification, Penntech Papers stated that the maximum rated output of the facility would be 57,800 kW/hr. and that average power generation, net of station power needs was expected to be 45,000 kW/hr. (or 394,200 MWH per year).

[11] Dynamic scheduling provides the metering, telemetering, computer software, hardware, communications, engineering and administration required to allow remote generators to follow closely the moment-to-moment variations of a local load. In effect, dynamic scheduling electronically moves load out of the control area in which it is physically located and into another control area. *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,709–10 (1996), *order on reh'g*, Order No. 888–A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 at 30,235–36 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997) (Open Access Rule).

Notice of Niagara Mohawk's petition for declaratory order revoking QF status was published in the **Federal Register**, 60 Fed. Reg. 53,917 (1995), with comments, protests or motions to intervene due on or before November 17, 1995.

A notice of intervention was filed by the New York Public Service Commission. Timely motions to intervene were filed by Penelec and by Willamette, on behalf of Penntech Papers.

In its answer to Niagara Mohawk's petition,[12] Penntech Papers states that Niagara Mohawk's petition rests on significant mistakes of fact. Penntech Papers argues that Niagara Mohawk's petition represents an effort to abrogate its contract with Penntech Papers as part of its ongoing effort to renegotiate contracts with the many QFs from which it purchases.

Penntech Papers states that it has adhered to the Commission's directive in its recertification order (48 FERC at 61,424) that it may not sell the gross output of its facility. Penntech Papers states that the cogeneration facility is an integral part of its paper mill, and not a "PURPA machine." Penntech Papers states that it uses a portion of the output from its generating turbine to serve auxiliary loads (station power), uses another portion to serve loads associated with its paper mill, and sells the remainder to Niagara Mohawk at a rate of 6 cents per kilowatt hour. Penntech Papers states (at 8) that "[f] or [Niagara Mohawk's] convenience, the portion of the net cogeneration output that is sold to [Niagara Mohawk] is 'scheduled' through Penelec, the transmitting utility." In addition, under the terms of the transmission and scheduling agreement with Penelec, Penntech Papers is required to pay Penelec, as line losses, three percent of the power it delivers to Penelec.

Penntech Papers states that although its net output undeniably exceeds the amount of power sold to Niagara Mohawk, the *de minimis* amount of "inadvertent" power advanced by Penelec to Penntech Papers (amounting to less than 1.96 percent of the scheduled sales to Niagara Mohawk in 1993 and 0.69 percent of the scheduled sales to Niagara Mohawk in 1994) is done to balance the power output schedule with the amount of power wheeled and is advanced at the insistence, and for the benefit, of Niagara Mohawk. Penntech Papers argues that the inadvertent power sales to Niagara Mohawk should not be a basis to decertify Penntech Papers' QF status. Penntech Papers states that this Commission has approved the transmission agreement under which Penelec advances power to Penntech Papers for inadvertent energy differentials. Penntech Papers further states that there would be no inadvertent energy differentials had Niagara Mohawk accepted dynamic scheduling.[13]

[12] The answer was filed by Willamette on behalf of Penntech Papers.

Penntech Papers further states that the power purchase agreement between Penntech Papers and Niagara Mohawk specifically recognizes that Penntech Papers' deliveries to Penelec would not exactly match the scheduled deliveries, and that Penelec would provide make-up power. Penntech Papers argues that it receives no benefit, and indeed loses money, from the make-up arrangement. Penntech Papers further argues that the provision for the sale of inadvertent excess generation and purchase of make-up power tends to even out over time, so that there is no continuing sale of power produced by a facility other than a QF.

IV. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.214 (1997), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities which filed them parties to the proceedings in which they intervened. Further, we find good cause to grant all of the untimely or opposed motions to intervene, and will consider all supplemental pleadings, in light of the interests they raise and in order to complete all of the arguments of the parties.

B. Statutory and Regulatory Framework

1. Statute and Regulations

As noted above, in FPA sections 3(17)(C)(ii) and 3(18)(b)(ii) Congress provided that QFs must be:

> [O]wned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities) * * *.

16 U.S.C. §§ 796(17)(C)(ii) and (18)(B)(ii) (1994). Section 292.206(a) of the Commission's regulations, 18 CFR § 292.206(a) (1997), tracks the statutory language almost verbatim. The current cases present the question of whether the sale of more than net output violates

[13] There is no requirement in our PURPA or open access regulations that an electric utility purchasing a QF's power do so under a dynamic scheduling arrangement.

the statutory and regulatory criteria for QF status.

2. Commission Precedent Concerning OF Output

In 1981, the year after the Commission promulgated its QF regulations, the Commission, in *Occidental Geothermal, Inc.*, 17 FERC ¶ 61,231 (1981) (*Occidental*), first addressed an issue relevant to the one now before us when it was required to address the "power production capacity" of a facility. The Commission determined that the power production capacity of a facility is:

> [T]he maximum net output of the facility which can be safely and reliably achieved under the most favorable operating conditions likely to occur over a period of years. The net output of the facility is its send out after subtraction of power used to operate auxiliary equipment in the facility necessary for power generation (such as pumps, blowers, fuel preparation machinery, and exciters) and for other essential electricity uses in the facility from the gross generator output.

17 FERC at 61,445.[14]

While, in hindsight, it seems clear that the Commission in *Occidental* did not intend to permit a QF to sell in excess of its net output (*i.e.* its power production capacity), the issue in that case was more limited; whether the proposed facility would exceed the 80 MW limit for qualifying small power production facilities set forth in section 292.204(a).[15]

Four years later, in 1985, the Commission again had occasion to address qualifying facility output issues. In *Power Developers, Inc.*, 32 FERC ¶ 61,101 at 61,276 (1985), *reh'g denied*, 34 FERC ¶ 61,136 (1986) (*Power Developers*),[16] the application raised the issue of whether "the qualifying capacity of the facility [is] gross or net electric power production capability?" 32 FERC at 61,275.

The Commission answered net. The Commission stated that were a QF to sell its gross output to a utility at the utility's avoided cost and purchase power for internal use from the utility, it would, in essence, be selling more power than the facility, standing alone, is capable of delivering. In other words, the QF would be receiving avoided cost prices for an amount of power that it does not enable the purchasing utility to avoid generating. 32 FERC at 61,276. The Commission stated that such a result would be inconsistent with the requirement of PURPA and the Commission's implementing regulations that utilities (and their ratepayers) be in the same financial position as if they had not purchased QF power. *Id.* (citing Order No. 69, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,128 at 30,871). However, even though the Commission in *Power Developers* found implicit in its *Occidental* discussion that QF sales are limited to net output, the Commission still did not reach the specific question of whether a QF that sold in excess of net output would be found to violate the "primarily engaged" ownership limitation in the statute and our regulations.

Finally, in 1991, the Commission addressed this issue in its order in *Turners Falls*. In that order, the Commission stated, for the first time, that the prohibition against a QF's selling in excess of its net output was based not only on policy considerations, but also on the statutory requirement that a QF be "owned by a person not a primarily engaged in the sale of electric power (other that electric power solely from cogeneration facilities or small power production facilities)." 16 U.S.C. §§ 796(17)(C)(ii)–(18)(B)(ii) (1994). In *Turners Falls*, the Commission found, based on its review of the language and legislative history of PURPA and the policies underlying enactment of PURPA and issuance of the Commission's implementing regulations, that a QF which sought to sell the incremental power in excess of its net output as non-qualifying power, would cease to be a QF, because it no longer would meet the statutory and regulatory restriction regarding utility ownership of QFs. 55 FERC at 62,667.

Before addressing the merits of the individual petitions filed with the Commission in the above-referenced proceedings, we will address the general legal and policy issues raised by these "net/gross" cases.

C. QF Output Issues

1. Can a QF Sell in Excess of Net Output?

We agree with the parties that it is not clear, on the face of the "simultaneous buy-sell" rule, that a QF is limited to selling its net output. Section 292.303(a) provides that "[e]ach electric utility shall purchase * * * *any* energy and capacity which is made available from a qualifying facility." (emphasis added). Similarly, section 292.303(b) provides that "[e]ach electric utility shall sell to any qualifying facility * * * *any* energy and capacity requested by the qualifying facility." (emphasis added). In addition, the Commission's statements leading up to its promulgation of the "simultaneous buy-sell rule also were not absolutely clear as to whether the Commission intended that a QF be able to sell gross output at avoided cost while purchasing station power at the purchasing utility's retail

The Commission first addressed the "simultaneous buy-sell" rule in its PURPA notice of proposed rulemaking. In the NOPR, the Commission discussed the situation "in which a cogenerator or small power producer desires to sell all of its output to a utility and purchase all of its needs from the utility simultaneously." Small Power Production and Cogeneration Rates and Exemptions, FERC Stats. & Regs., Proposed Regulations 1977–81 ¶ 32,039 at 32,466 (1979). The Commission stated that this rule was necessary to encourage QFs only to the extent it applies to "new" Capacity. However, because the discussion applied to both small power production facilities (which normally have no ongoing need to purchase from a utility other than station power) and to cogenerators (which often have a need to purchase power for industrial purposes other than generation), the discussion was ambiguous about the permissibility of selling all output and simultaneously buying back station power. *See also* Staff Paper Discussing Responsibilities to Establish Rules Regarding Rates, and Exemptions for Qualifying Cogeneration and Small Power Production Facilities Pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, 44 Fed. Reg. 38863, 38870 (July 3, 1979).

In Order No. 69, adopting regulations for the implementation of PURPA, the Commission indicated that the "simultaneous buy-sell" rule would be applicable to both qualifying small power production facilities and qualifying cogenerators, and again noted that avoided cost rates would normally only be available for new capacity. FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,128 at 30,877. As with its NOPR statements, the Commission's discussion was not clear about the permissibility of selling "all" output and buying back station power needs.

Moreover, it appears that several State regulatory authorities implemented PURPA based on a plausible interpretation that the "simultaneous buy-sell" rule permitted the sale of a

[14] In Malacha Power Project, Inc., 41 FERC ¶ 61,350 (1987), the Commission clarified that line losses to the point of interconnection with the grid also are subtracted from gross generator output to determine the power production capacity.

[15] The current version of the regulation was amended to reflect the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990. Those changes are not relevant to the issues before us in these proceedings.

[16] *See also* Penntech Papers, Inc., 48 FERC ¶ 61,120 (1989).

QF's gross output. For example, the New Hampshire Commission's standard QF sales contract contains a provision that allows for the sale of gross output and the buy back of auxiliary (station) power. From the QF filings we have received, it is apparent that there are other QF sales contracts, approved by other State regulatory authorities, that contain similar provisions.

However, as discussed above, this ambiguity was clarified to a significant degree in 1985 in *Power Developers*. There, the Commission made clear that a QF may not sell more than its net output at avoided cost rates. Finally, in 1991, in *Turner Falls*, the Commission removed any remaining ambiguity about whether the "simultaneous buy-sell" rule permitted a sale in excess of net output. The Commission clearly stated that a sale in excess of net output would deprive a facility of its QF status, unless the incremental sale was of power solely from cogeneration or small power production facilities.[17] *See supra* 13–14 (discussing orders). Accordingly, in these cases, the Commission removed any ambiguity and all industry participants were put on notice that the "simultaneous buy-sell" rule was not intended to permit a QF to sell its gross output to a utility at avoided cost rates, while buying back station power at a lower retail rate.

As a result, we disagree with the QFs' reading of the "simultaneous buy-sell" rule. It is clear to us that a QF facility can only sell energy and capacity from its facility which is actually available, and that, given our interpretation of what a QF is able to sell from its facility, this capacity is limited to the net output of the QF. Thus, the requirement of section 292.303(a), that an electric utility purchase any energy and capacity made available from a QF, is limited to the energy and capacity a QF actually has available, which is its net energy and capacity.

The Commission, in promulgating the simultaneous buy-sell rule, did not indicate otherwise. Indeed, the rationale behind the rule, as indicated in the preamble to Order No. 69, was as follows:

> The effect of this proposed rule was to separate the production aspect *of a qualifying facility* from its consumption function. Under this approach, the electrical output of a facility is viewed independently of its electrical needs. Thus, if a cogeneration facility produces five megawatts, and consumes three megawatts, it is treated the same as another qualifying facility that produces five megawatts, and that is located next to a factory that uses three megawatts.[18]

In this example, the Commission clearly was considering the case of a cogeneration facility where the factory associated with the cogeneration facility consumed power generated by the facility for industrial purposes. That the example was a cogeneration facility is meaningful because a cogeneration facility, unlike a small power producer, can have electric power needs other than for station power. When a cogeneration QF supplies its industrial host's electrical needs itself, it displaces power on the system that otherwise would have been supplied by the purchasing utility. This is not true when a cogenerator or small power producer supplies its own station power; the supplying of station power by a QF does not displace power which would have otherwise been supplied by the purchasing utility.[19] While a qualifying cogeneration facility may sell its entire net output and buy back power from its purchasing utility for non-electric generation uses (for example, manufacturing uses) by the thermal host,[20] a QF, whether a cogeneration facility or small power production facility, may not sell its gross output to its purchasing utility and buy back auxiliary (internal station) power.

Indeed, while the Commission did not address whether a QF would lose its qualifying status if it sold in excess of net output in *Power Developers*, the Commission in 1985 did address the meaning of section 292.303(a) (part of the simultaneous buy-sell rule). The Commission stated:

> Our regulations do not contemplate a qualifying facility selling its gross output to a utility.

> Although section 292.303(a) states that electric utilities are required to purchase "any" energy and capacity which is made available from a qualifying facility, the Commission has interpreted the capacity of a qualifying facility for purposes of obtaining qualifying status to be its net power production output, rather than its gross output.

32 FERC at 61,276.

Accordingly, we reiterate our earlier findings that a QF can only sell its net output, and that the sale of any other power will result in the loss of QF status, unless that power is "solely from cogeneration or small power production facilities."

2. What Date is Appropriate for Applying the Net Output Rule for Purposes of QF Status?

As noted above, we understand that many QFs and purchasing utilities have entered into contracts which require, or permit, the simultaneous sale of gross output and the purchase back of auxiliary (internal station) power. While there may have been some ambiguity when our PURPA regulations became effective, with the issuance of *Turners Falls*, the Commission clearly enunciated that a sale of a QF's output in excess of net output would result in the loss of a facility's QF status.[21] Our interpretation of the statutory ownership requirements in *Turners Falls* represented "an issue of first impression."[22] Moreover, the decision in *Turners Falls* rested not on the plain meaning of the statutory language involved,[23] but on an interpretation of the statute based on policy grounds. For these reasons, we believe that it would be unfair to revoke the QF certification of any facility which is selling its gross output to a utility-purchaser, and buying back auxiliary power and/or line losses to the point of interconnection, based on a QF contract entered into on or before the date of issuance of *Turners Falls*, that is on or before June 25, 1991.

We believe that this policy is consistent with our policy against invalidating contracts for which a PURPA-based challenge was not timely raised—that is, before the contracts were executed.[24] In our judgment, it would

[17] The Commission in *Turners Falls* was not faced with a factual situation where a QF sought to sell more than its net output *and* the additional power was "solely from cogeneration or small power production facilities." Neither is the Commission faced with that situation in the instant cases.

[18] Order No. 69, Small Power Production and Cogeneration Facilities, Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, FERC Stats. & Regs., Regulations Preambles, 1977–1981, ¶ 30,128 at 30,877 (1980) (emphasis added).

[19] The Commission, in its brief to the United States Court of Appeals for the District of Columbia Circuit defending Order No. 69, also illustrated the validity of its simultaneous buy-sell rule with reference to a cogeneration example. *American Electric Power Service Corporation, et al.* v. *FERC*, Docket No. 80–1789, May 15, 1981 brief at 52. The Commission, in its brief, also recognized the significance of displacement. Brief at 58. The court, in upholding the simultaneous buy-sell rule, likewise pointed to the cogeneration example as justifying the simultaneous buy-sell rule. *See American Electric Power Service Corporation* v. *FERC*, 675 F. 2d. 1226, 1237 (D.C. Cir. 1982), *rev'd on other grounds sub nom. American Paper Institute* v. *American Electric Power Service Corporation*, 461 U.S. 402 (1983).

[20] *See* Union Carbide Corporation, 48 FERC ¶ 61,130, *reh'g denied*, 49 FERC ¶ 61,209 (1989).

[21] As noted, the exception is if the incremental output sold, *i.e.*, above net output, is solely from cogeneration or small power production facilities.

[22] 55 FERC at 62,667; *see also id.* at 62,672.

[23] The Commission stated in *Turners Falls* that "because both the statute and the legislative history are unclear, we find it appropriate to consider the policy reasons of interpreting the statute as requested by Turners Falls." *Id.* at 62,669.

[24] *See* New York State Electric & Gas Corporation, 71 FERC ¶ 61,027 at 61,117, *order denying reconsideration*, 72 FERC ¶ 61,067 (1995), *appeal dismissed*, New York State Electric & Gas

not be consistent with Congress' directive to encourage cogeneration and small power production to upset the settled expectations of parties to, and to invalidate any of their obligations and responsibilities under, such executed PURPA sales contracts.

However, we see no legitimate basis to excuse a facility that, subsequent to the date of issuance of *Turners Falls*, either entered into a contract to sell more than its net output, or executed an amendment to a pre-*Turners Falls* contract that increased output, unless that amendment was pursuant to a provision in the pre-*Turners Falls* contract that specifically authorized such amendment. We will, therefore, revoke the QF status of any facility which sells in excess of its net output pursuant to a contract entered into after the date of issuance of *Turners Falls*, unless the additional amount sold is solely from cogeneration or small power production facilities.

3. How Is Net Output To Be Calculated?

In order to determine if a facility has sold in excess of its net output, it is necessary to define how to measure net output. The utility-purchasers in the instant proceedings urge that net output be calculated as actual net *production* on an hour-by-basis. On the other hand, the QFs urge that net *capacity* be the measure of the limitation on a QF's sale. They argue that while QFs may not sell in excess of their certified net capacity, they should be able to sell in excess of actual net production at any moment in time. The QFs state that this is what the *Turners Falls* decision requires.

The QFs are only partially correct. *Turners Falls* does stand for the proposition that the Commission will not certify a QF to sell in excess of its net capacity and that the sale above net capacity would result in the loss of QF status. *Turners Falls*, however, also contains additional language concerning "the sale of incremental output." 55 FERC at 62,672. While *Turners Falls* clearly states that QFs are limited to selling net capacity, the order does not directly address the sale of what has been referred to in the instant proceedings as "actual net production." We understand that purchasing utilities could reasonably read *Turners Falls* and its reference to "the sale of incremental output" to limit the sales by QFs to actual net production.

We find that the utilities' interpretation of the calculations more closely comports with Commission precedent and policy. In *Turners Falls*, the Commission interpreted PURPA to limit the certification of a QF to its net capacity. In interpreting PURPA, the Commission found that the plain language of the statute was not clear, and that the statutory history on the language involved was not clear, but that the policy underlying PURPA was dispositive. The policy which the Commission looked to was that PURPA was intended to be a "program providing for increased efficiency in the use of facilities and resources." (55 FERC at 62,670, quoting section 2 of PURPA). The Commission found that the economic distortion inherent in the sale of the incremental output, *i.e.*, the difference between a facility's net and gross output, would be inconsistent with the intent of PURPA. The Commission further found that if it were to permit Turners Falls to sell the incremental output, Turners Falls would derive an undue benefit from its qualifying status. *Id.* As a result, while the Commission in *Turners Falls* was directly addressing how much capacity it would certify (net capacity), it based the certification decision on its finding that PURPA does not permit a sale in excess of net output. The utilities' proposal that compliance with the net/gross rule be measured by monitoring actual net output on an hour-by-hour basis more accurately measures compliance with this PURPA limitation than the QFs' proposal that compliance be measured on an annual basis.

Moreover, measuring compliance with the net/gross rule on an hour-by-hour basis is consistent with Commission precedent on measurement of a facility's net capacity. In *American Ref-Fuel of Bergen County*, 54 FERC ¶ 61,287 (1991) (*Ref-Fuel*), the Commission used a "rolling one-hour period" for measuring the size limitation (80 MW) applicable to qualifying small power production facilities. In that case, Ref-Fuel argued that because of the substantial variation in the heat content of solid waste, the net output of the facility would often exceed 80 MW, but that it would be able to compensate for the substantial variation in the heat content of the fuel source with an automatic control system to restore net generation to 80 MW when it exceeded 80 MW. Ref-Fuel stated it could maintain the 80 MW net output level on average over a 60 minute time span measured at any point in time—the "rolling one-hour period." The Commission agreed to the rolling one-hour period, stating that:

> Generation output fluctuates instantaneously and accordingly must be adjusted many times each hour to follow system load changes. System load or consumer demand typically is determined by averaging energy use over a period of time of 15 to 60 minutes.

54 FERC at 61,817. The Commission noted that Form No. 1 requires utilities to compute the net peak demand (output) on generating units by using a 60-minute measurement period and that customer demand meters typically employ measurement periods of 15, 30, or 60 minutes. *Id.* at 61,817 n.5. The Commission further noted that a 60-minute time interval for measuring power output or peak load is common in the industry. 54 FERC at 61,817. The Commission recognized that a facility's generation output varies constantly and that net output in excess of 80 MW does not automatically violate the size limitation requirement of the statute (*citing Occidental Geothermal, Inc.*, 17 FERC ¶ 61,231 at 61,445 (1981)).

Finally the Commission recognized that use of a rolling one-hour period does not offer any potential for manipulation of the maximum size limitation. This is because the facility, if it exceeds the 80 MW net production limitation at one moment, would have to adjust net production below 80 MW during part of the hour to account for the excess generation.

We believe that the rationale for using a rolling one-hour period for measuring the net production of a facility for size limitation purposes is equally applicable to measuring net production for compliance with the net/gross output rule. Contrary to the QFs' arguments, use of a one-hour period does not make the certified capacity of a facility meaningless,[25] and indeed is consistent with this Commission's measurement of certified capacity. We conclude that a facility's net output should be measured on a rolling-one hour period for purposes of determining whether the facility makes sales in excess of its net output. In other words, a facility cannot sell each hour more than its net output for the hour.

Corporation v. FERC, 117 F.3d 1473 (D.C. Cir. 1997); Connecticut Light & Power Company, 70 FERC ¶ 61,012, *order denying reconsideration*, 71 FERC ¶ 61,035 at 61,153–54 (1995) (confusion regarding meaning of Commission's regulations made application of new policy to preexisting QF contracts inappropriate), *appeal dismissed sub nom.* Niagara Mohawk Power Corporation v. FERC, 117 F.3d 1485 (D.C. Cir. 1997); Southern California Edison Company and San Diego Gas & Electric Company, 70 FERC ¶ 61,215 at 61,178, *reconsideration denied*, 71 FERC ¶ 61,269 at 62,079 (1995).

[25] The certified capacity of a QF, *i.e.*, its net capacity, is the maximum net output that the facility can safely and reliably achieve at the point of interconnection under the most favorable operating conditions likely to occur over a period of several years.

4. How Does Transmission of QF Power by a Third Party Utility Affect Net Output?

The Penntech Papers case raises an issue concerning the measurement of net output in situations where QF power is transmitted by a third party to the purchasing utility. We have addressed this matter in our Open Access Rule. In Order No. 888–A, the Commission explained that:

> A QF arrangement for the receipt of Real Power Loss Service or ancillary services from the transmission provider or a third party for the purpose of completing a transmission transaction is not a sale-for-resale of power by a QF transmission customer that would violate our QF rules.[26]

In Order No. 888–B, the Commission recently clarified the matter as follows:

> [W]hile a QF can never sell more power than its net output at its point of interconnection with the grid, its location in relation to its purchaser (and thus its losses) may be relevant in the calculation of the avoided cost which it is entitled for the power it does deliver to its electric utility purchaser. However * * * the receipt of Real Power Loss Service or ancillary services is not a sale-for-resale of power. Rather, they are part of the costs of transmission which the QF must bear, in the absence of an agreement to share such costs with the transmitting utility.[27]

In conclusion, the purchase of line loss service for losses beyond the point of interconnection or an ancillary service by a QF from a third party does not result in the QF's engaging in a sale-for-resale of power produced by a facility other than a QF, which would result in loss of QF status.

D. Regulatory Consequences and Remedies for Sales in Excess of Net Output

Any facility which has sold in excess of its net output, pursuant to a contract entered into after the date of issuance of *Turners Falls*, unless the incremental output is solely from cogeneration or small power production facilities, must file rates pursuant to section 205 of the FPA within 60 days of the date of publication of this order in the **Federal Register**. In that filing, the facility must indicate whether it intends to continue to make sales in excess of net output.[28] For facilities which state that they will discontinue the sale of output in excess of net output as of the date of their filing, the rate for the prior sale of any output above net output will be determined using the methodology announced in *LG&E-Westmoreland Southhampton*, 76 FERC ¶ 61,116 (1996) (*LG&E*), *reh'g pending*.[29] The rate for all amounts sold up to the facility's net output should be the contract rate reflected in the parties' agreement, assuming such rate is no higher than the applicable avoided cost rate established by the State regulatory authority or nonregulated electric utility. Facilities making section 205 filings that reflect the cessation of power sales in excess of net output may ask for all other exemptions granted QFs, and we will grant such exemptions pursuant to the policy announced in *LG&E*.

For any facility that indicates in its section 205 filing that it will continue to sell power in excess of its net output, pursuant to its current contract, we will not differentiate between past and future sales, or allow different rates for sales up to or in excess of net output. Rather, the former QF will be required to cost justify its rates for past and future periods.[30]

E. Application of Policy to Pending Cases

1. Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., et al.

Claremont, a small power production facility, is selling its gross capacity to Connecticut Valley and buying back auxiliary power, This sale clearly violates the prohibition on the QF sale of amounts in excess of net output enunciated in *Turner Falls* and earlier cases, and would result in the loss of QF status were it taking place pursuant to a sales contract entered into after the date (June 25, 1991) of issuance of *Turner Falls*. Here, however, the sale takes place pursuant to a contract, executed on December 12, 1984.

Pursuant to the policy articulated above in this order, we will not enforce the net/gross policy against Claremont during the term of its power purchase agreement with Connecticut Valley, assuming the contract has not been amended to increase output after the date (June 25, 1991) of issuance of *Turners Falls*, unless that amendment was pursuant to a provision in the pre-*Turners Falls* contract that specifically authorized such amendment. Based upon this assumption, we will, therefore, not revoke the QF status of the Claremont facility or take other remedial action.

2. Carolina Power & Light Company v. Stone Container Corporation

The sale of QF power by Stone Container is not as clear. Stone Container represents that it has at all times limited its sale to no more than its "actual net output." The allegation by CP&L is that Stone Container, pursuant to a contract option contained in a contract entered into prior to the date of issuance of *Turners Falls*, but exercised after the date of issuance of *Turners Falls*, is at times selling in excess of actual net output.

Because Stone Container is operating pursuant to a contract executed prior to the date of issuance of *Turners Falls*, its sales will not result in the loss of QF status, even if it at times has sold in excess of its net output. While its contract was amended, after the date of issuance of *Turners Falls*, to take advantage of the option to switch to the "buy-all/sell-all" mode of operation, the exercise of the option took place pursuant to the original contract. The right to the "buy-all/sell-all" mode of operation was contained in the original, pre-*Turners Falls* contract. Depriving Stone Container of QF status in these circumstances would not be consistent with maintaining the parties' expectations when the contract was signed. Moreover, CP&L, to the extent it encouraged the switch (as represented by Stone Container), should not now be heard to claim that the mode of operation which it encouraged deprives the facility of its QF status. The time for CP&L to have objected to the "buy-all/sell-all" contractual provision was prior to its execution, and not long after its implementation.[31]

We therefore conclude that under the policy announced in this order, this sale does not result in the loss of Stone Container's QF status, and we will not revoke the QF status of the Stone Container facility or take other remedial action, assuming that the contract has not been further amended to increase output after the date (June 25, 1991) of issuance of *Turners Falls*, unless that amendment was pursuant to a provision in the pre-*Turners Falls* contract that specifically authorized such amendment.

[26] FERC Stats. & Regs. ¶ 31,048 at 30,237.

[27] Order 888–B, slip op. at 43–44.

[28] If the facility decides to sell only its net output, it could regain QF status on a prospective basis from the date it begins to sell only net output. However, whether its temporary loss of QF status would jeopardize its power sales arrangement is a matter of contract that may vary depending on the particulars of the power sales agreement.

[29] In *LG&E*, the Commission ordered a QF which failed to satisfy the Commission's technical requirements for QF status during a past period of non-compliance to file rates pursuant to section 205 of the FPA at a rate no higher than what the utility-purchaser would have paid for energy had it made an economic decision to purchase from the non-complying QF. In the case of a first-time failure to maintain QF status, the Commission explained that it would grant all other exemptions from regulation otherwise available to QFs.

[30] Of course, the former QF could seek market-based rate authority for sales pursuant to new, non-QF contracts.

[31] *See supra* note 24 and cases cited therein.

3. Niagara Mohawk Power Corporation v. Penntech Papers, Inc.

Niagara Mohawk argues that the Penntech Papers' purchase of power from Penelec, both of "make-up" power under a provision of Penntech Papers' transmission contract which Penelec, and line losses during transmission pursuant to the same contract, causes Penntech Papers to sell to Niagara Mohawk power from a facility other than a QF.

In Order No. 888, the Commission determined that "energy imbalance service" is one of six ancillary services which with must be provided under an open access transmission tariff.[32] The description of "energy imbalance service" and the service provided by Penelec to Penntech Papers to correct inadvertent imbalances indicate that they are the same service. As this is an ancillary service as defined in Order Nos. 888 and 888–A, it does not constitute a sale-for-resale and does not affect Penntech Papers' QF status. Likewise, the purchase of line loss service by Penntech Papers for transmission service provided past the point of interconnection with Penelec does not affect its QF status. We will, therefore, not revoke Penntech Papers' QF status or take other remedial action.

The Commission orders:

(A) The petitions for declaratory order are hereby granted in part and denied in part, as discussed in the body of this order.

(B) The motion of Connecticut Valley filed in Docket Nos. EL94–10–000 and QF86–177–001 to revoke the QF status of Claremont is hereby denied.

(C) The motion of CP&L filed in Docket Nos. EL94–62–000 and QF85–102–005 to revoke the QF status of Stone Container is hereby denied.

(D) The motion of Niagara Mohawk filed in Docket Nos. EL96–1–000 and QF86–722–003 to revoke the QF status of Penntech Papers is hereby denied.

(E) Any facility which by virtue of this order is required to file rates pursuant to section 205 of the FPA shall make such a filing within 60 days of the date of publication of this order in the **Federal Register**, as discussed in the body of this order.

(F) The Secretary is hereby directed to arrange for publication of this order in the **Federal Register** as soon as possible.

[32] FERC Stats. & Regs. ¶31,036 at 31, 703–04; *see also* Order No. 888–A, FERC Stats. & Regs ¶31,048 at 30,229–34.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4014 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES97–7–002]

Consumers Energy Company; Notice of Amendment of Application

February 11, 1998.

Take notice that on January 27, 1998, Consumers Energy Company (Consumers), filed an amendment to its original application in this proceeding. The amendment seeks an increase of $500 million in Consumers' current authorization to issue long-term securities for refunding and refinancing purposes. Consumers also requests waiver of the Commission's competitive bid/negotiated placement requirements for certain securities to be issued pursuant to the authorization requested in this docket.

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, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 358.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4033 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1681–000]

GPU Advanced Resources, Inc., Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, GPU Advanced Resources, Inc., tendered for filing proposed changes in the Code of Conduct to which it has agreed to adhere in connection with its sales of electric energy and capacity at market-based rates.

The proposed changes would, among other things, extend the application of the Code of Conduct to all power marketing affiliates of GPU, Inc., and would narrow certain limitations on transactions and information sharing to transactions and sharing among such power marketing affiliates and their public utility affiliates.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4028 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1672–000]

Kentucky Utilities Company, Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, Kentucky Utilities Company (KU), tendered for filing a series of supplemental contracts between KU and its wholesale requirements customers. KU requests an effective date of January 1, 1998, for these contracts.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4019 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1673–000]

Kentucky Utilities Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during October 1, 1997 through December 31, 1997, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4020 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1683–000]

Mid-Continent Area Power Pool; Notice of Filing

February 11, 1998.

Take notice that on January 29, 1998, Mid-Continent Area Power Pool (MAPP), tendered for filing Information Filing, New Members of MAPP.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4030 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1680–000]

New England Power Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, New England Power Company, tendered an amendment to Supplement No. 12 to Service Agreement No. 16 under its FERC Electric Tariff, Original Volume No. 1.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4027 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–217–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

February 11, 1998.

Take notice that on February 4, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–217–000 a request pursuant to Sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 17 small volume measuring stations under Northern's blanket certificate issued in Docket No. CP82–401 000 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.

Northern states that it requests authority to abandon 17 small volume measuring stations located in Minnesota. Northern further asserts that end-users have requested the removal of these measuring stations from their property.

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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3939 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–218–000]

Northern Natural Gas Company; Notice of Application To Abandon

February 11, 1998.

Take notice that on February 6, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed under Section 7(b) of the Natural Gas Act, for authority to abandon by sale to Transok, Inc. (Transok) 37 miles of 8 and 16-inch pipeline and dehydration facilities in Custer and Roger Mills Counties, Oklahoma. Northern proposes to sell the facilities to Transok for $3,000,000. Northern's request is more fully set forth in the application on file with the Commission and open to public inspection.

Specifically Natural proposes to sell:

1. 14 miles of Northern's 8-inch line extending from the outlet of the Diamond Shamrock Plant located in Section 5, Township 15N, Range 21W, Roger Mills County, Oklahoma to, and including the Redmoon Dehy yard located in Section 27, Township 14N, Range 20W, in Custer County, Oklahoma.

2. 23 miles of Northern's 16-inch line extending from the Northern/Transok interconnect in Section 33, Township 13N, Range 17W, to a point in Section 14, Township 12N, Range 14W all in Custer County, Oklahoma.

3. All farm taps, interconnecting points, delivery points and appurtenant facilities located on the subject facilities. All receipt points and delivery points located along the length of the facilities.

Northern states that after abandonment Northern's "Point Catalog" will be revised to reflect the elimination of the points associated with the facilities being sold. Northern states further, that its transportation customers will then nominate transportation service at the interconnect points between Transok's newly acquired facilities and Northern's transmission facilities.

Any person desiring to be heard or make any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission, 888 First 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 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protesters parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held wihtout further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3940 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–14–001]

Northern Natural Gas Company; Notice of Amendment

February 12, 1998.

Take notice that on February 6, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP98–14–001 an amendment to the pending application filed on October 9, 1997, in Docket No. CP98–14–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon service to Southern Union Gas Company (Southern Union), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

By the pending application in Docket No. CP98–14–000, Northern proposes to abandon by sale to PG&E–TEX, L.P. (PG&E), facilities located in the Permian Area of West Texas, consisting of 250 miles of pipeline ranging from 6-inch to 24-inch in diameter, nine compressor units located at two compressor stations, treating and dehydration facilities, all delivery points located along the length of the pipelines to be abandoned, and all appurtenant facilities.

In the subject amendment, Northern states that the individually certificated services with Southern Union, authorized by order issued September 20, 1989, in Docket No. CP89–14–000 (48 FERC ¶ 61,325 (1989)), was inadvertently omitted from Northern's request for abandonment of service in the original application. Northern states that the July 14, 1988, agreement between Northern and Southern Union provides for the sale of up to 1,100 Mcf per day of natural gas to Southern Union for resale to the City of McCamey, Texas; however, no service has been provided to Southern Union under this agreement since Northern's implementation of Order No. 636 on November 1, 1993.

In addition, subject to the terms of a third amendment to the Purchase and Sale Agreement of the facilities, the price of the facilities to be sold to PG&E is reduced from $19,250,000 to $18,250,000.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 5, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's

Rules. All persons who have heretofore filed need not file again.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4016 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ97–13–000]

Orlando Public Utilities Company; Notice of Filing

February 11, 1998.

Take notice that on January 26, 1998, Orlando Public Utilities Company, tendered for filing its revised open access transmission tariff in the above-referenced docket.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4034 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–167–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Amendment

February 11, 1998.

Take notice that on February 4, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) (formerly Pacific Gas Transmission Company), located at 2100 Southwest River Parkway, Portland, Oregon 97201, filed in Docket No. CP98–167–001, pursuant to section 7 of the Natural Gas Act (NGA), to amend its application which was filed on December 30, 1997.

PG&E GT–NW states that the purpose of this amendment is to reflect the termination of a firm transportation agreement with El Paso Energy Marketing Canada, Inc. involving deliveries of 17,702 Dth/day over a three year period. Accordingly, PG&E GT–NW filed a revised Exhibit I and a revised Exhibit N. PG&E GT–NW states that in all other aspects, the December 30 application remains unchanged.

PG&E GT–NW further states that even with the elimination of this service agreement, the remaining executed contracts will generate revenues on a cumulative basis over the next ten years that will be in excess of the cost of service associated with the proposed facilities for the same ten year period.

Any person desiring to participate in the hearing process or to make any protest with reference to said petition to amend should on or before February 23, 1998, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. 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. All persons who have heretofore filed need not file again.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3936 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

Power Authority of the State of New York; Correction to Notice of 1998 Schedule of Meetings To Discuss Settlement for Relicensing of the St. Lawrence-FDR Power Project

February 11, 1998.

On November 25, 1997, [FR Doc. 97–31481 (62 FR 63702, December 2, 1997)] a notice of a list of 1998 schedule of meetings for the Cooperative Consultation Process (CCP) Team and Subcommittees to continue settlement negotiations for the St. Lawrence-FDR Power Project, located on the St. Lawrence River, St. Lawrence County, New York, was issued. The following revisions should be made.

For the CCP Team meetings, delete "April 21, 1998" and "May 28–29, 1998".

For the Ecological Subcommittee meeting, delete "April 20, 1998", and replace with "April 21, 1998 (afternoon meeting)".

For the Land Management and Recreation Subcommittee meetings, add "April 20, 1998; April 21, 1998 (morning meeting)"; and "May 28, 1998". Also, add "A tentative meeting is scheduled for May 14, 1998".

For the Socioeconomic Subcommittee meeting, add "May 29, 1998".

For the Engineering Subcommittee meeting, add "May 13, 1998".

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3942 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1686–000]

Public Service Company of New Mexico; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, Public Service Company of New Mexico, submitted a notice of termination of the 1997 Wholesale Power Agreement between Public Service Company of New Mexico (PNM), and Texas-New Mexico Power Company (PNM FERC Rate Schedule No. 119 and Supplement No. 1) pursuant to § 35.15(c) of the Rules and Regulations of the Federal Energy Regulatory Commission. By the express terms of Section 5 of the contract, it was in effect for the period January 1, 1997 through December 31, 1997. PNM's filing also is available for public inspection at its offices in Albuquerque, New Mexico.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4032 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–215–000]

Questar Pipeline Company; Notice of Application

February 11, 1998.

Take notice that on February 2, 1998, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP98–215–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing Questar to replace approximately 16.4 miles of Main Line (M.L.) No. 43 pipeline and to abandon in place the existing pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar proposes to replace the entire 16.4 miles of 16-inch diameter M.L. No. 43 pipeline with a new 20-inch pipeline to be known as M.L. No. 103 in Uintah County, Utah. Questar states that the proposed new 20-inch diameter replacement pipeline will parallel the existing M.L. No. 43 pipeline right-of-way. Questar requests authorization to replace the existing 16-inch M.L. No. 43 pipeline because the protective coating on M.L. No. 43 is deteriorating. Questar also proposes to install pig launching and pig receiving facilities on either end of the proposed M.L. No. 103 project. The total cost associated with the installation of M.L. No. 103, as well as the installation of pig launcher and receiver facilities, valves, auxiliary pipeline and other appurtenances, is approximately $6,559,000.

Questar states that, following installation of the M.L. No. 103 pipeline, the existing 16.4 mile, 16-inch diameter M.L. No. 43 pipeline will be capped on both ends, purged with an inert gas and retired in place at an approximate cost of $40,700.

Any person desiring to be heard or making any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. 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.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications 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 Questar to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3938 Filed 2–17–98; 8;45 a.m.]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1682–000]

San Diego Gas & Electric Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, San Diego Gas and Electric Company (SDG&E), tendered for filing certain tariff sheets in its Transmission Owner Tariff (TO Tariff), to supersede certain TO Tariff sheets filed by SDG&E on March 31, 1997. The revised tariff sheets are as follows:

Revised Original Sheet Nos. 53–58

SDG&E states that it has ascertained that certain of the originally filed rates for retail transmission were based on computational errors and that the revised sheets are based on corrected calculations. SDF&E further states that the errors affected only the allocation of costs as among classes of retail transmission customers and do not affect either overall transmission revenue requirements or rates for wholesale transmission customers.

In addition to the revised tariff sheets, SDG&E has also tendered revised Statements BB, BG, and BL for Period 2.

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, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4029 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1674–000]

South Carolina Electric & Gas Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Northern Indiana Public Service Company (NIPSC), as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon NIPSC and the South Carolina Public Service Commission.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4021 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–153–004]

Southern Natural Gas Company; Notice of Petition To Amend

February 11, 1998.

Take notice that on February 4, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–153–004 a petition to amend the authorization issued on May 30, 1997 in Docket No. CP96–153–000, *et al.* pursuant to Section 7(c) of the Natural Gas Act, as amended, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern seeks authorization to modify the route of the northernmost segment of the North Alabama Pipeline to conform to the policy of the U.S. Fish and Wildlife Service for crossing the Wheeler National Wildlife Refuge (Refuge).

Southern states that commencing at M.P. 91.35 of the route approved in the certificate order, the modified route would proceed in a generally northern direction parallel to Interstate Highway 65 (I–65). It is said that where I–65 crosses the Refuge, the pipeline right-of-way would be immediately adjacent to the I–65 right-of-way, following this existing corridor through the Refuge. It is further said that a short distance thereafter, the new route would turn in a northeasterly direction to a point of termination at the new location for the Huntsville Meter Station.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Southern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3935 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1670–000]

State Line Energy, L.L.C.; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, State Line Energy, L.L.C., submitted for filing in the above-referenced docket its Quarterly Report regarding transactions that occurred during the period September 30, 1997 through December 31, 1997, pursuant to its Market-Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2869–000.

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, 888 First Street, N.E., Washington, D.C. 20246, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4018 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–220–000]

Tennessee Gas Pipeline Company; Notice of Application

February 11, 1998.

Take notice that on February 6, 1998, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP98–220–000, an application pursuant to Section 7(c) of Natural Gas Act and Federal Energy Regulatory Commission's regulations for a certificate of public convenience and necessity authorizing Tennessee to construct and operate facilities and to increase the certificated design capacity of portions of its system in order to provide existing customers with increased access to offshore gas supplies, all as more fully described in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become 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 the subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3941 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–07–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–212–000]

Texas Eastern Transmission Corporation; Notice of Application

February 11, 1998.

Take notice that on January 30, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77251–1642, filed in Docket No. CP98–212–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for authorization to abandon and to construct and operate certain facilities located in Orange County, Indiana, 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 replace approximately 2,473 feet of 24-inch pipeline, in three discrete segments, abandon the existing pipeline being replaced and to utilize temporary work space during the construction of such facilities.

It is said that the estimated cost of construction is $2,145,000. It is further said that the replacement pipeline would have a design delivery capacity equivalent to the facilities being replaced, thus there would be no change in Texas Eastern's system maximum daily design capacity.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

application if no motion to intervene is filed with 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 Texas Eastern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3931 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1684–000]

Tucson Electric Power Company; Notice of Filing

February 11, 1998.

Take notice that on January 29, 1998, Tucson Electric Power Company (Tucson), tendered for filing a Transaction Report for quarter ended December 31, 1997.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4031 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1676–000]

The Washington Water Power Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Long-Term Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Idaho Power Company. WWP requests that the Service Agreement be given an affective date of January 1, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4023 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1679–000]

Wisconsin Electric Power Company; Notice of Filing

February 11, 1998.

Take notice that on February 2, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date February 2, 1998. Wisconsin Electric is authorized to state that North American Energy Conservation, Inc., joins in the requested effective date.

Copies of the filing have been served on North American Energy Conservation, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

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, 888 First Street, N.E., Washington, D.C. 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 February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4026 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–14–000, et al.]

Encogen Hawaii, L.P., et al.; Electric Rate and Corporate Regulation Filings

February 9, 1998.

Take notice that the following filings have been made with the Commission:

1. Encogen Hawaii, L.P.

[Docket No. EG98–14–000]

Take notice that on February 6, 1998, Encogen Hawaii, L.P., having its principal office at 1817 Wood Street, Suite #550, West, Dallas, TX 75201, filed with the Commission an amendment to its application for a Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its concerns to those that concern the adequacy or accuracy of the application.

2. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER98–426–000]

Take notice that on January 23, 1998, Ohio Edison Company, on behalf of itself and Pennsylvania Power Company, tendered for filing an amendment in the above-referenced docket.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. FirstEnergy System

[Docket No. ER98–1600–000]

Take notice that on January 28, 1998, FirstEnergy System, filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Louisville Gas and Electric Company and Morgan Stanley Capital Group, Incorporated, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under the Service Agreements is January 1, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER98–1601–000]

Take notice that on January 28, 1998, Florida Power Corporation submitted a report of short-term transactions that occurred under its Market-based Rate Wholesale Power Sales Tariff (FERC Electric Tariff, Original Volume No. 8) during the quarter ending December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER98–1602–000]

Take notice that on January 28, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a summary of short-term transactions made during the fourth quarter of calendar year 1997 under Virginia Power's market rate sales tariff, FERC Electric Power Sales Tariff, Original Volume No. 4, filed by Virginia Power in Docket No. ER97–3561–000.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Power Service Corporation

[Docket No. ER98–1603–000]

Take notice that on January 27, 1998, American Electric Power Service Corporation, tendered for filing a Transaction Report for Quarter Ended December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Texas-New Mexico Power Company

[Docket No. ER98–1604–000]

Take notice that on January 27, 1998, Texas-New Mexico Power Company (TNMP), tendered for filing a quarterly report ended December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Rochester Gas and Electric Corporation

[Docket No. ER98–1605–000]

Take notice that on January 28, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Request for Approval of: (1) A Form Transmission Service Agreement for service under RG&E's open access transmission tariff; and (2) a Form Power Sales Agreement for service under RG&E's market-based power sales tariff (FERC Electric Tariff No. 3).

These service agreements are for use in a retail access pilot program that was approved by the New York State Public Service Commission in Case Nos. 96–E–0898 and 94–E–0952.

A copy of this filing has been served on the New York State Public Service Commission and on each person listed on the Official Service List compiled by the Secretary in Docket No. OA96–141.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER98–1606–000]

Take notice that on January 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Long-Term Market Rate (Schedule SP), Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Alabama Electric Power Cooperative, Inc., for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER98–1607–000]

Take notice that on January 28, 1998, Commonwealth Edison Company (ComEd), submitted for filing three Service Agreements, establishing Avista Energy (Avista), Edgar Electric Co-Op Association (Edgar), and Griffin Energy Marketing, L.L.C. (Griffin), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of January 28, 1998, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Avista, Edgar, Griffin, and the Illinois Commerce Commission.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER98–1610–000]

Take notice that on January 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and PacifiCorp Power Marketing, Inc.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER98–1611–000]

Take notice that on January 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1612–000]

Take notice that on January 28, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Power and Light Company (Bulk Power Marketing).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corporation

[Docket No. ER98–1613–000]

Take notice that on January 27, 1998, Central Vermont Public Service Corporation (Central Vermont), filed (1) amendments to its Open Access Tariff No. 7 to provide for transmission service over the 225 MW AC/DC Converter at Highgate, Vermont, and (2) unexecuted service agreements with New England Power Pool and Citizens Utilities. Central Vermont requests waiver of the 60-day notice requirement in order to permit the amendments and service agreements to become effective as of January 16, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Minnesota Power & Light Company

[Docket No. ER98–1615–000]

Take notice that on January 28, 1998, Minnesota Power & Light Company (MP), tendered for filing a report of short-term transactions that occurred during the quarter ending December 31, 1997, under MP's WCS–2 Tariff which was accepted for filing by the Commission in Docket No. ER96–1823–000].

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Midwest Energy, Inc.

[Docket No. ER98–1616–000]

Take notice that on January 29, 1998, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Point-to-Point Transmission Service entered into between Midwest and Tenaska Power Services Co.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1617–000]

Take notice that on January 29, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP Wholesale (POD: City of Melrose, MN).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1618–000]

Take notice that on January 29, 1998, Northern States Power Company (Minnesota)(NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP Wholesale (POD: City of Fairfax, MN).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. The Dayton Power and Light Company

[Docket No. ER98–1619–000]

Take notice that on January 29, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Tenaska Power Services Co., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon Tenaska Power Services Co., and the Public Utilities Commission of Ohio.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Energy Masters International, Inc.

[Docket No. ER98–1620–000]

Take notice that on January 28, 1998, Energy Masters International, Inc. (formerly Cenerprise, Inc., who's name was changed by Notice of Succession on December 9, 1997), tendered for filing a summary of activity for the fourth quarter of 1997, covering October 1 through December 31, 1997, inclusive.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Energy Unlimited, Inc.

[Docket No. ER98–1622–000]

Take notice that on January 29, 1998, Energy Unlimited, Inc. (Energy Unlimited), tendered for filing pursuant to § 205, 18 CFR 385.205), a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Energy Unlimited intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Energy Unlimited sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Energy Unlimited nor any of its affiliates are in the business of generating or transmitting electric power, or are engaged in any form of franchised electricity distribution.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. State Line Energy, L.L.C.

[Docket No. ER98–1623–000]

Take notice that on January 29, 1998, State Line Energy, L.L.C. (State Line), tendered for filing the following agreement concerning the provision of electrical service to Commonwealth Edison Company (ComEd).

1. Power Purchase Agreement (State Line Generating Station) dated April 17, 1996, between Commonwealth Edison Company and State Line Energy, L.L.C.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Dayton Power and Light Company

[Docket No. ER98–1624–000]

Take notice that on January 28, 1998, Dayton Power and Light Company (Dayton), tendered for filing a summary of 4th quarter market based sales.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. PJM Interconnection, L.L.C.

[Docket No. ER98–1625–000]

Take notice that on January 29, 1998, the PJM Interconnection, L.L.C. (PJM), filed, on behalf of the Members of the LLC, membership applications of Old Dominion Electric Cooperative, Panda Power Corporation and TriStar Ventures Corporation. PJM requests an effective date on the day after this Notice of Filing is received by FERC.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. The Alternative Current Power Group d/b/a The AC Power Group

[Docket No. ER98–1626–000]

Take notice that on January 29, 1998, The Alternative Current Power Group d/b/a The AC Power Group filed a supplement to its application for market-based rates as power marketer. The supplemental information pertains to a company name change, business type status and address change. Effective January 1, 1998, The Alternative Current Power Group d/b/a The AC Power Group changed its name to AC Power Corporation, a Texas corporation, located at 17601 Preston Rd. Suite 191, Dallas, TX. 75252. New business office telephone number is 972–818–0328. New fax number is 972–818–0329.

All other information as filed in the original petition for power marketer remains unchanged.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER98–1627–000]

Take notice that on January 30, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated January 20, 1998, with Tenaska Power Services Co., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Tenaska Power Services Co., as a customer under the Tariff. DLC requests an effective date of January 20, 1998, for the Service Agreement.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Duquesne Light Company

[Docket No. ER98–1628–000]

Take notice that on January 30, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated January 20, 1998, with DTE Energy Trading, Inc., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds DTE Energy Trading, Inc., as a customer under the Tariff. DLC requests an effective date of January 20, 1998, for the Service Agreement.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. South Carolina Electric & Gas Company

[Docket No. ER98–1629–000]

Take notice that on January 29, 1998, South Carolina Electric & Gas Company, tendered for filing a report that summarizes transactions that occurred October 1, 1997 through December 31, 1997, pursuant to the Market-Based Tariff accepted by the Commission in Docket Nos. ER96–1085–000 and ER96–3073–000].

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Southwestern Public Service Company

[Docket No. ER98–1630–000]

Take notice that on January 29, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted a Quarterly Report under Southwestern's market-based sales tariff. The report is for the period of October 1, 1997 through December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Northern Indiana Public Service Company

[Docket No. ER98–1632–000]

Take notice that on January 30, 1998, Northern Indiana Public Service Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Etna Green, Indiana. Northern Indiana has requested an effective date of February 1, 1998.

Copies of this filing have been sent to the Town of Etna Green, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Bangor Hydro-Electric Company

[Docket No. ER98–1633–000]

Take notice that on January 30, 1998, Bangor Hydro-Electric Company (Bangor Hydro), filed a form of service agreement for the provision of short term power between Bangor Hydro and PacifiCorp Power Marketing, Inc., under Bangor Hydro's FERC Rate Schedule Original Volume No. 1.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Southern Company Services, Inc.

[Docket No. ER98–1634–000]

Take notice that on January 30, 1998, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), submitted a report of short-term transactions that occurred under the Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) during the period October 1, 1997 through December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. New England Power Company

[Docket No. ER98–1636–000]

Take notice that on January 30, 1998, New England Power Company (NEP), tendered for filing with the Federal Energy Regulatory Commission a tariff for capacity and capacity related products, NEP Electric Tariff No. 10. Under the tariff, NEP may enter into service agreements for the sale at wholesale of electric capacity, capacity related products, or a combination of such products, at negotiated rates subject to a cost-based ceiling and may conduct transactions pursuant to such service agreements. NEP requested an effective date of April 1, 1998.

NEP has served its filing on the Massachusetts Department of Telecommunication and Energy, the Rhode Island Public Utilities Commission, the Vermont Department of Public Service, and the New Hampshire Public Utilities Commission. It has also been served on the Attorneys General for Massachusetts and Rhode Island.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Wisconsin Power and Light Co.

[Docket No. ER98–1637–000]

Take notice that on January 30, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing executed Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service, establishing Columbia Power Marketing Corporation as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of January 12, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Tucson Electric Power Company

[Docket No. ER98–1639–000]

Take notice that on January 30, 1998, Tucson Electric Power Company (TEP), tendered for filing one (1) service agreement for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requested waiver of the 60-day prior notice requirement to allow the service agreement to become effective as of the earliest date service commenced under the agreement, January 1, 1998. The details of the service agreement are as follows:

Service Agreement for Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts & Wholesale Marketing dated January 1, 1998. Service under this agreement commenced on January 1, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1640–000]

Take notice that on January 30, 1998, Consolidated Edison Company of New York, Inc., tendered for filing a summary of the electric exchanges, electric capacity, and electric other energy trading activities under its FERC Electric Tariff Rate Schedule No. 2, for the quarter ending December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. The Washington Water Power Company

[Docket No. ER98–1641–000]

Take notice that on January 30, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Firm Point to Point Firm Service Agreement under WWP's Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 8. WWP requests an effective date of January 1, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Southern California Edison Company

[Docket No. ER98–1685–000]

Take notice that on January 29, 1998, Southern California Edison Company (Edison), tendered for filing a revised Appendix III (Appendix III) which contains retail transmission rates included as part of Edison's Transmission Owners Tariff (TO Tariff), and various documents supporting the revisions to Appendix III.

Edison is requesting an effective date concurrent with the date the California Independent System Operator begins operations.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Colorado Springs Utilities

[Docket No. NJ97–9–001]

Take notice that on January 28, 1998, Colorado Springs Utilities, tendered for filing its revised open access standards of conduct in the above-referenced docket.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4015 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10847–001]

Creamer and Noble; Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Conduct Public Scoping Meetings and a Site Visit

February 11, 1998.

The Federal Energy Regulatory Commission (Commission) is reviewing an application for an original license for the proposed 500-megawatt Crystal Creek Hydropower Project, No. 10847–001. The pumped-storage project, proposed by Creamer and Noble Energy, Inc., would be located about 26 miles northeast of San Bernardino, California. About 237 acres of the project would be on lands within the San Bernardino National Forest, administered by the U.S. Forest Service (FS) and about 270 project acres would transect private property and lands administered by the U.S. Bureau of Land Management (BLM), Barstow Resource Area.

The Commission intends to prepare an Environmental Impact Statement (EIS) for the Project in accordance with the National Environmental Policy Act. In the EIS, we will consider reasonable alternatives to Creamer and Noble's proposed project, and analyze both site-specific and cumulative environmental impacts of the project, including an economic and engineering analysis.

The EIS will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations presented in the final EIS will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Indian Tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EIS, and to provide us with information that may be useful in preparing the EIS.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EIS will be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator, whose telephone number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address: David P. Boergers, Acting Secretary, Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The comments and information are due to the Commission by April 10, 1998. All filings should clearly show the following on the first page: Crystal Creek Hydroelectric Project, FERC No. 10847–001.

In addition to written comments, we're holding two scoping meetings to solicit any verbal input and comments you may wish to offer on the scope of the EIS. An agency scoping meeting will begin at 8:30 a.m. on Wednesday, March 11, 1998, at the San Bernardino Valley Municipal Water District, 1350 South "E" Street, San Bernardino, California. A public scoping meeting will begin at 6:30 p.m. on Wednesday, March 11, 1998, at the Lucerne Valley Community Center, 33187 Highway 247, Lucerne Valley, California. The public and agencies may attend either or both meetings, and we'll treat written and verbal responses equally. There will also be a visit to the proposed project site on March 10, 1998, to become more familiar with the proposed project. More information about these meetings and site visit is available in the scoping document.

Any questions may be directed to Mr. Carl Keller, project coordinator, at (202) 219–2831, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, NE, Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3945 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

February 11, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license for the construction and operation of water intakes and associated facilities on project lands, and the withdrawal of approximately 12 million gallons per day from the project reservoir for irrigation.

b. *Project No:* 2149–068.

c. *Date Filed:* January 26, 1998.

d. *Applicant:* Public Utility District No. 1 of Douglas County, Washington.

e. *Name of Project:* Wells Hydroelectric Project.

f. *Location:* Okanogan County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., 791(a)–825(r).

h. *Applicant Contact:* Mr. Gordon Brett, Property Supervisor, Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802–4497, (509) 884–7191.

i. *FERC Contact:* Jim Haimes, (202) 219–2780.

j. *Comment Date:* April 6, 1998.

k. *Description of Project:* The licensee is requesting the Commission's authorization to issue a permit to Dan Pariseau Orchards for the installation and operation of water intakes and associated facilities on lands of the Wells Project. The facilities would include 12 water intakes on the Columbia River, each having a capacity to withdraw approximately 1.0 million gallons per day from the project reservoir, and associated buried pipelines to transport water for the irrigation of adjacent apple orchards.

1. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2.. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3943 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

February 11, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license that would allow the Clayton-Rabun County Water Authority (Authority) to increase its water withdrawal from Lake Rabun reservoir for municipal water supply from 806,000 gallons per day (gpd) currently to 2,000,000 gpd (that is, from approximately 1.5 to 3.0 cubic feet per second).

b. *Project No:* 2354–018.

c. *Date Filed:* January 29, 1998.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* North Georgia Project.

f. *Location:* Rabun County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., 791(a)–825(r).

h. *Applicant Contact:* Mr. Larry J. Wall, Georgia Power Company, 241 Ralph McGill Blvd. NE, Atlanta, GA 30308–2054, (404) 506–2054.

i. *FERC Contact:* Jim Haimes, (202) 219–2780.

j. *Comment Date:* April 6, 1998.

k. *Description of Project:* The licensee requests Commission authorization to permit the Authority to increase its water withdrawal from Lake Rabun reservoir from 806,000 gpd currently to 2,000,000 gpd. Existing pumps and water treatment facilities at the site are able to accommodate the increased water withdrawal; consequently, the proposed action would not involve any new construction activity.

1. *This notice also consists of the following standard paragraph:* B, C1, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 3385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3944 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Conduit Exemption

February 11, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No:* 11468–001.

c. *Date filed:* January 28, 1998.

d. *Applicant:* North Side Canal Company.

e. *Name of Project:* Crossroads Conduit Project.

f. *Location:* On the North Side canal system in Jerome County, Idaho (T. 7S. R. 16E., Sections 23, 24, and 25).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:*

Randolph J. Hill, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 395–8930

or

John Rosholt, Rosholt, Robertson & Tucker, P.O. Box 1906, Twin Falls, ID 83301, (208) 734–0700.

i. *FERC Contact:* Héctor M. Pérez at (202) 219-2843.

j. *Description of Project:* The proposed project would consist of: (1) A 900-foot-long, 150-foot-wide forebay with a normal water surface elevation of 3,773.5 feet formed by two dikes with a maximum height above existing ground surface of 9 feet; (2) a primary overflow bypass channel with a top elevation of 3,774 feet and a secondary overflow bypass channel with a top elevation of 3,774.75 feet, both at the forebay; (3) a reinforced concrete intake structure; (4) a 10-foot-diameter, 1,750-foot-long steel penstock; and (5) a reinforced concrete powerhouse with a 3,200-kilowatt turbine-generator unit.

k. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3946 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Acceptance and Notice Requesting Interventions and Protests

February 11, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Original License for a Major Water Power Project—5 Megawatts or Less.

b. Project No.: 11480.

c. Date filed: November 25, 1997.

d. Applicant: Haida Corporation.

e. Name of Project: Reynolds Creek Hydroelectric Project.

f. Location: On Reynolds Creek, Prince of Wales Island, Alaska.

g. Filed Pursuant to: Federal Power Act and Public Utility Regulatory Policies Act.

h. Applicant Contact: Michael V. Stimac, HDR Engineering, Inc., 500-108th Avenue NE, Suite 1200, Bellevue, Washington 98004–5538, (425) 453–1523.

i. FERC Contact: Carl J. Keller, (202) 219–2831.

j. Deadline for filing interventions and protests: April 15, 1998.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions—see attached paragraph D7.

l. Brief Description of Project: The proposed modified run-of-river hydroelectric project would consist of: (1) A 20-foot-long, concrete weir, diversion dam and intake at the outlet of Rich's Pond; (2) a 3,200-foot-long, 42-inch diameter, steel penstock, (3) a metal powerhouse initially containing a 1,500 kilowatt (kW) horizontal impulse turbine/generator for Phase 1; Phase II would add a second 3,500 kW turbine/generator, (4) about 500 feet of new access road, and (5) a 10.9-mile-long, 34.5 kilovolt overhead transmission line.

m. This notice also consists of the following standard paragraphs: A2, A–9, B1, and D7.

n. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426 or by calling (202) 208–1659. A copy is also available

for inspection and reproduction by contacting Mr. Michael Stimac at HDR Engineering, Inc. at (425) 453–1523 in Bellevue, Washington or Mr. Charles Skultka, Sr., Haida Corporation, at (907) 966–2574 in Hydaburg, Alaska.

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Lindwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3947 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5968–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; General Conformity of Federal Actions to State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Determining Conformity of General Federal Actions to State Implementation Plans, OMB Control Number 2060–0279, ICR number 1637.03, expiration date: April 30, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 20, 1998.

ADDRESSES: A copy of the supporting statement may be obtained from the Ozone Policy and Strategy Group, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, MD–15, Research Triangle Park, NC 27711 or is available at http://www.epa.gov/ttn/oarpg/meta.19078.1.General.Doc, 19078.2.Gencon.Log, and 19078.3.Gencon.xls.

Comments must be mailed to David H. Stonefield, Ozone Policy and Strategies Group, Air Quality Strategies and Standards Division, MD–15, Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: David Stonefield, telephone: 919–541–5350, Facsimile: 919–541–0824, E–MAIL: stonefield.dave@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which take Federal actions, or are subject to Federal actions, and emit pollutants above de minimis levels.

Title: Determining Conformity of General Federal Actions to State Implementation Plans, OMB Control Number 2060–0279, ICR number 1637.03, expiration date: April 30, 1998.

Abstract: Before any agency, department, or instrumentality of the Federal government engages in, supports in any way, provides financial assistance for, licenses, permits, approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 *et seq.*) requires that all Federal actions conform with the SIPs to attain and maintain the NAAQS. The EPA's implementing regulations require Federal entities to make a conformity determination for all actions which will impact areas designated as nonattainment or maintenance for the NAAQS and which will result in total direct and indirect emissions in excess of de minimis levels. The Federal entities must collect information on the SIP requirements and the pollution sources to make the conformity determination. Depending on the type of action, the Federal entities either collect the information themselves, hire consultants to collect the information or require applicants/sponsors of the Federal action to provide the information.

The type and quantity of information required will depend on the

circumstances surrounding the action. First, the entity must make an applicability determination. If the net total direct and indirect emissions do not exceed de minimis levels established in the regulations or if the action meets certain criteria for an exemption, a conformity determination is not required. Actions requiring conformity determinations vary from straightforward, requiring minimal information, to complex, requiring significant amounts of information. The Federal entity must determine the type and quantity of information on a case-by-case basis. State and local air pollution control agencies are usually requested to provide information to the Federal entities making a conformity determination and are provided opportunities to comment on the proposed determinations. The public is also provided an opportunity to comment on the proposed determinations.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated annual projected hour burden and cost for the respondents (generally Federal agencies) are 32,560 hours and $1,118,119. The estimated annual projected hour burden and cost for the State and local agencies are 1,156 hours and $323,354. The estimated annual projected hour burden and cost for the EPA are 1,846 hours and $51,173. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 6, 1998.

John Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 98–4006 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5955–2]

Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the EPA has issued guidance for continuing the implementation of the Clean Air Act requirements for the 1-hour ozone and pre-existing PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) NAAQS following EPA's promulgation of the new 8-hour ozone (62 FR 38856, July 18, 1997) and PM (62 FR 38652, July 18, 1997) NAAQS. The EPA has issued the guidance to ensure that momentum is maintained by the States in their current programs while moving toward developing their plans for implementing the new NAAQS, and it applies to all areas now subject to the 1-hour ozone standard and the pre-existing PM_{10} standard regardless of attainment status. On July 16, 1997 (62 FR 38421, July 18, 1997), President Clinton issued a directive to EPA Administrator Browner on implementation of the new standards for ozone and PM. In that directive, the President laid out a plan on how these new standards, as well as the current 1-hour ozone and pre-existing PM standards, are to be implemented. The guidance reflects the Presidential Directive.

ADDRESSES: Copies of the guidance are available from the World Wide Web site listed in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For specific questions and comments on the ozone portion of this guidance, contact Ms. Sharon Reinders, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5284; for specific questions and comments on the PM portion of this guidance, contact Ms. Robin Dunkins, U.S. EPA, MD–15, Research Triangle Park NC 27711, telephone (919) 541–5335.

SUPPLEMENTARY INFORMATION: The purpose of this guidance is to set forth EPA's current views on key issues regarding the ongoing programs implemented by State, local and tribal air pollution control agencies to attain the 1-hour ozone and pre-existing PM_{10} NAAQS. These issues will be addressed in future rulemakings as appropriate. The EPA will propose to take a particular action based in whole or in part on its views of the relevant issues, and the public will have an opportunity to comment on EPA's interpretations during the rulemakings. When EPA issues final rules based on its reviews, those views will be binding on the States, the public, and EPA as a matter of law.

Electronic Availability

A World Wide Web (WWW) site has been developed for overview information on the NAAQS and the ozone, PM, and regional haze (RH) implementation process. The Uniform Resource Location (URL) for the home page of the web site is *http://ttnwww.rtpnc.epa.gov/implement*. For assistance, the TTN Helpline is (919) 541–5384. For those persons without electronic capability, a copy may be obtained from Ms. Tricia Crabtree, MD–15, Air Quality Strategies and Standards Division, RTP NC 27711, telephone (919) 541–5688).

Dated: February 6, 1998.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 98–3882 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5967–9]

Open Meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group.

SUMMARY: As required by section 10 (a)(2) of the Federal Advisory

Committee Act (Pub. L. 92–463), the EPA is giving notice of the sixth meeting of the Industrial Non-Hazardous Waste Policy Dialogue Committee, also known as the Industrial Non-Hazardous Waste Stakeholders Focus Group. The purpose of this committee is to advise EPA and ASTSWMO (the Association of State and Territorial Solid Waste Management Officials) in developing voluntary guidance for the management of industrial waste in landfills, waste piles, surface impoundments, and land application units. The Focus Group will facilitate the exchange of information and ideas among the interested parties relating to the development of such guidance. The purpose of the sixth meeting will be to continue discussion of issues related to the development of such guidance. Issues to be discussed will include ground-water modeling/risk results (i.e., leachate concentration threshold values for the Tier I national approach for the four types of management units), development of a screening tool to evaluate the need for air emission controls, and waste characterization. In addition, presentations will be made to the Focus Group concerning the development of the landfill neural net software (i.e., the tool to be used by facility managers for the Tier II site-specific adjustments) and the latest draft of the CD–ROM being developed for this project. There will be an opportunity for limited public comment at the end of each day of the meeting.

DATES: The committee will meet on March 18 and 19, 1998, from 9:00 a.m. to 5:00 p.m. on March 18, and from 8:30 a.m. to 3:00 p.m. on March 19.

ADDRESSES: The location of the meeting is the Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW, Washington, D.C. 20008. The phone number is 202–328-2000. The seating capacity of the room is approximately 60 people, and seating will be on a first-come basis. Supporting materials are available for viewing at Docket F–96–INHA–FFFFF in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The material to be discussed at the March Focus Group meeting will be available for viewing in the above docket on and after March 4, 1998. For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the committee should contact Paul Cassidy, Municipal and Industrial Solid Waste Division, Office of Solid Waste, at (703) 308–7281 or e-mail at cassidy.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice is available on the Internet. Follow these instructions to access electronically:

WWW: http://www.epa.gov/fedrgstr/

FTP: ftp.epa.gov

Login: anonymous

Password: your Internet address

File is located in /pub/epaoswer

Background

EPA and ASTSWMO have formed a State/EPA Steering Committee to jointly develop voluntary facility guidance for the management of industrial nonhazardous waste in land-based disposal units. The purpose of the guidance document is to provide a guide to facility managers so that they can provide safe industrial waste management. The guidance document will address such topics as appropriate controls for ground-water, surface-water, and air protection, liner designs, public participation, waste reduction, daily operating practices, monitoring and corrective action, and closure and post-closure considerations.

The State/EPA Steering Committee has convened this Stakeholders Focus Group to obtain recommendations from individuals who are members of a broad spectrum of public interest groups and affected industries. All recommendations from Focus Group participants will be forwarded to the State/EPA Steering Committee for consideration, as the Stakeholders' Focus Group will not strive for consensus. The State/EPA Steering Committee will also provide an opportunity for public comment on the draft guidance document.

Copies of the minutes of all Stakeholder Focus Group meetings have been made available through the docket at the RCRA Information Center, including minutes of the previous 5 Focus Group meetings, which were held on April 11–12, 1996, September 11–12, 1996, February 19–20, 1997, May 20–21, 1997, and October 8–9, 1997.

Dated: February 6, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–4009 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5967–6]

Announcement and Publication of the Policy for Municipality and Municipal Solid Waste; CERCLA Settlements at NPL Co-Disposal Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This policy supplements the "Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes" (1989 Policy) that was issued by the U.S. Environmental Protection Agency (EPA) on September 30, 1989. This policy states that EPA will continue its policy of not generally identifying generators and transporters of municipal solid waste (MSW) as potentially responsible parties at NPL sites. In recognition of the strong public interest in reducing contribution litigation, however, EPA identifies in the policy a settlement methodology for making available settlements to MSW generators and transporters who seek to resolve their liability. In addition, the policy identifies a presumptive settlement range for municipal owners and operators of co-disposal sites on the NPL who desire to settlement their Superfund liability.

FOR FURTHER INFORMATION CONTACT: Leslie Jones (202–564–5123) or Doug Dixon (202–564–4232), Office of Site Remediation Enforcement, 401 M. St, S.W., 2273A, Washington, D.C. 20460. This policy is available electronically at http://www.epa.gov/oeca//osre.html. Copies of this policy can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number PB98–118003. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553–NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated: February 5, 1998.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites

I. Purpose

The purpose of this policy is to provide a fair, consistent, and efficient settlement methodology for resolving the potential liability under CERCLA [1] of generators and transporters of municipal sewage sludge and/or municipal solid waste at co-disposal landfills on the National Priorities List (NPL), and municipal owners and operators of such sites. This policy is intended to reduce transaction costs, including those associated with third-party litigation, and to encourage global settlements at sites.

II. Background

Currently, there are approximately 250 landfills on the NPL that accepted both municipal sewage sludge and/or municipal solid waste (collectively referred to as "MSW") and other wastes, such as industrial wastes, containing hazardous substances. These landfills, which are commonly referred to as "co-disposal" landfills, comprise approximately 23% of the sites on the NPL. Many of these landfills were or are owned or operated by municipalities in connection with their governmental function of providing necessary sanitation and trash disposal services to residents and businesses.

EPA recognizes the differences between MSW and the types of wastes that usually give rise to the environmental problems at NPL sites. Although MSW may contain hazardous substances, such substances are generally present in only small concentrations. Landfills at which MSW alone was disposed of do not typically pose environmental problems of sufficient magnitude to merit designation as NPL sites. In the Agency's experience, and with only rare exceptions do MSW-only landfills become Superfund sites, unless other types of wastes containing hazardous substances, such as industrial wastes, are co-disposed at the facility. Moreover, the cost of remediating MSW is typically lower than the cost of remediating hazardous waste, as evidenced by the difference between closure/post-closure requirements and corrective action costs incurred at facilities regulated under Subtitles D and C of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.* (RCRA).

On December 12, 1989, EPA issued the "Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes" (the 1989 Policy) to establish a consistent approach to certain issues facing municipalities and MSW generators/transporters. The 1989 Policy sets forth the criteria by which EPA generally determines whether to exercise enforcement discretion to pursue MSW generators/transporters as potentially responsible parties (PRPs) under § 107(a) of CERCLA. The 1989 Policy provides that EPA will not generally identify an MSW generator/transporter as a PRP for the disposal of MSW at a site unless there is site-specific evidence that the MSW that party disposed of contained hazardous substances derived from a commercial, institutional or industrial process or activity. Despite the 1989 Policy, the potential presence of small concentrations of hazardous substances in MSW has resulted in contribution claims by private parties against MSW generators/transporters.

Additionally, the 1989 Policy recognizes that municipal owners/operators, like private parties, may be PRPs at Superfund sites. The 1989 Policy identifies several settlement provisions that may be particularly suitable for settlements with municipal owners/operators in light of their status as governmental entities.

Consistent with the 1989 Policy, the Agency will continue its policy to not generally identify MSW generators/transporters as PRPs at NPL sites, and to consider the performance of in-kind services by a municipal owner/operator as part of that party's cost share settlement. In recognition of the strong public interest in reducing the burden of contribution litigation, however, this policy supplements the 1989 Policy by providing for settlements with MSW generators/transporters and municipal owners/operators that wish to resolve their potential Superfund liability and obtain contribution protection pursuant to Section 113(f) of CERCLA.

III. Definitions

For purposes of this policy, EPA defines municipal solid waste as household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills. A contributor of municipal solid waste containing such other wastes may not be eligible for a settlement pursuant to this policy if EPA determines, based upon the total volume or toxicity of such other wastes, that application of this policy would be inequitable.[2]

For purposes of this policy, municipal solid waste and municipal sewage sludge are collectively referred to as MSW; all other wastes and materials containing hazardous substances are referred to as non-MSW. Municipal sewage sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage sludge, but does not include sewage sludge containing residue removed during the treatment of wastewater from manufacturing or processing operations.

The term municipality refers to any political subdivision of a state and may include a city, county, town, township, local public school district or other local government entity.

IV. Policy Statement

EPA intends to exercise its enforcement discretion to offer settlements to eligible parties that wish to resolve their CERCLA liability based on a unit cost formula for contributions by MSW generators/transporters and a presumptive settlement percentage and range for municipal owners/operators of co-disposal sites.

MSW Generator/Transporter Settlements

For settlement purposes, EPA calculates an MSW generator/transporter's share of response costs by multiplying the known or estimated quantity of MSW contributed by the generator/transporter by an estimated unit cost of remediating MSW at a representative RCRA Subtitle D landfill. This method provides a fair and efficient means by which EPA may settle with MSW generators/transporters that reflect a reasonable approximation of the cost of remediating MSW.

This policy's unit cost methodology is based on the costs of closure/post-closure activities at a representative RCRA Subtitle D landfill. EPA's estimate of the cost per unit of remediating MSW at a representative

[1] The Comprehensive Environmental Response, Compensation and Liability, 42 U.S.C. 9601, *et seq.*

[2] For example, such other wastes may not constitute municipal solid waste where the cumulative amount of such other wastes disposed of by a single generator or transporter is larger than the amount that would be eligible for a de micromis settlement.

Subtitle D landfill is $5.30 per ton.[3] That unit cost is derived from the cost model used in EPA's "Regulatory Impact Analysis for the Final Criteria for Municipal Solid Waste Landfills," (RIA).[4]

To calculate the unit cost, the Subtitle D landfill cost model was applied to account for the costs associated with the closure/post-closure criteria of part 258[5] (excluding non-remedial costs, such as siting and operational activities) for two types of cost scenarios: basic closure cover requirements at a Subtitle D landfill; and closure requirements supplemented by a typical corrective action response at a Subtitle D landfill. Based on the costs associated with those activities, EPA developed a cost per ton for each scenario. In recognition of EPA's estimate that approximately 30–35% of existing unlined MSW landfills will trigger corrective action under part 258,[6] EPA used a weighted average of both unit costs to develop a final unit cost. Specifically, EPA averaged the unit costs giving a 67.5% weight to the basic closure cover unit cost and a 32.5% weight to the multilayer cover and corrective action scenario. The resulting unit cost, $5.30 per ton reflects (as stated in the Subtitle D RIA) is the likelihood that unlined MSW landfills, such as those typically found on the NPL, would trigger corrective action under part 258.

In applying the RIA model to develop unit costs, EPA used the average size of co-disposal sites on the NPL, 69 acres. Other landfill assumptions from the RIA that EPA used in running the model include the following: a 20-year operating life (also consistent with the average NPL co-disposal site operating life); 260 operating days per year; a below-grade thickness of 15 feet with 50 percent of waste below grade; a compacted waste density of 1,200 lb/cy;[7] and a landfill input of 289.3 tons per day.[8] The present value cost is calculated assuming a 7 percent discount rate.

When seeking to apply the unit cost to parties' MSW contributions, in some cases a party's contribution is quantified by volume (cubic yards) rather than weight (pounds). Absent site-specific contemporaneous density conversion factors, Regions may use the following presumptive conversion factors that are representative of MSW. MSW at the time of collection from places of generation (*i.e.*, "loose" or "curbside" refuse) has a density conversion factor of 100 lbs./cu. yd.[9] MSW at the time of transport in or disposed by a compactor truck has a density conversion factor of 600 lbs./cu. yd.[10] In cases involving municipal sewage sludge, a party's contribution may first be converted from a volumetric value to a wet weight value using a water density of 8.33 lbs./gallon [11] and the specific gravity of the municipal sewage sludge.[12] The wet weight may then be converted to a dry weight using an appropriate value for the percentage of solids in the municipal sewage sludge. These conversion factors, in conjunction with the unit cost, can be used to develop a total settlement amount for the MSW attributable to an individual party.

In order to be eligible for a settlement under this policy, an MSW generator/transporter must provide all information requested by EPA to estimate the quantity of MSW contributed by such party. EPA may solicit information from other parties where appropriate to estimate the quantity of a particular generator's/transporter's contribution of MSW. Where the party has been forthcoming with requested information, but the information is nonetheless imperfect or incomplete, EPA will construct an estimate of the party's quantity incorporating reasonable assumptions based on relevant information, such as census data and national per capita solid waste generation information.

MSW generators/transporters settling pursuant to this policy will be required to waive their contribution claims against other parties at the site. In the situation where there is more than one generator or transporter associated with the same MSW, EPA will not seek multiple recovery of the unit cost rate from different generators or transporters with respect to the same units of MSW. EPA will settle with one or all such parties for the total amount of costs associated with the same waste based on the unit cost rate. Notwithstanding the general requirement that settlors under this policy must waive their contribution claims, a settlor will not be required to waive its contribution claims against any nonsettling non-de micromis generators or transporters associated with the same waste. However, in regards to these individual payments for the same MSW, EPA will not become involved in determining the respective shares for the parties.

It is an MSW generator's or transporter's responsibility to notify EPA of its desire to enter into settlement negotiations pursuant to this proposal. Absent the initiation of settlement discussions by an MSW G/T, EPA may not take steps to pursue settlements with such parties.

Municipal Owner/Operator Settlements

Pursuant to this policy, the U.S. will offer settlements to municipal owners/operators of co-disposal facilities who wish to settle; those municipal owners/operators who do not settle with EPA will remain subject to site claims by EPA consistent with the principles of joint and several liability, and claims by other parties.

EPA recognizes that some of the co-disposal landfills listed on the NPL are or were owned or operated by municipalities in connection with their governmental function to provide necessary sanitation and trash disposal services to residents and businesses. EPA believes that those factors, along with the nonprofit status of municipalities and the unique fiscal planning considerations that they face, warrant a national settlement policy that provides municipal owners/operators with settlements that are fair, reasonable, and in the public interest. As discussed below, EPA has based the policy on what municipalities have historically paid in settlements at such sites.

This policy establishes 20% of total estimated response costs for the site as a presumptive baseline settlement amount for an individual municipality to resolve its owner/operator liability at the site. Regions may offer settlements varying from this presumption consistent with this policy, generally not to exceed 35%, based on a number of site-specific factors. The 20% baseline is an individual cost share and pertains solely to a municipal owner/operator's liability as an owner/operator. EPA recognizes that, at some

[3] This rate will be adjusted over time to reflect inflation.

[4] PB–92–100–841 (EPA's Office of Solid Waste and Emergency Response); see also RIA Addendum, PB–92–100–858.

[5] Part 258 is the set of regulations that establish landfill operation and closure requirements for RCRA Subtitle D landfills.

[6] See Addendum to RIA at II–12 n. 13.

[7] September 22, 1997 memo to the file by Leslie Jones (conversation with Dr. Robert Kerner, Drexell University, head and founder of the Geosynthetic Institute).

[8] The RIA model calculates a ton per day input of 289.3 based on the 69-acre size, the waste density factor of 1200 lb.cy, and a total of 5200 operating days during the life of the landfill.

[9] "Estimates of the Volume of MSW and Selected Components in Trash Cans and Landfills" (Feb. 1990), prepared for the Council for Solid Waste Solutions by Franklin Associates, Ltd.; "Basic Data: Solid Waste Amounts, Composition and Management Systems" (Oct. 1985—Technical Bulletin #85–6), National Solid Waste Management Association.

[10] Id.

[11] "Final Guidance on Preparing Waste-in Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA" (Feb. 22, 1991), OSWER Directive No. 9835.16.

[12] Specific density is determined by dividing the density of a material by the density of water.

sites, there may be multiple liable municipal owners/operators and EPA may determine that it is appropriate to settle for less than the presumption for an individual owner/operator. A group or coalition of two or more municipalities with the same nexus (i.e., basis for liability) to a site, operating at the same time or during continuous operations under municipal control, should be considered a single owner/operator for purposes of developing a cost share (e.g., two or more cities operated together in joint operations; in cost sharing agreements; or continuously where such a group's membership may have changed in part). In cases where a municipal owner/operator is also liable as an MSW generator/transporter, EPA may offer to resolve the latter liability for an additional payment amount developed pursuant to the MSW generator/transporter settlement methodology.

Under this policy, EPA may adjust the settlement in a particular case upward from the presumptive percentage (generally not to exceed a 35% share) based on consideration of the following factors:

(1) Whether the municipality or an officer or employee of the municipality exacerbated environmental contamination or exposure (e.g., the municipality permitted the installation of drinking water wells in known areas of contamination); and

(2) Whether the owner/operator received operating revenues net of waste system operating costs during ownership or operation of the site that are substantially higher than the owner/operator's presumptive settlement amount pursuant to this policy.

The Regions may adjust the presumptive percentage downward based on whether the municipality, of its own volition (i.e., not pursuant to a judicial or administrative order) made specific efforts to mitigate environmental harm once that harm was evident (e.g., the municipality installed environmental control systems, such as gas control and leachate collection systems, where appropriate; the municipality discontinued accepting hazardous waste once groundwater contamination was discovered; etc.). The Regions may also consider other relevant equitable factors at the site.

The 20% baseline amount is based on several considerations. EPA examined the data from past settlements of CERCLA liability between the United States, or private parties, and municipal owners/operators at co-disposal sites on the NPL where there were also PRPs who were potentially liable for the disposal of non-MSW, such as industrial waste. EPA excluded from analysis sites where the municipal owner/operator was the only identified PRP because those are not the types of situations that this policy is intended to address. Thus, settlements under this policy are appropriate only at sites where there are multiple, viable non-*de minimis* non-MSW generators/transporters. EPA's analysis of past settlements indicated an average municipality settlement amount of 29% of site costs.

In reducing the 29% settlement average to a 20% presumptive settlement amount, EPA considered two primary factors. First, in examining the historical settlement data, EPA considered that the relevant historical settlements typically reflected resolution of the municipality's liability not only as an owner/operator, but also as a generator or transporter of MSW. Under this policy, a municipality's generator/transporter liability will be resolved through payment of an additional amount, calculated pursuant to the MSW generator/transporter methodology.

Second, the owner/operator settlement amounts under this policy also reflect the requirement that municipal owners/operators that settle under this policy will be required to waive all contribution rights against other parties as a condition of settlement. By contrast, in many historical settlements, municipal owners/operators retained their contribution rights and hence were potentially able to seek recovery of part of the cost of their settlements from other parties.

V. Application

This policy applies to co-disposal sites on the NPL. This policy is intended for settlement purposes only and, therefore, the formulas contained in this policy are relevant only where settlement occurs. In addition, this policy does not address claims for natural resource damages.

This policy does not apply to MSW generators/transporters who also generated or transported any non-MSW containing a hazardous substance, except to the extent that a party can demonstrate to EPA's satisfaction the relative amounts of MSW and non-MSW it disposed of at the site and the composition of the non-MSW. In such cases, EPA may offer to resolve the party's liability with respect to MSW as provided in this policy at such time as the party also agrees to an appropriate settlement relating to its non-MSW on terms and conditions acceptable to EPA.

EPA does not intend to reopen settlements with the U.S., nor does this policy have any effect on unilateral administrative orders (UAOs) issued prior to issuance of the policy. At sites for which prior settlements have been reached but where MSW parties are subject to third party litigation, the U.S. may settle with eligible parties based on the formulas established in this policy and may place those settlement funds in a site-specific special account. At sites where no parties have settled to perform work, where the U.S. is seeking to recover costs from private parties, and where the private parties have initiated contribution actions against municipalities and other MSW generators/transporters, the U.S. will seek to apply the most expeditious methods available to resolve liability for those parties pursued in third-party litigation, including, in appropriate circumstances, application of this policy. EPA may require settling parties to perform work under appropriate circumstances, in a manner consistent with the settlement amounts provided in this policy.

Because one of the goals of this policy is to settle for a fair share from MSW generators/transporters and municipal owners/operators, EPA will consider in determining a settlement amount under this policy any claims, settlements or judgments for contribution by a party seeking settlement pursuant to this policy. In no circumstances should a party that receives monies from contribution settlements in excess of its actual cleanup costs receive a benefit from this policy.

The United States will not apply this policy where, under the circumstances of the case, the resulting settlement would not be fair, reasonable, or in the public interest. Regions should carefully consider and address any public comments on a proposed settlement that questions the settlement's fairness, reasonableness, or consistency with the statute.

VI. Financial Considerations in Settlements

In cases under this policy, EPA will consider all claims of limited ability to pay. EPA intends in the future to develop guidelines regarding analysis of municipal ability to pay. Parties making such claims are required to provide EPA with documentation deemed necessary by EPA relating to the claim, including potential or actual recovery of insurance proceeds. Recognizing that municipal owners/operators often are uniquely situated to perform in-kind services at a site (e.g., mowing, road maintenance, structural maintenance), EPA will carefully consider any forms of in-kind services that a municipal owner/

operator may offer as partial settlement of its cost share.

VII. Use with Other Policies

This policy is intended to be used in concert with EPA's existing guidance documents and policies (e.g., orphan share, de micromis, residential homeowner, etc.), and so other EPA settlement policies may also apply to these sites. For example, those parties eligible for orphan share compensation under EPA's orphan share policy will continue to be eligible for such compensation.[13]

VIII. Consultation Requirement

The first two settlements in each Region reached pursuant to this policy require the concurrence of the Director of the Office of Site Remediation Enforcement (OSRE). All subsequent settlements with municipal owners/operators at co-disposal sites require the concurrence of the Director of OSRE. If you have any questions regarding this policy please call Leslie Jones (202) 564–5123 or Doug Dixon (202) 564–4232.

Notice: This guidance and any internal procedures adopted for its implementation are intended exclusively as guidance for employees of the U.S. Government. This guidance is not a rule and does not create any legal obligations. Whether and how the United States applies the guidance to any particular site will depend on the facts at the site.

[FR Doc. 98–4007 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5967–7]

Notice of Proposed Administrative De Micromis Settlement Pursuant to Section 122(g)(4) of the Comprehensive Environmental Response,Compensation, and Liability Act, Regarding the Pollution Abatement Services Superfund Site, Oswego, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (EPA), Region II, announces a proposed administrative "de micromis" settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Pollution Abatement Services Superfund Site (Site). The Site is located near the eastern boundary of the City of Oswego, New York. The Site is included on the National Priorities List established pursuant to section 105(a) of CERCLA, 42 U.S.C. 9605(a). This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment.

The proposed administrative settlement has been memorialized in an Administrative Order on Consent (Order) between EPA and Oneida, Ltd. (Respondent). Respondent contributed a minimal amount of hazardous substances to the Site and is eligible for a de micromis settlement under EPA's policies and section 122(g) of CERCLA. This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that this Order is inappropriate, improper or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to this agreement.

DATES: Comments must be provided on or before March 20, 1998.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: "Pollution Abatement Services Superfund Site, U.S. EPA Index No. II–CERCLA–97–0210". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3177.

Dated: January 29, 1998.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 98–4008 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

[13] The orphan share policy will continue, however, to apply towards total site costs and not an individual settlor's settlement share.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 Fed. Reg. 7170.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, February 24th, 1998.

CHANGE IN THE MEETING: The Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: February 13, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–4242 Filed 2–13–98; 3:35 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 11, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 20, 1998.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0454.

Title: Regulation of International Accounting Rates.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 800.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 1,600 hours.

Frequency of Response: On occasion reporting requirement.

Estimated Cost Per Respondent: $28,000.

Needs and Uses: The Commission requests this collection of information as a method to monitor the international accounting rates to ensure that the public interest is being served and also to enforce Commission policies. By requiring a U.S. carrier to make an equivalency showing and to file other documents for end users interconnected international private lines, the Commission will be able to preclude one-way bypass and safeguard its international settlements policy.

The data collected is required by Section 43.51(d) of the Commission's rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3988 Filed 2–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

Open Commission Meeting, Thursday, February 19, 1998

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 19, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Wireless Telecommunications.	TITLE: Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services and Biennial Review of Commission Regulations Pursuant to Section 11 of the Communications Act of 1934. SUMMARY: The Commission will consider consolidating, revising and streamlining its rules governing application procedures for radio services licensed by the Wireless Telecommunications Bureau.
2	Mass Media	TITLE: 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996. SUMMARY: The Commission will review its broadcast ownership rules as part of the regulatory reform review adopted by the Telecommunications Act of 1996.
3	International	TITLE: Policies and Rules for the Direct Broadcast Satellite Service. SUMMARY: The Commission will consider action concerning the rules governing the direct broadcast satellite service.
4	Common Carrier	TITLE: Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96–115); Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934 (CC Docket No. 96–149). SUMMARY: The Commission will consider action concerning the use and protection of customer proprietary network information under Section 222 of the Telecommunications Act.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive; Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–4231 Filed 2–13–98; 3:16 pm]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Harvest International Co., 5441 Festival Circle, La Palma, CA 90623, Gilbert J. JI, Sole Proprietor

ASECOMER International Corporation d/b/a/ Interworld Freight, Inc. d/b/a Junior Cargo Inc., 8610 NW 72nd Street, Miami, FL 33166, Officer: John O. Crespo, Chairman

Intermodel Terminal Inc., 2160 East Dominguez Street, Long Beach, CA 90810, Officers: Isao Ueda, President, Yoichiro Kasai, Vice President

HAG International, L.L.C., 148 Deer Trail North, Ramsey, NJ 07446, Officers: Hartmut Thiele, President, Cynthia Thiele, Vice President

Dated: February 11, 1998.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 98–3990 Filed 2–17–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 3, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Kevin Roger Hammer, Hoffman, Minnesota; to acquire voting shares of Hoffman Bancshares, Inc., Hoffman, Minneosta, and thereby indirectly acquire Farmers State Bank of Hoffman, Hoffman, Minneosta.

Board of Governors of the Federal Reserve System, February 11, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3948 Filed 2–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Merchants Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Gulf Southwest Nevada Bancorp, Inc., Houston, Texas, and Merchants Bank, Houston, Texas.

In connection with this application, Applicant also has applied to acquire Funds Management Group, Inc., Houston, Texas, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y, and to engage in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y. These activities will be conducted throughout the State of Texas.

2. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Peoples First Corporation, Paducah, Kentucky, and thereby indirectly acquire Peoples National Bank & Trust Company, Paducah, Kentucky.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire 47.71 percent of the voting shares of Century Acquisition Corporation, Hurst, Texas, and thereby indirectly acquire City National Bank, Kilgore, Texas.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Zions Bancorporation, Salt Lake City, Utah, and Val Cor Bancorporation, Inc., Cortez, Colorado; to merge with SBT Bancshares, Inc., Colorado Springs, Colorado, and thereby indirectly acquire State Bank and Trust of Colorado Springs, Colorado Springs, Colorado.

In connection with this application, Applicants have also applied to acquire SBT Mortgage, LLC, Colorado Springs, Colorado, and thereby engage in mortgage lending activities, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 11, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3950 Filed 2–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Morrill Bancshares, Inc., Sebetha, Kansas, and Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, First Centralia Bancshares, Inc., Centralia, Kansas, Davis Bancorporation, Inc., Davis, Oklahoma, Onaga Bancshares, Onaga, Kansas; to acquire FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 11, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3949 Filed 2–17–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 814]

Applied Research in Emerging Infections; Hepatitis C Virus Infection—Sexual Transmission

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for competitive cooperative agreements and/or grants to support applied research on emerging infections—epidemiologic studies of sexual transmission of hepatitis C virus (HCV) infection.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (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 317 of the Public Health Service Act, as amended (42 U.S.C. 241 and 247b).

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children's Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private non-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private non-profit organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-and/or women-owned non-profit businesses are eligible to apply.

Availability of Funds

Approximately $500,000 is available in FY 1998 to fund one or two awards. It is expected the awards will begin on or about August 10, 1998 and will be made for a 12-month budget period within a project period of up to three years. The funding estimate is subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Determination of Which Instrument To Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. CDC will review the applications in accordance with the evaluation criteria. Before issuing awards, CDC will determine whether a grant or cooperative agreement is the appropriate instrument based upon the need for substantial CDC involvement in the project.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352, recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

No part of any appropriation shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

Once expected to be eliminated as a public health problem, infectious diseases remain the leading cause of death worldwide. In the United States and elsewhere, infectious diseases increasingly threaten public health and contribute significantly to the escalating costs of health care.

In partnership with other Federal agencies, State and local health departments, academic institutions, and others, CDC has developed a plan for revitalizing the nation's ability to identify, contain, and prevent illness from emerging infectious diseases. The plan, Addressing Emerging Infectious Disease Threats; A Prevention Strategy for the United States, identifies objectives in four major areas: surveillance; applied research; prevention and control; and infrastructure.

Under the objective for applied research, the plan proposes to integrate laboratory science and epidemiology to optimize public health practice in the United States. In FY 1996, CDC initiated the Extramural Applied Research Program in Emerging Infections (EARP).

This grant/cooperative agreement announcement specifically addresses the area of hepatitis c virus (HCV) infection.

In the United States, an estimated 3.9 million persons are chronically infected with HCV and are a potential source of transmission to others. In the absence of pre- or post-exposure prophylaxis, preventing infection is dependent on providing infected persons with specific information about the risk of transmission in different settings. This announcement addresses the sexual transmission of HCV infection.

Case-control studies have demonstrated an independent association between acquiring acute non-A, non-B hepatitis and a history of exposure to an infected sex partner or to multiple heterosexual partners. HCV seroprevalence studies of STD populations have generally demonstrated an increased risk associated with high-risk sexual behaviors, including multiple partners and failure to use a condom. In contrast, HCV seroprevalance studies of long-term partners of patients with chronic HCV infection have generally shown either very low or absent risk, but these studies had inadequate sample sizes to address the issue, most were not conducted in the United States, and in several of the studies in which transmission between long term sex partners was reported, a common parenteral exposure in the past could not be ruled out. Because of the limited and inconsistent data available, there are currently no specific recommendations for changes in sexual practices for infected persons and their steady partners. Definitive studies in this area are needed to determine if such recommendations need to be developed.

Purpose

The purpose of this grant/cooperative agreement program is to provide assistance for projects addressing the sexual transmission of HCV infection between steady partners. Specifically, applications are solicited for projects aimed at determining if there is an increased risk of HCV infection among steady sexual partners of HCV infected persons and identifying potential risk factors responsible for transmission.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for conducting activities for a cooperative agreement under B. (CDC Activities):

Research Project Grants

A research project grant is one in which substantial programmatic involvement by CDC is not anticipated by the recipient. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from CDC. This would include possessing sufficient resources for clinical, laboratory, and data management services and a level of scientific expertise to achieve the objectives described in their research proposal without substantial technical assistance from CDC.

Cooperative Agreements

A cooperative agreement implies that CDC will assist recipients in conducting the proposed research. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with CDC.

A. Recipient Activities

Determine if there is an increased risk of HCV infection among steady sexual partners of HCV infected persons and identify potential risk factors responsible for transmission.

1. Enroll a sufficient number of anti-HCV positive persons and their steady sexual partners (estimated at ≥1000 participants each) to evaluate low frequency events. A steady sexual partner is defined as one whose only partner was the index case during the previous 3 or more years.

a. Index cases should represent a broad spectrum of infection (e.g., asymptomatic persons identified through routine screening, symptomatic persons with various stages of chronic liver disease, etc.), a broad range of duration of infection (when it can be determined), and as broad an age range as possible.

2. Conduct an anti-HCV seroprevalence study of the sexual partners and a complete risk behavior history on cases and partners. All samples with anti-HCV repeatedly reactive results using enzyme immuno-assay should be tested using a supplemental anti-HCV assay.

3. Use nucleic acid detection methods to identify virus-specific factors in either the index case or the partner that may be responsible for transmission and to confirm the identity of virus strains in partner-pairs when both are infected.

4. Publish results.

B. CDC Activities (Cooperative Agreement)

1. Provide technical assistance in the design and conduct of the research.

2. Perform selected laboratory tests as appropriate and necessary.

3. Participate in data management, the analysis of research data, and the interpretation and presentation of research findings.

4. Provide biological materials as necessary for studies, etc.

Technical Reporting Requirements

An original and two copies of a narrative progress report are required semiannually. The first semiannual report is required with each year's non-competing continuation application and should cover program activities from date of the previous report (or date of award for reporting in the first year of the project).

The second semiannual report and Financial Status Report (FSR) are due 90 days after the end of each budget period and should cover activities from the date of previous report. Progress reports should address the status of progress toward specific project objectives and should include copies of any publications resulting from the project. The final performance report and FSR are required no later than 90 days after the end of the project period.

All reports should be directed to the CDC Grants Management Officer at the address referenced in the following section.

Application Process

Notification of Intent To Apply

In order to assist CDC in planning and executing the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so as soon as possible prior to the application due date but not later than 10 business days prior to the application due date. Notification should cite this Announcement number 814 and include: (1) Name and address of institution and (2) name, address, and phone number of contact person. Notification can be provided by facsimile, postal mail, or electronic mail (E-mail) to Sharron P. Orum, Grants Management Officer, Attn: Gladys T. Gissentanna, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, Georgia 30305, facsimile (404) 842–6513 or E-mail gcg4@cdc.gov.

Application Content

All applicants must develop their application in accordance with the PHS Form 398, information contained in this

grant/cooperative agreement announcement, and the instructions outlined below.

General Instructions

Due to the need to reproduce copies of the applications for the reviewers, ALL pages of the application must be in the following format:

1. The original and five (5) copies must be unstapled and unbound.
2. All pages must be clearly numbered, and a complete index to the application and its appendices must be included.
3. All materials must be typewritten, single-spaced, using a font no smaller than size 12, and on 8½" by 11" white paper.
4. Any reprints, brochures, or other enclosures must be copied onto 8½" by 11" white paper by the applicant. No bound materials will be accepted.
5. All pages must be printed on one side only, with at least 1" margins, headers, and footers.

Special Instruction

The application narrative must not exceed 10 pages (excluding budget and appendices). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below.

1. Abstract

Provide a brief (two pages maximum) abstract of the project. Clearly identify the type of award that is being applied for: grant or cooperative agreement.

2. Background and Need

Discuss the background and need for the proposed project. Demonstrate a clear understanding of the purpose and objectives of this program.

3. Capacity and Personnel

Describe applicant's past experience in conducting projects/studies similar to that being proposed. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Provide *in an appendix* letters of support from all key participating non-applicant organizations, individuals, etc., which clearly indicate their commitment to participate as described in the operational plan. Do not include letters of support from CDC personnel. Letters of support from CDC will not be accepted. Award of a cooperative agreement implies CDC participation as outlined in the Program Requirements section of this announcement.

4. Objectives and Technical Approach

Present specific objectives for the proposed project which are measurable and time-phased and are consistent with the Purpose and Recipient Activities of this Program Announcement. Present a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses these objectives (if proposing a multi-year project, provide a detailed description of first-year activities and a brief overview of subsequent-year activities). Clearly identify specific assigned responsibilities for all key professional personnel. Include a clear description of applicant's technical approach/methods which are directly relevant to the above objectives. Describe specific study protocols or plans for the development of study protocols. Describe the nature and extent of collaboration with CDC (if applying for a cooperative agreement) and/or others during various phases of the project. Describe in detail a plan for evaluating study results and for evaluating progress toward achieving project objectives.

5. Budget

Provide a line-item budget and accompanying detailed, line-by-line justification that demonstrates the request is consistent with the purpose and objectives of this program. If requesting funds for contracts, provide the following information for each proposed contract: (a) Name of proposed contractor, (b) breakdown and justification for estimated costs, (c) description and scope of activities to be performed by contractor, (d) period of performance, and (e) method of contractor selection (e.g., sole-source or competitive solicitation).

Note: If indirect costs are requested from CDC, a copy of the organization's current negotiated Federal indirect cost rate agreement or cost allocation plan must be provided.

6. Human Subjects

Whether or not exempt from DHHS regulations, if the proposed project involves human subjects, describe adequate procedures for the protection of human subjects. Also, ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (10 Points)

Extent to which applicant demonstrates a clear understanding of the subject area and of the purpose and objectives of this grant/cooperative agreement program.

2. Capacity (45 Points)

Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. If applicable, extent to which applicant includes letters of support from non-applicant organizations, individuals, etc., and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan.

3. Objectives and Technical Approach (45 Points Total)

a. Extent to which applicant describes objectives of the proposed project which are consistent with the purpose and goals of this grant/cooperative agreement program and which are measurable and time-phased. (10 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all "Recipient Activities." Extent to which applicant clearly identifies specific assigned responsibilities of all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the approach/methods are appropriate and adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant describes adequate and appropriate collaboration with CDC (if applying for a cooperative agreement). Extent to which women, racial and ethnic minority populations are appropriately represented in applications involving human research. (30 points)

c. Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives.

If the proposed project involves notifiable conditions, the degree to which applicant describes an adequate process for providing necessary information to appropriate State and/or local health departments. (5 points)

4. Budget (Not Scored)

Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of grant/cooperative agreement funds.

5. Human Subjects (Not Scored)

If the proposed project involves human subjects, whether or not exempt from the Department of Health and Human Services (DHHS) regulations, the extent to which adequate procedures are described for the protection of human subjects. Note: Objective Review Group (ORG) recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the ORG has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Executive Order 12372 Review

This program is not subject to Executive Order 12372 Review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the grant/cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If an American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Women, Racial and Ethnic Minorities

It is the policy of the CDC and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Hispanic or Latino and White. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of each application PHS Form 398 should be submitted to Sharron Orum, Grants Management Officer, Attn: Gladys T. Gissentanna, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, Georgia 30305, on or before May 15, 1998.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 814. 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 obtained from Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6801, facsimile (404) 842-6513, E-mail gcg4cdc.gov.

Programmatic technical assistance may be obtained from Miriam J. Alter, Ph.D., National Center for Infectious Diseases, Division of Viral and Rickettsial Diseases, Hepatitis Branch, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–37, Atlanta, Georgia 30333, telephone (404) 639–2709, E-mail address: mja2@cdc.gov.

Please refer to Announcement 814 when requesting information regarding this program.

You may also obtain this and other CDC announcements from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov, or at the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office,

Washington, D.C. 20402–9325, telephone (202) 512–1800.

Dated: February 11, 1998.

Joseph R. Carter

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC)

[FR Doc. 98–3981 Filed 2–17–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93P–0448]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Labeling; Serving Sizes; Reference Amount for Salt, Salt Substitutes, Seasoning Salts (e.g., Garlic Salt)" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 2, 1997 (62 FR 63647), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0362. The approval expires on January 31, 2001.

Dated: February 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3985 Filed 2–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0077]

Draft Guidance for Industry: Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of, and requesting comment on a draft guidance for industry entitled "Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)." The purpose of the draft guidance and the discussion questions appended to the draft guidance is to stimulate discussion and seek input about designing clinical programs for the development of drugs, devices, and biological products intended for the treatment of OA. The draft guidance and appended questions will be the topics of discussion at the Arthritis Advisory Committee meeting to be held on February 20, 1998.

DATES: Written comments may be submitted on the draft guidance document by April 20, 1998. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance and appended questions are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm." Written requests for single copies of the draft guidance and appended questions should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The February 20, 1998, meeting of the Arthritis Advisory Committee will be held at the Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Chin C. Koerner, Center for Drug Evaluation and Research (HFD–550), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2090.

SUPPLEMENTARY INFORMATION: Currently, treatment for OA is fundamentally symptomatic, with no data available on the impact on long-term outcomes. Clinical trial experience with OA has been limited to short-term studies in patients with knee or hip OA and generalized OA normally has not been appropriate for assessing OA agents. A number of novel approaches are under study for the treatment of OA, as companies, clinicians, and patients search for more effective therapeutics. The focus of the discussion during the February 20, 1998, Arthritis Advisory Committee Meeting will be: (1) The appropriateness of the proposed claims for improvement of pain, function, structure, and durability, as well as delay in new OA and delay in joint replacement; and (2) trial designs and analyses to support those claims. Notice of the meeting of the Arthritis Advisory Committee appeared in the **Federal Register** of January 16, 1998 (63 FR 2682).

The purpose of the draft guidance and the appended questions is to stimulate discussion and seek input regarding the design of clinical programs for developing drugs, devices, or biological products intended for the treatment of OA. Discussion during the meeting will enable public participation and the exchange of ideas on developing and assessing new treatment modalities for OA, types of claims that might be reasonably pursued, and data necessary to support such claims. The discussions are not intended to result in consensus among participants; they are intended to contribute to the formulation of suggestions to drug, device, and biological product sponsors for designing appropriate study protocols and expediting product development.

Interested persons may submit written comments on the draft document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft document, appended questions, and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3982 Filed 2–12–98; 1:39pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190–98–1220–24–1A]

Emergency Closure of Public Lands in San Benito and Fresno Counties, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of emergency closure and restrictions on use of public lands in the Clear Creek Management Area, located in San Benito and Fresno Counties, California.

SUMMARY: This notification serves to document an emergency closure order which went into effect on February 10, 1998 for all public lands (approximately 50,000 acres) within the Clear Creek Management Area. This notice supercedes and replaces a 1995 emergency closure order (§ 5–00161–GP5–010–004) for this area. The authorized officer has determined that the flooding, slides and road washouts resulting from recent severe rainstorms, have made this area unsafe for recreational use, and that additionally, recreational use could result in serious damage to natural resources. Public lands in this area are therefore temporarily closed to public recreational use, although some exemptions apply, as described below. The closure will be lifted as soon as County Roads and internal access roads can be repaired and maintained to meet a minimum of public safety and access needs. Notice is also served that because of environmental sensitivity, the area known as "Upper Hillclimb Canyon", which is within the Clear Creek Management Area, will remain closed to vehicle use until such time as manageable routes through this area may be determined. Finally, notice is served that because of environmental hazards, several abandoned mine sites commonly known as the "Alpine", "Archer", "Aurora", "Larious Canyon", and "Molina" will also remain closed to all public entry, with the exception of access routes through these mined areas as demarcated by BLM signs. Additional abandoned mines may additionally be closed under subsequent **Federal Register** notices, pending review of water quality sampling results.

The purpose of this closure is to protect human life and safety, to protect sensitive resources, including threatened plants and their habitat, water quality and aquatic species, and wildlife habitat, and to prevent human contact with known hazardous substances.

A map of the areas affected by these closures is on file and may be viewed at the Hollister Field Office of the Bureau of Land Management. The area known as "Upper Hillclimb Canyon" is further described as all areas encompassed by Clear Creek Canyon Road, East Clear Creek Ridge Route, South Clear Creek Road, and Reservoir Road except for the included portions of Sections 5 and 6 of T.18 S., R.12 E. A map showing the Hillclimb Canyon closure is also available for viewing at the Hollister Field Office. A map showing the mine site closures is also available at the Hollister Field Office.

The above closures and restrictions are temporary and are intended to prevent further resource damage, and/or adverse impacts to public health and safety. The following persons are exempt from this closure order:

(1) Federal, State, or Local Law Enforcement Officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in the execution of their official duties.

(3) Any member of an organized rescue, fire-fighting force, Emergency Medical Services organization while in the performance and execution of an official duty.

(4) Any member of a federal, state or local public works department while in the performance of an official duty.

(5) Any person in receipt of a written authorization of exemption obtained from the Hollister Field Office.

(6) Local landowners, persons with valid existing rights or lease operations, or representatives thereof, who have a responsibility or need to access their property or to continue their operations on public land.

EFFECTIVE DATE: The overall closure became effective on February 10, 1998, and shall remain in effect until rescinded or modified by the Authorized Officer after consideration of current weather conditions. Emergency closures of Upper Hillclimb Canyon and the above-listed mines will remain in effect until further notice.

SUPPLEMENTARY INFORMATION: These closures and restrictions are under the authority of 43 CFR 8364.1 and 43 CFR 8341.2. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7 and 8340.0–7, including a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Area Manager, Hollister Field Office, 20 Hamilton Court, Hollister, CA 95024, (408) 630–5000.

Dated: February 10, 1998.

Robert E. Beehler,

Hollister Field Manager.

[FR Doc. 98–3980 Filed 2–17–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

REVISION—Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Tonto National Forest, United States Forest Service, Phoenix, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of Tonto National Forest, United States Forest Service, Phoenix, AZ. **This notice was originally published September 26, 1996.**

A detailed assessment of the human remains was made by U.S. Forest Service professional staff, American Museum of Natural History professional staff, Arizona State Museum professional staff, Arizona State University professional staff, Museum of Northern Arizona professional staff, and the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Ak-Chin Indian Community, the Gila River Indian Community, the Hopi Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, and the Yavapai-Prescott Indian Tribe. **Since publication of the original notice, consultation has also been conducted with the San Carlos Apache Tribe, the Yavapai-Apache Tribe, and the White Mountain Apache Tribe. Copies of the original notice were also sent to these Indian tribes.**

Continuities of ethnographic materials, technology, and architecture indicate affiliation of the above mentioned sites with historic and present-day Piman and O'odham cultures. Oral traditions presented by representatives of the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation support affiliation with the Salado and Hohokam sites in this area of central Arizona. **Based upon further oral**

tradition evidence provided by representatives of the Hopi Tribe and Pueblo of Zuni since publication of the original notice, the USDA Forest Service has revised its determinations of cultural affiliation for the Hohokam and Salado human remains and associated funerary objects. The USDA Forest Service has determined, based on the preponderance of the additional evidence presented, that the Hopi Tribe and the Pueblo of Zuni are culturally affiliated with the Hohokam and Salado human remains and associated funerary objects, although to a lesser extent than the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation.

Based on the above mentioned information, officials of the USDA National Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 1,376 individuals of Native American ancestry. Officials of the USDA Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 5,326 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Officials of the USDA National Forest Service have determined that, pursuant to 25 U.S.C. 3003 (d)(2)(B), there is a relationship of shared group identity which can be reasonably traced between these 1,376 Native American human remains and 5,326 associated funerary objects and the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation. **While not clearly culturally affiliated, officials of the USDA National Forest Service have further determined that, pursuant to 25 U.S.C. 3003 (d)(2)(C), there is a reasonable belief of shared group identity given the totality of the circumstances surrounding the acquisition of these 1,376 Native American human remains and 5,326 associated funerary objects with the Hopi Tribe and Pueblo of Zuni.**

This notice has been sent to officials of the Ak-Chin Indian Community, the Gila River Indian Community, the Hopi Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, the Yavapai-Prescott Indian Tribe, the **San Carlos Apache Tribe, the Yavapai-Apache Tribe, and the White Mountain Apache Tribe.** Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Ave. SW, Albuquerque, NM 87102; telephone: (505) 842–3238, fax (505) 842–3800, before [*thirty days after publication in the* **Federal Register**]. Repatriation of the human remains and associated funerary objects to the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, the Hopi Tribe and the Pueblo of Zuni, as indicated above, may begin after that date if no additional claimants come forward.

Dated: February 10, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–4013 Filed 2–17–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office; National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Two Open Meetings by Teleconference

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open meeting by teleconference on March 5, 1998 and notice of open meeting by teleconference on April 9, 1998.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of two meetings of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor. The meetings will take place on March 5, 1998 and April 9, 1998. Due to scheduling difficulties and the need for immediate action, we are unable to give the full 15 days advance notice for the March 5, 1998 meeting.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC. The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, and educational institutions.

DATES: The Committee will meet on March 5, 1998 from 4:00 p.m. to 5:00 p.m. and on April 9, 1998 from 4:00 p.m. to 5:00 p.m. The meetings will be by teleconference.

ADDRESSES: U.S. Department of Labor, 200 Constitution Avenue N.W., Room C–5515 (Executive Conference Room), Washington, D.C. 20210. The meetings are open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, Designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, DC, on February 13, 1998.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 98–4193 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,100; L.A. Manufacturing, Inc., Livingston, TN

TA–W–33,902; Lehigh Furniture Co., Marianna, FL

TA–W–33,828; Dana Corp., Parish Heavy Truck, Structural Components Div., Reading, PA

TA–W–34,040; Butler Design Service, Aurora, CO

TA–W–34,051; Franke Contract Group, Div. Of Franke, Inc., North Wales, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,075; Sutersville Lumber Co., Inc., Sutersville, PA

TA–W–34,04; Brown Shoe Co., Fredericktown, MO

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA–W–34,078; Johns Manville, Roofing Div., Wauhegan, IL

TA–W–34,114; Burlington Industries, Burlington House Decorative Fabrics Div., Smithfield Sprinning Plant, Smithfield, NC

TA–W–34,022; National Seating Co., Horse Cave, KY

TA–W–34,037; Barry Callebaut USA, Inc., Pennsauken, NJ

TA–W–34,031; MKE-Quantum Components, Recording Heads Group, Louisville, CO

Increased imports did not contribute importantly to worker separations at the firms.

TA–W–34,066; Johnstown Wire Technologies, Great Lakes Div., Buffalo, NY

Production of steel wire was transferred from Buffalo, NY to another domestic plant.

TA–W–33,729; Schmid Laboratories, Anderson, SC

Subject firm phased out automobile operations at its Anderson, SC plant and transferred production to another affiliated domestic plant

TA–W–33,878; Cabot Oil and Gas Corp., The Carlton District, Carlton, PA

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–34,079; Littonian Shoe Co., Littlestown, PA: November 28, 1996.

TA–W–34,063; Georgio Foods, Inc., Temple, PA: November 1, 1996.

TA–W–33,881; Corning, Inc., Erwin, NY: September 1, 1996.

TA–W–33,941; Maine Yankee Atomic Power Co., Wiscasset, ME: October 21, 1996.

TA–W–34,159; Chester Clothes, Inc., Philipsburg, PA: January 6, 1997.

TA–W–34,122; Diversified Plastics, Inc., Elk Grove Village, IL: December 10, 1996.

TA–W–34,046 & A; Manchester Knitted Fashon, Manchester, NH and Whitefield, NH: November 20, 1996.

TA–W–34,062; Can Corp of America, Inc., Blandon, PA: November 1, 1996.

TA–W–33,912; Fiskars, Inc., Power Sentry Div., Fergus Falls, MN: October 3, 1996.

TA–W–34,112 & A; Sportswear, Inc., d/b/a American Athletic Apparel, Puxico, MO and Sikeston, MO: December 10, 1996.

TA–W–34,099; Century Products, Inc., Cheboygan, MI: December 2, 1996.

TA–W–34,158; Eugene F. Burrill, Lumber Co., White City, OR: December 8, 1996.

TA–W–33,907; Textron Automotive Co., Inc., Textron Automotive Interiors, Dover, NH: October 2, 1996.

All workers of Textron Automotive Co., Inc., Textron Automotive Interiors, Dover, NH excluding workers in the KO7 paint line are eligible to apply for trade adjustments assistance.

TA–W–33,697; Employee Service, Inc., Rush City, MN: May 9, 1996.

TA–W–33,758; Guess, Inc., Los Angeles, CA: July 24, 1996.

TA–W–34,008; J & L Specialty Steel, Inc., Detroit, MI: November 3, 1996.

TA–W–33,768; Mr. Casuals, a/k/a/ Rives Casuals, Inc., Independence, VA: August 12, 1996.

TA–W–34,041; Jam Enterprises, El Paso, TX: November 4, 1996.

TA–W–34,048; Dresser Rand Co., Painted Post, NY: November 18, 1996.

TA–W–34,009; Morganton Dyeing & Finishing, Morganton, NC: October 31, 1996.

TA–W–33,991; Jetricks Corp., Selmer, TN: October 21, 1996.

TA–W–33,926; Robinson Manufacturing Co., Inc., Parsons, TN: October 9, 1996.

TA–W–33,895; Donnkenny Apparel, Inc., Haysi, VA: September 30, 1996.

All workers of Dolnnkenny Apparel, Inc., Haysi, VA engaged in employment related to the production of ladies' apparel produced by the Haysi plant are eligible to apply for trade adjustment assistance.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivisions.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02056; Johnstown Wire Technologies, Great Lakes Div., Buffalo, NY
NAFTA–TAA–02078; Trelleburg YSH, Inc., South Haven, MI
NAFTA–TAA–02063; Burlington Industries, Burlington House Decorative Fabrics Div., Smithfield Spinning Plant, Smithfield, NC
NAFTA–TAA–01785; Gulfstream Tomato Packers, LTD, Perrine, FL
NAFTA–TAA–01927; Dana Corp., Parish Heavy Truck Structural Components Div. Reading, PA
NAFTA–TAA–02049; J&L Specialty Steel, Inc., Detroit, MI
NAFTA–TAA–01909; Union City Body Co., LP, Union City Body Company, Union City Div., Union City, IN
NAFTA–TAA–02109; Century Products, Inc., Cheboygan, MI
NAFTA–TAA–02043; Franke Contract Group, Franke, Inc., North Wales, PA
NAFTA–TAA–01812; Excel of Battle Creek, Battle Creek, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02057; Sutersville Lumber Co., Inc., Sutersville, PA
NAFTA–TAA–02093; Brown Shoe Co., Fredericktown, MO

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02087; Diversified Plastics, Inc., Elk Grove Village, IL: December 10, 1996.
NAFTA–TAA–01974; Dana Corp., Parish Light Vehicle Structures Div., Reading, PA: October 3, 1996.
NAFTA–TAA–01974; Dana Corp., Parish Light Vehicle Structures Div., Reading, PA: October 3, 1996.
NAFTA–TAA–02115; Chester Clothes, Inc., Philipsburg, PA: January 6, 1997.
NAFTA–TAA–02084; Eugene F. Burrill Lumber Co., White City, OR: December 11, 1996.
NAFTA–TAA–01950; Fiskars, Inc., Power Sentry Div., Fergus Falls, MN: October 3, 1996.
NAFTA–TAA–01987; Maine Yankee Atomic Power Co., Wiscasset, ME: October 21, 1996.
NAFTA–TAA–02072 & A; Sportswear, Inc., d/b/a American Athletic Apparel, Puxico, MO & Sikeston, MO: December 15, 1996.
NAFTA–TAA–02099; RMP, Div., of Holman Enterprises, Pennsaukee, NJ & Cinnaminson, NJ: December 2, 1996.
NAFTA–TAA–01966; Hamburg Shirt Co., Hamburg, AR: September 15, 1996.
NAFTA–TAA–02098; Guess, Inc., Los Angeles, CA: July 24, 1996.
NAFTA–TAA–01997; Hamilton Beach Proctor-Silex, Inc., Electrical Toaster Div., Mt. Airy, NC: October 28, 1996.
NAFTA–TAA–02113; Tultex Corp., Chilhowie, VA: January 9, 1997.
NAFTA–TAA–02064; Morgan Products LTD, Oshkosh, WI: December 10, 1996.
NAFTA–TAA–02074; Dal-Tile Corp., Mt. Gilead, NC: December 11, 1996.

I hereby certify that the aforementioned determinations were issued during the month of January 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 30, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4064 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than March 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 01/20/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,153	Delbar Products (IAMAW)	Perkasie, PA	12/29/97	Rear View Mirrors—Trucks, Vans.
34,154	American Metal Products (Wkrs)	LaFollette, TN	12/15/97	Grills & Registers.
34,155	Arjo Manufacturing Co (Co.)	Aurora, NE	12/15/97	Bathing Equip.—Hospital & Nursing Home.
34,156	Pinnacle Micro, Inc (Wkrs)	Colorado Springs, CO	01/05/98	Rewritable Optical Storage Products.

APPENDIX—Continued

[Petitions Instituted On 01/20/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,157	Ebo Cedar Products (Co.)	Bonners Farry, ID	01/05/98	Cedar Post and Rail Fencing.
34,158	Eugene F. Burrill Lumber (Co.)	White City, OR	12/18/97	Framing Lumber.
34,159	Chester Clothes, Inc (Co.)	Philipsburg, PA	01/06/98	Men's Suits.
34,160	Renfro Corporation (Wkrs)	Pulaski, VA	01/06/98	Men's & Ladies' Socks.
34,161	ABB Power T & D Co., Inc (Wkrs)	Muncie, IN	01/08/98	Medium & Large Power Transformers.
34,162	Thomas and Betts (Wkrs)	Horsehead, NY	01/09/98	Cables and Computer Connectors.
34,163	Coast Converters, Inc (Wkrs)	Los Angeles, CA	01/02/98	Polyethelene Bags.
34,164	Sara Lee Casual Wear (Wkrs)	Hillsville, VA	01/10/98	T-Shirts, Sweatshirts.
34,165	Mitsubishi Consumer (Co.)	Braselton, GA	01/09/98	Direct View Televisions.
34,166	Mitsubishi Consumer (Co.)	Costa Mesa, CA	01/09/98	Direct View Televisions.
34,168	Chrysler Corp (Wkrs)	Belvidere, IL	01/20/98	Sub-Compact Automobiles.

[FR Doc. 98–4062 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,095]

Eastman Kodak Company, Kodak Colorado Division, Windsor, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 15, 1997 in response to a worker petition which was filed on December 15, 1997 on behalf of workers at Eastman Kodak Company, Kodak Colorado Division, Windsor, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4066 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,096]

Florence Dye and Textile, Incorporated, Woonsocket, RI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 15, 1997 in response to a worker petition which was filed on behalf of workers at Florence Dye and Textile, Inc. of Woonsocket, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 30th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4065 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,061; TA–W–34,061A; TA–W–34,061B]

Oxford Industries, Incorporated; Oxford Women's Catalog and Special Markets Division, Alma, GA; Oxford of Giles, Pearisburg, VA; Oxford of Gaffney, Gaffney, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 21, 1997, applicable to workers of Oxford Women's Catalog and Special Markets Division of Oxford Industries, Incorporated located in Alma, Georgia. The notice was published in the Federal Register on January 22, 1998 (63 FR 3352).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that layoffs will occur at Oxford Industries, Incorporated locations in Pearisburg, Virginia where the workers produce ladies knit apparel, and in Gaffney, South Carolina where the workers produce jackets and outerwear.

The intent of the Department's certification is to include all workers of Oxford Industries, Incorporated adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers of Oxford Industries, Incorporated locations in Pearisburg, Virginia and Gaffney, South Carolina.

The amended notice applicable to TA–W–34,061 is hereby issued as follows:

All workers of Oxford Industries, Incorporated, Oxford Women's Catalog and Special Markets Division, Alma, Georgia (TA–W–34,061), Oxford of Giles, Pearisburg, Virginia (TA–W–34,061A), Oxford of Gaffney, Gaffney, South Carolina (TA–W–34,061B) who became totally or partially separated from employment on or after November 19, 1996 through December 21, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 6th day of February 1998.

Grant D. Beale,

Acting Director, Officer of Trade Adjustment Assistance.

[FR Doc. 98–4053 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,128]

Romla Ventilator Company, Gardena, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 5, 1998, in response to a worker petition which was filed on

January 5, 1998, on behalf of workers at Romla Ventilator Company, Gardena, California.

Petitioning workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 6th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4056 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,837; TA–W–33,737A]

Russell Corporation, Cummings, GA; Montgomery Sewing Plant, Montgomery, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 5, 1998, applicable to all workers of Russell Corporation, located in Cummings, Georgia. The notice will be published soon in the **Federal Register**.

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at the Montgomery Sewing Plant from August, 1997 until its' closing, January, 1998. The workers sewed T-shirts and tank tops for Russell Corporation.

The intent of the Department's certification is to include all workers of Russell Corporation who were adversely affected by increased imports of T-shirts and tank tops.

Accordingly, the Department is amending the certification to cover the workers of Russell Corporation, Montgomery Sewing Plant, Montgomery Alabama.

The amended notice applicable to TA–W–33,837 is hereby issued as follows:

All workers of Russell Corporation, Cummings, Georgia (TA–W–33,837), and the Montgomery Sewing Plant, Montgomery, Alabama (TA–W–33,837A) who became totally or partially separated from employment on or after August 15, 1996, through January 5, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4055 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,132]

Snap-Tite, Incorporated, Quick Disconnect Division, Union City, PA; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on March 25, 1997, for all workers of Snap-Tite, Incorporated, Quick Disconnect Division, Union City, Pennsylvania. Workers at the subject firm produce quick disconnect couplings. The notice was published in the **Federal Register** on May 2, 1997 (62 FR 24135).

In response to a request for reconsideration, filed by company representatives, on January 11, 1998, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration. The notice will soon be published in the **Federal Register**.

The Department requested company data for sales, employment and imports through June 1997, which were not available at the time of the initial investigation. In accordance with data submitted by company officials in the initial determination, updated information shows that during the time period relevant to the investigation, sales and employment at the subject firm declined. Findings on reconsideration show that employment declines in 1996 were the result of a work stoppage. Other findings show that Snap-Tite increased import purchases of quick disconnect couplings from January–June 1995 through the January–June time periods of 1996 and 1997. The increase in import purchases, however, represented a negligible amount (less than one percent) of company sales in each year.

New findings on reconsideration of the certification shows that criterion (3) of Section 222 of the worker group eligibility requirements is not met. Increased company imports of quick disconnect couplings did not contribute importantly to worker separations.

Since new findings on reconsideration show that the criteria of the Trade Act are not met, the certification has been terminated.

Signed at Washington, DC, this 5th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4061 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,903; TA–W–33,903A; TA–W–33,903B]

Taylor Togs, Incorporated Micaville, NC; Green Mountain, NC; and Taylorsville, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 1997, applicable to all workers of Taylor Togs, Incorporated, Micaville and Green Mountain, North Carolina. The notice was published in the **Federal Register** on November 7, 1997 (62 FR 60280).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred in December, 1997 at Taylor Togs, Incorporated, Taylorsville, North Carolina. The workers are engaged in employment related to the production of blue jeans.

The intent of the Department's certification is to include all workers at Taylor Togs, Incorporated adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover workers of the subject firm's Taylorville, North Carolina location. The Department is also amending the number to correctly identify the Green Mountain, North Carolina location to specify TA–W–33,903A instead of TA–W–33,903.

The amended notice applicable to TA–W–33, 903 is hereby issued as follows:

All workers of Taylor Togs, Incorporated, Micaville and Green Mountain, North Carolina (TA–W–33, 903) and Taylorville, North Carolina (TA–W–33, 903A) engaged in employment related to the production of blue jeans who became totally or partially separated from employment on or after October 2, 1996 through October 23, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4054 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigation Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 02/02/98

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,189	VF Knitwear (Co.)	Chatham, VA	01/12/98	Tee and Fleece Shirts.
34,190	Lovingston (Wkrs)	Staunton, VA	01/19/98	Girl's Shorts and Stretch Pants.
34,191	Calgon Carbon (Co.)	Tucson, AZ	01/19/98	Equipment for Water Purification.
34,192	Handy Girl (Wkrs)	Deer Park, MD	01/20/98	Crop Tops, Biker Shorts, Pant Sets.
34,193	Kat-Em International (Co.)	Los Angeles, CA	01/26/98	Yarn Dyed and Printed Fabrics.
34,194	Otis Elevator (Wkrs)	Tucson, AZ	01/15/98	Elevators.
34,195	Morrison Enterprises (Wkrs)	Redmond, RA	01/02/98	Cut Stock Wood and Finger Joit Wood.
34,196	Graham-Field/Temco (Co.)	Passaic, NJ	01/13/98	Bed Rails, IV Poles, Bath Safety Prod.
34,197	Imaging Supplies (Wkrs)	Jefferson City, TN	01/13/98	Ribbon Cartridges.
34,198	Cindy Lee, Inc (Wkrs)	Pen Argyl, PA	01/17/98	Blouses, Skirts, Pants.
34,199	Sangamon, Inc (UPWU)	Taylorville, IL	01/22/98	Greeting Cards.
34,200	Getinge Castle, Inc (Co.)	Lakewood, NJ	01/15/98	Sterilizer Equipment.
34,201	Sunrise Medical PEP (Co.)	Simi Vally, CA	01/12/98	Walkers and Canes.
34,202	Tennessee River Mill (Wkrs)	Lawrenceburg, TN	01/21/98	Knit T-Shirts.
34,203	American Olean Tile (Wkrs)	Lansdale, PA	01/20/98	Ceramic Wall Tile and Trim.
34,204	Pride Refining (Wkrs)	Abilene, TX	01/24/98	Finished Hydrocarbon Products.
34,205	Bucilla Corp. (Wkrs)	Hazleton, PA	01/19/98	Needlework Applique.
34,206	U.S. Steel Mining Co, LLC (Co.)	Pineville, WV	01/20/98	Coal.
34,207	Tenneco Packaging (Wkrs)	Clayton, NJ	01/12/98	Disposable Foil and Plastic Containers.
34,208	Oxford of Giles (Co.)	Pearisburg, VA	01/20/98	Ladies' Knit Apparel.
34,209	Dexter Sportswear (Co.)	Dexter, GA	01/23/98	Men's and Boys' Slacks.
34,210	Delta Flag Co (Wkrs)	Oaks, PA	01/24/98	Printed, Dyed and Sewn Flags.
34,211	Alta Genetics, USA (Co.)	Hughson, CA	01/15/98	Frozen Bull Semen.
34,212	Bakery Salvage (Wkrs)	Buffalo, NY	01/22/98	Animal Feed.
34,213	U.S. Kids Apparel Group (Wkrs)	Canton, GA	01/14/98	Girl's Dresses and Nightowns.
34,214	Fort James Corp. (UPWU)	Ashland, WI	01/22/98	Napkins.

[FR Doc. 98–4063 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 26th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 01/26/98

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,169	VF Knitwear, Inc (Comp)	Stoneville, NC	01/12/98	Tee and Fleece Shirts.
34,170	Scientific Atlanta (Comp)	Tempe, AZ	01/16/98	Cable Boxes.
34,171	Key Tronic Corp (Comp)	Las Cruces, NM	12/29/97	Personal Computer Keyboards.
34,172	Lone Pine Forest Products (Wrks)	Bend, OR	12/29/97	Grape Box Ends, Pine Furniture Parts.
34,173	Quiltex Co (UNITE)	Brooklyn, NY	12/31/97	Infant Crib Sets.
34,174	United Technologies Auto (Comp)	Columbus, MS	01/09/98	Fractional Horse Power Electric Motors.
34,175	Great Connections (Wrks)	Lititz, PA	01/12/98	Home and Office Furniture.
34,176	Hewlett Packard (Wrks)	Vancouver, WA	01/06/98	Printed Circuit Assemblies for Printers.
34,177	Paul-Bruce/L.V. Myles (Wrks)	Scotland Neck, NC	01/08/98	Children's and Ladies' Sleepwear.
34,178	Allied Signal Aerospace (USW)	Stratford, CT	01/13/98	Assemblies and Components for Engines.
34,179	Proam Corp (Wrks)	Long Island Cty, NY	01/12/98	Ladies' Jackets.
34,180	Comac (Wrks)	Columbia, TN	01/08/98	Sand/Prepared Saturn Autos for Paint.
34,181	Specialty Manufacturers (Wrks)	Bristol, TN	01/05/98	T-Shirts, Boby Bibs and Visors.
34,182	Mountainsmith (Wrks)	Cotter, AR	01/09/98	Backpacks.
34,183	Ashmore Sportswear (Wrks)	Womelsdorf, PA	01/12/98	T-Shirts.
34,184	Forsyth Industries, Inc (Comp)	East Aurora, NY	01/15/98	Metal Stampings and Wire Forms.
34,185	Oryx Energy Co (Comp)	Dallas, TX	01/16/98	Oil and Gas.
34,186	Biljo, Inc (Comp)	Dublin, GA	01/14/98	Men's and Boys' Slacks.
34,187	Overly Door Co (USWA)	Greensburg, PA	01/16/98	Hollow Metal Doors.
34,188	Badger Paper Mill (UPIU)	Peshtigo, WI	01/19/98	Bond, Twisting, Dry, Wax Gum, Candy Wrap.

[FR Doc. 98–4057 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs Under Title IV–A Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed reinstatement of the previously-approved planning and reporting system for Job Training Partnership Act (JTPA) title IV–A, section 402 Migrant and Seasonal Farmworker programs for three more program years (July 1, 1997 to June 30, 2000). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 20, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Thomas M. Dowd, Acting Chief, Division of Migrant and Seasonal Farmworker Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–8502 ext 119 (VOICE) or (202) 219–6338 (FAX) (these are not toll-free numbers) or INTERNET: DOWDT@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration of the Department of Labor is requesting reinstatement of its previously-approved planning and reporting system for Job Training Partnership Act (JTPA) title IV–A, section 402 Migrant and Seasonal Farmworker grantees for three more program years (July 1, 1997 to June 30, 2000). In evaluating the last two years' planning and reporting experience of the grantees who receive funding under section 402, the Department has decided that the system does not require any major changes beyond those instituted for PY 1995 when the Standardized Participant Information Report (SPIR) was adopted to replace the Farmworker Annual Status Report [FASR—ETA 8599]. This position is reached in part because of pending new workforce legislation, which would possibly require extensive revisions to the current planning and reporting system.

II. Current Actions

The proposed ICR will be a reinstatement of a previously approved system that will be used by approximately 34 section 402 grantees as the primary planning and reporting vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and employability enhancements, as well as detailed financial data on program expenditures. Section 402 grantees are currently required to submit annual participant data on the SPIR, which will not be affected by this continuation. SPIR burdens are covered separately under OMB Clearance No. 1205–0350 (expiration date 6/30/98), and have not been included in the following burden estimates. For ease of analysis, the following burden estimate is broken down into the three main components of section 402 program operation: (1) planning; (2) recordkeeping; and (3) reporting.

Type of Review: REINSTATEMENT.

AGENCY: Employment and Training Administration.

Title: Planning and reporting system for JTPA title IV–A, section 402 Migrant and Seasonal Farmworker grantees.

OMB Number: 1205–0215.

Catalog of Federal Domestic Assistance Number: 17.252.

Recordkeeping Requirements: Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53].

Affected Public: Private non-profit organizations; State agencies; consortia of any of the above.

Total Estimated Burden: 65,152 hours.

Detailed breakdown of the above-estimated burden hour requirements for the JTPA section 402 program:

Required activity	MSFW form Nos.	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hrs.
(Plan.) Master Agreement		34	1	34	0.5	17
(Plan.) Narrative		34	1	34	22	748
Budget Information Sum	ETA 8595	34	1	34	15	510
Program Planning Sum	ETA 8596	34	1	34	16	544
Recordkeeping		34		35,224	1.75	61,667
(Reporting) FSR	ETA 8597	34	4	102	7	952
Program Status Summary	ETA 8598	34	3	102	7	714
Totals		34	11	35,564	69.25	65,152

Note: Recordkeeping estimates are based on the actual number of terminees reported on the SPIR for PY 1995 (35,224) times an estimated average of 1.75 hours per participant record.

The individual time per response (whether plan, record, or report) varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each program year. If the grantee has a fully-developed and automated MIS, the response time is limited to one-time programming plus processing time for each response. It is the Department's desire to see as many section 402 grantees as possible become computerized, so that response time for planning and reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

Estimated Grantee Burden Costs: (There are no capital/start-up costs involved in any section 402 activities).

Planning: 1,819 hours times an estimated cost per grantee hour of $20.00 (including fringes) = $36,380 per year.

Recordkeeping: 61,667 hours times the same $20.00 per hour = $1,233,340.

Reporting: 1,666 hours times $20.00 = $33,320 per year.

Total estimated burden costs: $1,303,040 (nationwide).

As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms.

All costs associated with the required submissions outlined above, whether for planning, recordkeeping, or reporting purposes, are allowable grant expenses.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 11th day of February, 1998.

Anna W. Goddard,

Director, Office of Special Targeted Programs.

[FR Doc. 98–4050 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 1998 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs), allowable charges for meals, and maximum travel subsistence reimbursement for 1998.

SUMMARY: The Director, U.S. Employment Service, announces 1998 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services, the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day, and the maximum travel subsistence reimbursement which a worker with receipts may claim in 1998.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

Under specified conditions, workers are entitled to reimbursement for travel subsistence expense. The minimum reimbursement is the charge for three daily meals as discussed above. The Director here announces the current maximum reimbursement for workers with receipts.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Beverly, III, Director, U.S. Employment Service, U.S. Department of Labor, Room N–4700, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: 202–219–5257 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification. The labor certification must show that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 1998

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Director, U.S. Employment Service, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 1998 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE—1998 ADVERSE EFFECT WAGE RATES (AEWRS)

State	1998 AEWR
Alabama	$6.30
Arizona	6.08
Arkansas	5.98
California	6.87
Colorado	6.39
Connecticut	6.84
Delaware	6.33
Florida	6.77
Georgia	6.30
Hawaii	8.83
Idaho	6.54
Illinois	7.18
Indiana	7.18
Iowa	6.86
Kansas	7.01
Kentucky	5.92
Louisiana	5.98
Maine	6.84
Maryland	6.33
Massachusetts	6.84
Michigan	6.85
Minnesota	6.85
Mississippi	5.98
Missouri	6.86
Montana	6.54
Nebraska	7.01
Nevada	6.39
New Hampshire	6.84
New Jersey	6.33
New Mexico	6.08
New York	6.84
North Carolina	6.16
North Dakota	7.01
Ohio	7.18
Oklahoma	5.92
Oregon	7.08
Pennsylvania	6.33
Rhode Island	6.84
South Carolina	6.30
South Dakota	7.01
Tennessee	5.92
Texas	5.92
Utah	6.39
Vermont	6.84
Virginia	6.16
Washington	7.08
West Virginia	5.92
Wisconsin	6.85
Wyoming	6.54

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires

employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2B logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provided that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently document. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that. The regulations require the director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1997 rates were published in a notice on February 7, 1997 at 62 FR 5853.

DOL has determined the percentage change between December of 1996 and December of 1997 for the CIP–U for Food was 2.6 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1998 are as follows: (1) for 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $7.60 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $9.49 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitle to reimbursement, is the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42–94, established that the maximum is the meals component of the standard CONUS (continental United States) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Ch. 301. The CONUS meal component is now $30.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of $15.00.

If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed at Washington, DC, this 11th day of February, 1998.

John R. Beverly, III,

Director, U.S. Employment Service.

[FR Doc. 98–4051 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02048; NAFTA–02048A; NAFTA–02048B]

Oxford Industries, Incorporated; Oxford Women's Catalog and Special Markets Division, Alma, GA; Oxford of Giles, Pearisburg, VA; Oxford of Gaffney, Gaffney, SC; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on December 21, 1997, applicable to workers of Oxford Women's Catalog and Special Markets Division of Oxford Industries, Incorporated located in Alma, Georgia. The notice was published in the **Federal Register** on January 22, 1998 (63 FR 3352).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that layoffs will occur at Oxford Industries, Incorporated locations in Pearisburg, Virginia where the workers produce ladies knit apparel, and in Gaffney, South Carolina where the workers produce jackets and outerwear.

The intent of the Department's certification is to include all workers of Oxford Industries, Incorporated adversely affected by increased imports from Mexico. Accordingly, the Department is amending the certification to include workers of Oxford Industries, Incorporated locations in Pearisburg, Virginia and Gaffney, South Carolina.

The amended notice applicable to NAFTA–02048 is hereby issued as follows:

All workers of Oxford Industries, Incorporated, Oxford Women's Catalog and Special Markets Division, Alma, Georgia (NAFTA–02048), Oxford of Giles, Pearisburg, Virginia (NAFTA–02048A), Oxford of Gaffney, Gaffney, South Carolina (NAFTA–02048B) who became totally or partially separated from employment on or after November 24, 1996 through December 21, 1999, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 6th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4058 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02159]

Oxford Industries, Incorporated Oxford of Giles, Pearisburg, VA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on January 27, 1998, in response to a petition filed on behalf of workers at Oxford Industries, Incorporated, Oxford of Giles located in Pearisburg, Virginia.

The petitioning group of workers are covered under an existing NAFTA certification (NAFTA–02048A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 6th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4059 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02096]

Romla Ventilator Company, Gardena, California; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on December 23, 1997, on behalf of workers at Romla Ventilator Company, Gardena, California.

This case is being terminated because the workers were separated from the subject firm more than one year prior to the date of the petition. The NAFTA Implementation Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 6th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4060 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than March 2, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than March 2, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Tultex Corporation (Co.)	Chilhowie, VA	01/09/1998	NAFTA–2,113	Fleece tops, shirts and blouse parts.
Allied Signal (IUE)	Eatentown, NJ	12/21/1997	NAFTA–2,114	Power generators.
Chester Clothes (UNITE)	Philipsburg, PA	01/09/1998	NAFTA–2,115	Men's and boys' suits.
Viti Fashion (Wkrs)	Hialeah, FL	12/12/1997	NAFTA–2,116	Children's apparel.
Shelby Die Casting (Co.)	Fayette, AL	01/12/1998	NAFTA–2,117	Aluminum castings.
Sara Lee Hosiery (Co.)	Marion, SC	01/13/1998	NAFTA–2,118	Sewing of hosiery.
L.V. Myles—Paul Bruce (Wkrs)	Scotland Neck, NC	01/12/1998	NAFTA–2,119	Womens and childrens clothes.
Mitsubishi Consumer Electronics America (Co.).	Costa Mesa, CA	01/12/1998	NAFTA–2,120	Televisions.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Mitsubishi Consumer Electronics America (Co.).	Braselton, GA	01/12/1998	NAFTA–2,121	Televisions.
Gentex Printing (Co.)	Rocky Mount, NC	01/12/1998	NAFTA–2,122	Fabric printing and finishing.
W.R. Grace and Company-Conn. (Co.)	Beltsville, MD	12/14/1997	NAFTA–2,123	fireproofing power products.
Specialty—Chaise Mate (Wkrs)	Bristol, TN	01/14/1998	NAFTA–2,124	T-shirts, baby bibs.
Ebo Cedar Products (Co.)	Bonners Ferry, ID	01/14/1998	NAFTA–2,125	Cedar post and rail fencing.
Mark Eby Cedar Products (Co.)	Bonners Ferry, ID	01/07/1998	NAFTA–2,126	Cedar post and rail fencing.
Omak Wood Products (IBCJ)	Omak, WA	01/14/1998	NAFTA–2,127	Ponderosa pine.
Abb Power T and D Company (IUE)	Muncie, IN	01/12/1998	NAFTA–2,128	Transformers.
Hewlett Packard (Wkrs)	Vancouver, WA	01/14/1998	NAFTA–2,129	Computer printers.
Trendline Home Fashions—Great Connect. (Wkrs).	Lititz, PA	01/15/1998	NAFTA–2,130	Home office furniture.
Hamilton Sportswear (Wkrs)	Hamilton, AL	01/15/1998	NAFTA–2,131	T-shirts, tank tops, sweatshirts.
VF Knitwear (Co.)	Chatham, VA	01/20/1998	NAFTA–2,132	T-shirts and fleece.
VF Knitwear (Co.)	Stoneville, NC	01/14/1998	NAFTA–2,133	T-shirts and fleece.
VF Knitwear (Co.)	Franklin, NC	01/14/1998	NAFTA–2,134	T-shirts and fleece.
Color Box (Wkrs)	Buffalo, NY	01/16/1998	NAFTA–2,135	Boxes.
Biljo (Co.)	Dublin, GA	01/16/1998	NAFTA–2,136	Men's and boy's slacks.
Cocoa Barry US (FSU)	Pennsauken, NJ	01/17/1998	NAFTA–2,137	Cocoa and chocolate.
Otis Elevator (Wkrs)	Tucson, AZ	01/16/1998	NAFTA–2,138	Electronics assemblies.
Scientific Atlanta (Wkrs)	Tempe, AZ	01/16/1998	NAFTA–2,139	Cable boxes.
Badger Paper Mill (Wkrs)	Peshtigo, WI	01/16/1998	NAFTA–2,140	Bond paper.
Kered Clothing (Co.)	Manchester, NH	01/20/1998	NAFTA–2,141	Ladies sportwear.
Computech Data Entry (Wkrs)	Orlando, FL	01/20/1998	NAFTA–2,142	Data entry for UPS.
Shin Etsu Polymer America (Co.)	Union City, CA	01/20/1998	NAFTA–2,143	Rubber key boards for cellular phones.
Power Holding (Wkrs)	Milwaukee, WI	01/21/1998	NAFTA–2,144	Electrical components.
Coast Converters (Wkrs)	Los Angeles, CA	01/20/1998	NAFTA–2,145	Poly bags.
Alta Genetics (Co.)	Hughson, CA	01/21/1998	NAFTA–2,146	Frozen bull semen.
Overly Door (Wkrs)	Greensburg, PA	01/22/1998	NAFTA–2,147	Hollow metal doors.
Sangamon (UPW)	Taylorville, IL	01/22/1998	NAFTA–2,148	Greeting cards, table stationary.
Lone Pine Forest (Wkrs)	Bend, OR	01/26/1998	NAFTA–2,149	Fruit boxes.
Dexter Sportwear (Co.)	Dexter, GA	01/27/1998	NAFTA–2,150	Men's and boys' slacks.
Fluor Daniel (Co.)	Casper, WY	01/22/1998	NAFTA–2,151	Crude oil.
American Home Products (Co.)	Bound Brook, NJ	01/26/1998	NAFTA–2,152	Methasolamide bulk.
Biscayne Apparel (Wkrs)	Arlington, GA	01/27/1998	NAFTA–2,153	Undergarments.
Calgon Carbon (Co.)	Tucson, AZ	01/26/1998	NAFTA–2,154	Equipment for water purification.
Dettra Flag (Wrks)	Oaks, PA	01/27/1998	NAFTA–2,155	Printed dyed flags and banners.
Allied Signal Aerospace (UAW)	Stratford, CT	01/14/1998	NAFTA–2,156	Gas tubine engines.
Fort James (UPWU)	Ashland, WI	01/26/1998	NAFTA–2,157	Napkins.
Lovingston (Wrks)	Stauntan, VA	01/27/1998	NAFTA–2,158	Girls knit pants and shorts.
Oxford of Giles (Co.)	Pearisburg, VA	01/27/1998	NAFTA–2,159	Ladies knit apparel.
Sunrise Medical (Co.)	Simi Valley, CA	01/27/1998	NAFTA–2,160	Walkers, canes, shower care.
Glit Gemtex (Co.)	Buffalo, NY	01/29/1998	NAFTA–2,161	Vulcanized fibre discs.
Seattle Gear (Wrks)	Seattle, WA	01/28/1998	NAFTA–2,162	Designer gear.
Jantzen (Co.)	Seneca, SC	01/28/1998	NAFTA–2,163	Women's apparel.
Tennessee Woolen Mills (UNITE)	Lebanon, TN	01/27/1998	NAFTA–2,164	Blankets.
Advanced Organics (Wrks)	Upper Sandusky, OH	01/20/1998	NAFTA–2,165	Trucking.
SPM Denver a Dynacast (Wrks)	Denver, CO	01/28/1998	NAFTA–2,166	Plastic injection molded.
Metor Plastic Technologies (Co.)	Columbus, IN	01/30/1998	NAFTA–2,167	Plastic components for televisions.
Proam (Wrks)	Long Island City, NY	01/20/1998	NAFTA–2,168	Women's jacket.
BTR Automotive Sealing Systems (Wrks).	West Unity, OH	01/30/1998	NAFTA–2,169	Rubber decklid and door weatherseals.
I-State (Co.)	Plainsboro, NJ	02/02/1998	NAFTA–2,170	Disposable cartridges.
Avery Dennison (Wrks)	Chicopee, MA	02/02/1998	NAFTA–2,171	Vinyl ring binders.
Flavor Fresh—Unimark (Wrks)	Lawrence, MA	02/02/1998	NAFTA–2,172	Canned fruit.
VIZ Manufacturing (Co.)	Philadelphia, PA	02/03/1998	NAFTA–2,173	Meteorological instruments.
Commercial Fishing Vessel (Co.)	Bodega Bay, CA	02/02/1998	NAFTA–2,174	Swordfish.
Glenbrook Nickel (Co.)	Riddle, OR	02/03/1998	NAFTA–2,175	Ferronickel.
Pecos Valley Field Service (Wrks)	Pecos, TX	02/03/1998	NAFTA–2,176	Sulphur.

[FR Doc. 98–4052 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 12, 1998.

TIME AND DATE: 10:00 a.m., Thursday, February 19, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Consolidation Coal Co.*, Docket Nos. WEVA 93–146A and 93–81–R (Issues include whether substantial evidence supports the judge's determination that Consol did not violate section 103(j) of the Mine Act, which requires operators to take appropriate measures to prevent the destruction of evidence which would assist in investigating the cause of an accident).

TIME AND DATE: 2:00 p.m. Thursday, February 19, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of a quorum of the Commission that the Commission consider and act upon the following in a closed session:

1. *Secretary of Labor* v. *Consolidation Coal Co.*, Docket Nos. WEVA 93–146A and 93–81–R (See oral argument listing, *supra*, for issues).

TIME AND DATE: 10:00 a.m., Thursday, March 5, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor* v. *Wayne R. Steen*, employed by Ambrosia Coal & Construction Co., Docket No. PENN 94–15 (Issues include whether on second remand the judge properly assessed a $2,000 penalty against Wayne R. Steen under sections 110(c) and 110(i) of the Mine Act for violating 30 C.F.R. § 77.404(a)).

TIME AND DATE: 10:00 a.m., Thursday, March 19, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *United Mine Workers of America o.b.o. Burgess* v. *Secretary of Labor*, Docket Nos. SE 96–367–D and SE 97–18–D (Issues include whether the judge properly dismissed discrimination complaints filed against the Mine Safety and Health Administration ("MSHA") and named MSHA officials).

TIME AND DATE: 2:00 p.m. Thursday, March 19, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *United Mine Workers of America o.b.o. Burgess* v. *Secretary of Labor*, Docket Nos. SE 96–367–D and SE 97–18–D (See oral argument listing, *supra*, for issues).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 98–4262 Filed 2–13–98; 3:57 pm]
BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–02]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Rotorcraft Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Rotorcraft Subcommittee meeting.

DATES: Tuesday, March 17, 1998, 1:00 p.m. to 5:00 p.m.; Wednesday, March 18, 1998, 8:00 a.m. to 5:00 p.m.; and Thursday, March 19, 1998, 8:00 a.m. to 12:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 241, Room B2, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Hartle-Giffin, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–2752.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Review of Rotorcraft Subcommittee Recommendations
—Review of Rotorcraft Base Program
—Short Haul & Civil Tiltrotor Planning
—Briefing on Rotorcraft Safety Study

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 10, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–4047 Filed 2–17–98; 8:45 am]
BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: "An Approach for Using Probabilistic Risk Assessment in Risk-informed Decisions on Plant-Specific Changes to the Current Licensing Basis," Regulatory Guides RG–1.174 through RG–1.178

2. Current OMB approval number: 3150–0011

3. How often the collection is required: Use of the new risk-informed

methodology for making changes in the licensing basis of operating plants in the areas of inservice inspection (ISI), inservice testing (IST), graded quality assurance (GQA), and technical specifications (TS), is available to all licensees but is not required. Licensees may make voluntary submittals when, and if, in their judgment, it is to their advantage to do so (for example, to improve plant safety, reduce costs, gain operating flexibility).

4. Who is required or asked to report: Licensees of nuclear power plants may report when, and if, in their judgment, it is to their advantage to do so.

5. The number of annual respondents: ISI: 6, IST: 3, QA: 1, TS: 20

6. The number of hours needed annually to complete the requirement or request (per respondent): ISI: 6,200, IST: 5,200, QA: 4,000, TS: 1,060

7. Abstract: In the specific areas of ISI, IST, GQA, and TS, a new series of Regulatory Guides provides a risk-informed method for licensees to use in requesting changes to their current licensing bases (CLB). No changes or additions have been made to any rules or regulations in conjunction with the issuance of this series of guides. The new method will be a voluntary alternative to the deterministically-based CLB change method previously used (which will remain acceptable as an alternative to the new risk-informed method).

The new risk-informed alternative method will allow licensees to concentrate on plant equipment and operations that are most critically important to plant safety so as to achieve a savings in total effort and greater operating flexibility with an insignificant change in overall safety. The guides specify the records, analyses, and documents that licensees are expected to prepare in support of risk-informed changes to their CLB in the specified areas.

Submit, by April 20, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 11th day of February, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–3978 Filed 2–17–98; 8:45 am]

BILLING CODE 6590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation Portsmouth Gaseous Diffusion Plant; Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a 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 this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

For further details with respect to the action see: (1) The application for

amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room.

Date of amendment request: October 21, 1997.

Brief description of amendment: On October 21, 1997, United States Enrichment Corporation (USEC) submitted a certificate amendment request for the Portsmouth Gaseous Diffusion Plant (PORTS) to extend a completion date and to clarify commitments related to Measuring and Test Equipment (M&TE) made in Issue 24 entitled "Maintenance Program" of the "Plan for Achieving Compliance with Nuclear Regulatory Commission Regulations at the Portsmouth Gaseous Diffusion Plant" DOE/ORO–2027/R3 (Compliance Plan).

The PORTS Quality Assurance Program (QAP) requires safety related structures, systems and components (SSCs) to be designated as Q, AQ and AQ–NCS according to their area of application and degree of importance to safety. The PORTS QAP and the Safety Analysis Report designate those SSCs as Q and AQ, and AQ–NCS, which are relied upon for non-criticality safety and criticality safety, respectively. The PORTS QAP requires USEC to apply quality assurance (QA) requirements contained in ASME NQA–1–1989 entitled "Quality Assurance Program Requirements for Nuclear Facilities" to Q and AQ–NCS SSCs. For AQ SSCs, which in comparison to Q and AQ–NCS SSCs are less important from a safety standpoint, only a portion of the ASME NQA–1–1989 requirements are applicable.

Currently, the Plan of Action and Schedule (POAS) section of Issue 24 of the PORTS Compliance Plan implies that M&TE used for Q, AQ and AQ-NCS SSCs are also designated as Q, AQ and AQ-NCS, respectively. The clarification contained in USEC's amendment request, deletes this implication. In addition to the clarification, USEC has also included a request to extend the completion date for revising the calibration program to meet the more formal requirements for AQ SSCs from December 31, 1997, to June 30, 1998. According to USEC, the existing December 31, 1997, date in the POAS of the PORTS Compliance Plan Issue 24 is inconsistent with two other actions contained elsewhere in the same POAS. In addition, according to USEC, Issue 22 entitled "Maintenance Program" of the Paducah Gaseous Diffusion Plant (PGDP) Compliance Plan identifies June 30, 1998, as the date for completing similar corrective actions which address similar noncompliances.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

This amendment deletes the implication that M&TE are designated as Q, AQ, and AQ-NCS SSCs. It also corrects an inconsistency related to the completion date for revising the calibration program to meet more formal requirements for AQ SSCs by extending the completion date from December 31, 1997, to June 30, 1998. This amendment does not constitute a change to the QA requirements applicable to M&TE. Per the PORTS QAP, which was reviewed and approved by the NRC as part of the initial certification, QA requirements contained in ASME NQA–1 1989 will continue to be applied to M&TE used for Q, AQ-NCS and AQ SSCs. In addition, the interim safety requirements contained in the Justification for Continued Operation (JCO) section of Issue 24 of the PORTS Compliance Plan, which was developed by DOE and approved by DOE and NRC, pertaining to AQ SSCs and the associated M&TE, would continue to be applied until June 30, 1998. As such, this amendment will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposures.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in new or different kinds of accidents.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety program.

The staff has not identified any safeguards or security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards or security programs.

Effective date: The amendment to GDP–2 will become effective immediately after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will revise the Compliance Plan.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 4th day of 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–3977 Filed 2–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of February 16, 23, March 2, and 9, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 16

Wednesday, February 18

2:00 p.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7).

Thursday, February 19

9:30 a.m.—Meeting with Northeast Nuclear on Millstone (Public Meeting) (Contact: Bill Travers, 301–415–1200).

12:00 p.m.—Affirmation Session (Public Meeting) (if needed).

Week of February 23—Tentative

There are no meetings the week of February 23.

Week of March 2—Tentative

There are no meetings the week of March 2.

Week of March 9—Tentative

Wednesday, March 11

9:00 a.m.—Briefing by Executive Branch (Closed—Ex. 1).

2:00 p.m.—Briefing on MOX Fuel Fabrication Facility Licensing (Public Meeting) (Contact: Ted Sherr. 301–415–7218).

Thursday, March 12

2:00 p.m.—Briefing on Fire Protection (Public Meeting).

3:30 p.m.—Affirmation Session (Public Meeting) (if needed).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be bound on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–4218 Filed 2–13–98; 2:39 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of Expiring Information Collection Form RI 25–14

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget a request for reclearance of an information collection. RI 25–14, Self-Certification of Full-Time School Attendance, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirement of Section 8341(a)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 14,000 Self-Certification and Full-Time School Attendance forms are completed annually; each requires approximately 12 minutes to complete, for a total public burden of 2,800 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before April 19, 1998.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–4196 Filed 2–17–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form RI 30–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of an information collection. RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving disability annuity and are subject to their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Approximately 8,000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Service, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 98–4195 Filed 2–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Form RI 94–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 94–7, Death Benefit Payment Rollover Election for Federal Employees Retirement System (FERS), provides FERS surviving spouses and former spouses with the means to elect payment of the FERS rollover-eligible benefits directly or to an Individual Retirement Account.

Approximately 700 RI 94–7 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 700 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before March 20, 1998.

ADDRESSES: Send or deliver comments to—

John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3313, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 98–4197 Filed 2–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Form RI 38–115

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 38–115, Representative Payee Survey, is designed to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Approximately 4,067 RI 38–115 forms will be completed annually. This form takes approximately 20 minutes to complete. The annual burden is 1,356 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before March 20, 1998.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 98–4198 Filed 2–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Form RI 98–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 98–7, We Need Important Information About Your Eligibility for Social Security Administration (SSA) Disability Benefits, is used to verify receipt of SSA disability benefits, make necessary adjustments to the Federal Employees Retirement System (FERS) disability benefit, and to notify the retiree of any overpayment amount payable to OPM. It also specifically notifies the retiree of his or her responsibility to notify OPM of his or her Social Security status and the consequences of non-notification.

Approximately 2200 RI 98–7 forms will be completed annually. We estimate it takes approximately 5 minutes to complete the form. The annual burden is 183 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before March 20, 1998.

ADDRESSES: Send or deliver comments to—

John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget &

Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–4199 Filed 2–17–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (London Insurance Group, Inc., 6⅞% Notes Due September 15, 2005, Issued Pursuant to the Indenture Dated September 25, 1995) File No. 1–13938

February 10, 1998.

London Insurance Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the New York Stock Exchange Inc. ("NYSE" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

On December 12, 1997, the Company completed a tender offer for the issued and outstanding Security. Through the tender offer, the Company purchased $142,543,000 of the $150,000,000 aggregate principal amount of the Security then outstanding.

The Company believes that its application to withdraw the Security from listing and registration on the NYSE should be granted for the following reasons:

(1) The aggregate principal amount of the Security that remains issued and outstanding is small. Of the original issuance of $150,000,000, only $7,457,000 of that aggregate principal amount of the Security remains issued and outstanding.

(2) The Security is held by a small number of holders. As of January 14, 1998, the Depositary Trust Company ("DTC") was the only holder of record. Through DTC, there are approximately 6 beneficial holders of the Security. $7,000,000 of the remaining principal amount of the Security is beneficially held by one institution.

(3) The Security is the Company's only listed security in the United States.

(4) The costs of satisfying the Company's reporting obligations under the Act do not justify the continued listing of the Security. The Company is not subject to the reporting requirements of the Act for any of its equity securities and is not obligated under the terms of the Indenture to file any reports with the Commission. As a consequence of the continued listing of the Security, the Company will be required to incur the costs of preparing annual and periodic reports to comply with the reporting requirements of the Act for the benefit of a limited number of Security holders. In addition, the Company is not obligated under the Indenture or any other document to maintain the listing or registration of the Security on the NYSE or any other national securities exchange.

On January 8, 1998, an authorized representative of the NYSE advised the Company that the Exchange would not object to the voluntary removal of the Security from listing and registration on the Exchange.

Any interested person may, on or before March 4, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–3934 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23024; 812–10928]

Nationwide Investing Foundation III, et al.; Notice of Application

February 10, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Order requested to allow certain series of a registered open-end management investment company to acquire all of the assets of certain series of three registered open-end management investment companies. Because of certain affiliations, applicants may not rely on Rule 17a–8 under the Act.

APPLICANTS: Nationwide Investing Foundation III ("NIF III"), Nationwide Investing Foundation ("NIF"), Nationwide Investing Foundation II ("NIF II"), Financial Horizons Investment Trust ("FHIT"), and Nationwide Advisory Services, Inc. ("NAS").

FILING DATES: The application was filed on December 24, 1997, and amended on February 6, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application persons 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 March 5, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Three Nationwide Plaza, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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, 450 5th Street NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. NIF III, an Ohio business trust, is an open-end management investment company registered under the Act. NIF III consists of nine series: Nationwide Growth Fund, Nationwide Fund, Nationwide Bond Fund, Nationwide Money Market Fund, Nationwide Intermediate U.S. Government Bond Fund, Nationwide Mid Cap Growth Fund, (the "NIF III Acquiring Series"), Nationwide Tax-Free Income Fund, Nationwide Long-Term U.S.

Government Bond Fund, and Nationwide S&P 500 Index Fund.[1] NIF III plans to offer initially one class of shares, class D that carries a front-end sales charge, for each of its series, other than the Nationwide Money Market Fund, which will issue shares without class designation or sales charge.

2. NIF, a Michigan business trust, is an open-end management investment company registered under the Act. NIF currently offers four series: Nationwide Growth Fund, Nationwide Fund, Nationwide Bond Fund, and Nationwide Money Market Fund (the "NIF Acquired Series"). Shares of Nationwide Growth Fund, Nationwide Fund, and Nationwide Bond Fund are subject to a front-end sales charge. NIF II, a Massachusetts business trust, is an open-end management investment company registered under the Act, and currently offers two series, Nationwide U.S. Government Income Fund (the "NIF II Acquired Series"), and Nationwide Tax-Free Income Fund.[2] Shares of the Nationwide U.S. Government Income Fund are subject to a contingent deferred sales charge. FHIT, a Massachusetts business trust, is an open-end management investment company registered under the Act. FHIT currently offers four series: Growth Fund, Cash Reserve Fund (the "FHIT Acquired Series"), Municipal Bond Fund, and Government Bond Fund.[3] Shares of the Growth Fund are subject to a contingent deferred sales charge. The NIF Acquired Series, NIF II Acquired Series, and FHIT Acquired Series together are the "Acquired Series".

3. NAS is registered as an investment adviser under the Investment Advisers Act of 1940. NAS serves as investment adviser for NIF III and the Acquiring Series, and for NIF, NIF II, FHIT, and the Acquired Series. NAS is a wholly-owned subsidiary of Nationwide Life Insurance Company, which, in turn, is wholly-owned by Nationwide Financial Services, Inc. ("NFS"). NFS is controlled by the Nationwide Corporation, which is controlled by Nationwide Mutual Insurance Company.

4. As of December 18, 1997, Nationwide Life Insurance Company, directly or indirectly owned, controlled or held the power to vote 31% of the outstanding shares of NIF's Nationwide Growth Fund, 24.1% of NIF's Nationwide Fund, 16.8% of NIF's Nationwide Bond Fund, 54.4% of NIF's Nationwide Money Market Fund, 15.8% of NIF II's Nationwide U.S. Government Income Fund, and 5.3% of FHIT's Growth Fund, and 73.5% of FHIT's Cash Reserve Fund. These shares of NIF, NIF II, and FHIT are owned by separate accounts of Nationwide Life Insurance Company, which vote these shares in accordance with instructions received from the underlying variable annuity contract owners. If no instructions are received from the underlying variable annuity contract owners, the separate accounts vote the shares in the same proportion as the votes cast on behalf of variable annuity contract owners who submit timely instructions.

5. On November 7, 1997, the boards of trustees of NIF III, NIF, NIF II and FHIT (the "Boards"), including the disinterested trustees, considered and unanimously approved Agreements and Plans of Reorganization between NIF III, NIF, NIF II and FHIT (the "Reorganization"). In the Reorganization, each of NIF, NIF II, and FHIT has agreed to sell all of its assets to the Acquiring Series, in exchange for assumption of the Acquired Series' liabilities and the issuance and delivery of class D shares of the corresponding Acquiring Series of NIF III (the NIF III Money Market Fund will issue and deliver shares without any class designation) equal in net asset value at the close of business at the Valuation Time (defined below) to the value of the shares of the corresponding Acquired Series. The Valuation Time is intended to be 4:00 p.m., Eastern Standard Time, on the day before the assets and liabilities of the Acquired Series are transferred to the corresponding Acquired Series.

6. No sales charge will be incurred by shareholders of the Acquired Series in connection with their acquisition of corresponding Acquiring Series shares. Applicants state that the investment objectives, policies and restrictions of the Acquiring Series are substantially similar to those of the corresponding Acquired Series.

7. The Boards determined that the Reorganization is in the best interests of NIF III, NIF, NIF II, and FHIT, and of the shareholders of the Acquired Series and the corresponding Acquiring Series, and that the interests of shareholders would not be diluted as a result of the Reorganization. In assessing the Reorganization, the factors considered by the Boards included: (a) The business objectives and purposes of the Reorganization, namely, becoming three separate business entities of NIF, NIF II, and FHIT into one business entity, NIF III; (b) the compatibility of the investment objectives, polices and restrictions between the respective Acquired Series and the corresponding Acquiring Series; (c) the terms and conditions, including the allocation of expenses of the Reorganization; (d) the tax-free nature of the Reorganization; and (e) the expense ratios of the Acquiring Series and the corresponding Acquired Series.

8. NAS has agreed to pay for 50% of the Reorganization fees and expenses of NIF III, NIF, NIF II, and FHIT. NAS also has agreed to pay for 50% of proxy solicitation and other costs associated with the special meeting of shareholders of NIF, NIF II, and FHIT. NIF III bears its own organizational costs.

9. On November 26, 1997, NIF III filed with the SEC its registration statement on Form N–14, containing a preliminary combined prospectus/proxy statement, which became effective on January 8, 1998. Applicants sent the prospectus/proxy statement to Acquired Series shareholders on or about January 12, 1998, for their approval at a special shareholder meeting to be held on February 16, 1988.

10. The Reorganization is subject to the following conditions precedent: (a) That the shareholders of the Acquired Series approve the Agreement; (b) that the Acquired Series and the Acquiring Series receive opinions of counsel to the effect that the Reorganization will be tax-free for the Acquiring Series, the Acquired Series, and their shareholders; and (c) that applicants will receive from the SEC and exemption from section 17(a) of the Act for the Reorganization. Applicants agree not to make any material changes to the Agreement without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to the company, or purchasing from the company and security or other property.

2. Section 2(a)(3) of the Act defines the term "affiliated person of another person" to include, in pertinent part, any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person, and any person directly or indirectly controlling, controlled by, or under common control with such other person, and if such other person is an

[1] NIF III's Nationwide Tax-Free Income Fund, Nationwide Long-Term U.S. Government Bond Fund, and Nationwide S&P 500 Index Fund are not applicants for the relief requested.

[2] NIF II's Nationwide Tax-Free Income Fund is not an applicant for the relief requested.

[3] FHIT's Municipal Bond Fund and Government Bond Fund are not applicants for the relief requested.

investment company, any investment adviser thereof.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

4. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization, because an affiliate of NAS, Nationwide Life Insurance Company, directly or through its separate accounts, owns, controls or holds the power to vote 5% or more of the outstanding voting securities of each of NIF's Nationwide Growth Fund, Nationwide Fund, Nationwide Bond Fund, Nationwide Money Market Fund, and NIF II's Nationwide U.S. Government Income Fund, and FHIT's Growth fund and Cash Reserve Fund. Applicants assert that NIF, NIF II, FHIT and each of the respective Acquired Series may be an affiliated person of Nationwide Life Insurance Company under section 2(a((3)(B) of the Act.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

6. Applicants submit that the Reorganization satisfies the standards of section 17(b). Applicants believe the terms of the Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the exchange is based on the relative net asset values of the relevant Funds' shares, and no sales charge will be incurred by shareholders of the Acquired Series in connection with their acquisition of corresponding Acquiring Series Shares. Applicants assert that the Reorganization is consistent with the investment objectives of the Acquired Series and the corresponding Acquiring Series.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3929 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23014A; 812–10908]

The Sessions Group, et al., Notice of Application

January 30, 1998.

Correction

In FR Document No. 98–2883 beginning on page 5976 for Thursday, February 5, 1998, the date of the release was incorrectly stated. The correct date should be as set forth above.

Dated; February 11, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3933 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39631; File No. SR–AMEX–97–37]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to Expansion of Designated Options Areas

February 9, 1998.

I. Introduction

On October 14, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the locations where options on Amex-listed stocks may trade at the Exchange. The proposed rule change was published for comment in the **Federal Register.**[3] No comments were received on the proposal. On January 14, 1998, the Amex filed an amendment to the proposed rule change ("Amendment No. 1"),[4] The Commission hereby approves the proposal. In addition, the Commission is publishing this notice to solicit comments from interested persons on Amendment No. 1 to the proposal and hereby approves that amendment on an accelerated basis.

II. Description of the Proposal

In 1988, the Commission approved an Amex proposal to permit options trading on Amex-listed stocks ("1988 Approval Order").[5] In that order, the Commission noted that: "[W]ith the expansion of its trading facility, specifically the addition of a separate trading room, the Amex is in a position to trade stocks and options thereon in physically separated locations. The proposed rule change specifies that such trading shall take place at different trading locations and provides the safeguards necessary to prevent abuses which could result from the trading of stocks and related options in physical proximity to each other."[6]

More recently, in 1994, the Commission approved an Amex proposal to provide greater flexibility in the design and development of new stock index option products which can be listed and traded on Amex.[7] In that approval order, the Commission based its approval in part on the fact that Amex imposed a number of restrictions on trading in options on indexes. For instance, where Amex-listed stocks comprise more than 10% of the value of a particular index, options on that index must be traded in a *room physically separated from* the Equity Floor.[8]

Now, Amex, as a result of increases in trading volume in options on the Exchange,[9] has proposed to relax the requirement that Amex-listed stocks and options on Amex-listed stocks be traded in a room physically separated from the Main Trading Floor

Background

Amex currently has three trading locations: (1) the Main Trading Floor; (2) the mezzanine trading level, which is located above the Exchange's main trading floor ("Mezzanine"),[10] and (3) a separate room connected by a hallway to the Main Trading Floor (the "Red Room" or "Designated Options Area").

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39306 (November 6, 1997), 62 FR 61154 (November 14, 1997).

[4] Letter from Scott G. VanHatten, Legal Counsel, Derivative Securities, Amex, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, dated January 13, 1998.

[5] Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988) (File No. SR–AMEX–88–16).

[6] *Id.*

[7] Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994).

[8] *Id.* (emphasis added).

[9] The Amex noted in its filing that the number of options on Amex-listed stocks has increased slowly, to 45 classes since 1988, while the overall number of options classes traded on the Exchange has increased over 350% since that time.

[10] The Mezzanine abuts and overlooks the Exchange's equity trading floor. *See* Release No. 34–34359 at n. 8.

On the Main Trading Floor, Amex currently permits trading in:

(1) Amex-listed stocks,

(2) Options on non-Amex-listed stocks, and

(3) Options on indexes (excluding options on indexes where Amex-listed stocks comprise more than 10% of the index value, by weight).[11]

In the Red Room, Amex currently permits trading in:

(1) Options on Amex-listed stocks,

(2) Options on non-Amex-listed stocks, and

(3) Options on indexes where Amex-listed stocks comprise more than 10% of the index value, by weight.

On the Mezzanine, Amex currently permits trading in:

(1) Options on indexes where Amex-listed stocks comprise more than 10% of the index value by weight, and

(2) Options on non-Amex-listed stocks.

Consistent with the 1988 Approval Order, as described above, trading of Amex-listed stocks occurs on the Main Trading Floor, while trading of options on Amex-listed stocks is permitted only in the Red Room. The Exchange states that the capacity of the Red Room is no longer sufficient to accommodate all trading in options on Amex-listed stocks. The Exchange represented in its filing that while the number of options on Amex-listed stocks has increased slowly, to approximately 45 classes since 1988, the overall number of option classes traded on the Exchange has increased over 350% since that time. As a result of this increase in classes of options traded at the Amex, the Exchange states that it currently lacks flexibility in moving trading units around its trading floors. Those specialist units currently trading options on Amex-listed stocks are forced to remain in the Red Room, even though they have outgrown their space, or face giving up those classes to move to larger quarters. Moreover, the Exchange represented that specialist units that currently do not trade any options on Amex-listed stocks are unable to do so because there is no room left in the Red Room. The increase in classes of options traded on the Exchange and the Exchange's need for flexibility in moving the various trading units around the Exchange's trading floors has made it necessary for the Exchange to find additional physically separate locations for trading options on Amex-listed stocks.

Accordingly, the Exchange has proposed to permit options trading on Amex-listed stocks in two locations of the Exchange in addition to the Red Room: (1) The Mezzanine and (2) the back row of the west side of the Exchange's Main Trading Floor, also referred to as the west side of Exchange Posts 12, 13 and 15 ("Back Row").

The Exchange represented in its filing that the two locations selected would keep options and equity trading sufficiently separate such that there can be no time and place advantage derived from the proximity of the equity and options trading areas.[12] The Exchange contends that permitting the trading of options on Amex-listed stocks on the Mezzanine is consistent with the Commission's approval of the Mezzanine as a physically separate trading location with respect to trading in stock index options. For options on Amex-listed stocks traded on the Mezzanine, the Exchange represents that: (1) Options on Amex-listed stocks shall not be traded in the portion of the Mezzanine that is visible from the Main Trading Floor; (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Mezzanine and the Main Trading Floor; and (3) members will be notified in writing by the Exchange of the new prohibitions on the use of hand signals or other like means of communication.

With respect to the Back Row trading location, the Exchange contends that it will be able to keep options and equity trading sufficiently separate to avoid the time and place advantage that could result from the proximity of the equity and options trading area. Specifically, the Exchange represents that no option on an Amex-listed equity will trade at any post on the Exchange's Main Trading Floor where there exists a direct line of sight between the posts of the option and its corresponding underlying equity. In addition, for options on Amex-listed stocks traded at the Back Row of the Main Trading Floor: (1) Those options shall remain separate from their corresponding underlying equities by no less than one row of posts on the Main Trading Floor; (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Back Row and the Main Trading Floor; and (3) members will be notified in writing by the Exchange of the new prohibitions on the use of hand signals or other like means of communications.

The Exchange believes that the proposed rule change will not increase the potential for trading abuse and manipulation as there is no line of sight between the Mezzanine and the Back Row and the Designated Stock Area, which will now constitute those areas of the Main Trading Floor other than the Back Row. Thus, no time or place advantage should result from the proposed rule change.

In addition to the above representations, the Exchange states that it has in place various safeguards to detect and prevent any such abuse or manipulation. For instance, the Exchange notes that options on Amex-listed stocks and the underlying Amex-listed stocks will continue to be deemed "paired securities," (as that term is used in the Exchange's Series 900 rules).[13] This designation invokes additional safeguards designed to prevent the misuse of market information and market manipulation by Amex members. These safeguards include Amex Rule 175, which generally prohibits someone from acting as a specialist in an equity and in the option on the equity.

In addition, Amex Rule 958(e) prohibits any equity specialist, odd-lot dealer or Nasdaq market maker from acting as a registered trader in a class of stock options on a stock in which he is registered in the primary market place. Moreover, Rule 958(f) prohibits any member, while acting as a Registered Options Trader ("ROT"), who is also registered as a Registered Equity Trader or Registered Equity Marketmaker, from executing a proprietary Exchange option transaction on a paired security if he has been in the Designated Stock Area (*i.e.*, the Main Trading Floor) where the related security is traded during the preceding 60 minutes.

To ensure compliance with the above safeguards, the Exchange states that it has in place various surveillance procedures. The Exchange's surveillance procedures, which are set forth at Section XI, C of the Amex Trading Analysis Options Surveillance Manual concerning Paired Security Review, include, among other items, the preparation of daily activity reports on ROTs' trading activity in Amex-listed stocks and options. These reports are

[11] An index can be valued using a number of different methods. For example, an index can be valued by determining: the price of the components of the index (price-weighting); the number of shares of each component that could be purchased by spending equal dollar amounts (equal dollar-weighting); and the market capitalizations of the components of the index (capitalization-weighting). *Cf.* Release No. 34–34359 at n. 7 and accompanying text.

[12] Securities Exchange Act Release No. 39306 (November 6, 1997), 62 FR 61154 (November 14, 1997).

[13] The term *paired security* means a security which is the subject of securities trading on the Exchange and Exchange option trading. Amex Rule 900(b)(38).

used to analyze ROT trading activity to ensure compliance with Amex Rule 958.

Lastly, the Exchange states that it will continue to follow the restrictions the Exchange imposed in its proposal regarding trade in index options as discussed in Securities Exchange Act Release No. 34359,[14] which addresses, among other items, the locations where it is permissible to trade options on indexes where Amex-listed stocks comprise more than 10% of the index value by weight.[15]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and with the requirements of Section 6 of the Act.[16] In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act in that it should remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and protect investors and the public.[17] The Commission believes that the Amex has provided adequate safeguards to protect against market manipulation and abuse of market information in this context. The Commission also believes that the proposal will allow the Exchange flexibility in moving trading posts while minimizing the potential for abuse by ensuring that Amex traders will not be able to obtain unfair informational advantages.

In considering this filing, the Commission notes that floor traders and market makers, by virtue of their close proximity to the trading crowds and access to market information, may have a time and place advantage over other market participants. For example, floor traders in the crowd may be able to gain an insight into the future direction of the market on the basis of, among other things, the other traders in the crowd and their bidding/offering patterns. Likewise, market makers have an informational advantage about order flow and quote changes. For the reasons stated below, however, the Commission believes that the restrictions contained in the Amex proposal adequately minimize any potential for misuse of information or market manipulation. The Commission concurs with the Exchange's view that the trading locations for equities and options on equities are sufficiently separated in a manner that will minimize the time and place advantage that can be derived from the proximity of the equity and options trading areas. Specifically, for options on Amex-listed stocks traded on the Mezzanine, the Exchange has represented that: (1) Those options shall not be traded in the portion of the Mezzanine that is visible from the Main Trading Floor, and (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Mezzanine and the Main Trading Floor. For options on Amex-listed stocks traded at the Back Row of the Main Trading Floor: (1) Those options shall remain separate from their corresponding underlying equities by no less than one row of posts on the Main Trading Floor, and (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Back Row and the Main Trading Floor. Members will be notified in writing by the Exchange of the new prohibitions on the use of hand signals or other like means of communications.

By restricting the trading of options to areas outside the visibility of trading of the underlying securities, the Commission believes the proposal adequately limits the ability of Amex members to unfairly use any material, nonpublic information they might possess. Moreover, the Commission believes that current surveillance procedures are adequate to identify and deter potential manipulations and other trading abuses. Finally, by prohibiting hand signals and other forms of communication between options and equity trading posts on the Main Trading Floor, the Mezzanine, and the Back Row, the Exchange should be able to significantly restrict abuses.

The Commission's approval of the proposed rule change is premised on the belief that the Amex's proposed trading locations for equities and options are sufficiently separated such that there is no time and place advantage derived from the physical proximity of the two trading locations which could be exploited by Amex members. Accordingly, any decision by the Amex to change the location of the designated options area relative to the designated stock area, or to modify the means of access between them, would require submission of a proposed rule change under Section 19(b) of the Act.

Based on the foregoing, the Commission believes that the proposal will allow the Exchange to expand the trading locations for options on Amex-listed stocks while providing adequate protections against market participants that might attempt to manipulate the market or misuse any market information, which results from the trading of options and the stocks underlying those options in physical proximity to each other.

The Commission finds good cause consistent with the Act for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 simply provides additional details regarding, among other things, where options and stocks are currently traded at the Amex and does not substantively change the proposal as originally filed. Accordingly, the Commission approves Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments, including whether the submission is consistent with the Act, concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–97–37 and should be submitted by March 11, 1998.

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[14] *Id.*

[15] *Id.* Among other items, the Exchange represented that: First, index options trading shall not be located on the Exchange's Main Trading Floor; and second, for index options traded on the Mezzanine where Amex-listed stocks comprise more than 10% of the value of the index, by weight: (1) Those options shall not be traded in the portion of the Mezzanine that is visible from the Main Trading Floor, and (2) members will be prohibited from using hand signals or other forms of communication to communicate between the Mezzanine and the Main Trading Floor. Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994).

[16] 15 U.S.C. 78f(b).

[17] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act.[18] that the proposed rule change (SR–AMEX–97–37), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3996 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39643; International Series Release No. 1114; File No. 601–01]

Self-Regulatory Organizations; Morgan Guaranty Trust Company of New York, Brussels Office, as Operator of the Euroclear System; Order Approving Application for Exemption From Registration as a Clearing Agency

February 11, 1998.

I. Introduction

On March 5, 1997, Morgan Guaranty Trust Company of New York ("MGT"), Brussels office ("MGT-Brussels"), as operator of the Euroclear System [1] pursuant to a contract with Euroclear Clearance System Société Coopérative, a Belgian cooperative ("Belgian Cooperative"),[2] filled with the Securities and Exchange Commission ("Commission") an application on Form CA–1 [3] for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") [4] and Rule 17ab2–1 thereunder.[5] Notice of MGT–Brussels' application was published in the **Federal Register** on May 15, 1997.[6] Six comment letters were received in response to the notice of filing of the Euroclear application.[7] This order grants the application of MGT–Brussels, as operator of the Euroclear System, for exemption from registration as a clearing agency to the extent the Euroclear System performs the functions of a clearing agency with respect to transactions involving U.S. government and agency securities for its U.S. participants subject to the conditions and limitations that are set forth below.

II. Description of Euroclear System Operations [8]

Euroclear provides several services to its participants, including securities clearance and settlement, securities lending and borrowing, and securities custody.[9]

A. Securities Clearance and Settlement

The Euroclear System functions as a clearance and settlement system for internationally traded securities. Securities settlement through the Euroclear System can occur with other participants in the Euroclear System ("internal settlement"), with members of Cedel Bank, société anonyme, Luxembourg ("Cedel"), the operator of the Cedel system ("Bridge settlement"), or with counterparties in certain local markets that are not members of either the Euroclear System or Cedel ("external settlement").

The annual volume of transactions settled in the Euroclear System has grown from about US$3 trillion in 1987 to over US$34.6 trillion in 1996. The fastest growing segments of this activity have been repurchase and reverse repurchase agreements ("repos"), book-entry pledging arrangements, securities lending, and other collateral transactions [10] involving non-U.S. government securities.[11] Although the individual certificated or uncertificated government securities of these countries are immobilized or dematerialized with the central banks or central securities depositories ("CSDs") in their home markets, book-entry positions with respect to such securities can be acquired, held, transferred, and pledged by book-entry on the records of Euroclear in any of the 35 currencies available in the Euroclear System because of the links to local custodian banks, central banks, CSDs, and national payment systems around the world.

1. Internal Settlement: Clearance and Settlement of Trades Between Euroclear System Participants

Transactions between Euroclear System participants in the Euroclear System can be settled either against payment or free of payment.[12] Upon

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[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] For purposes of this order, the term "Euroclear" refers to MGT-Brussels in its capacity as operator of the Euroclear System. MGT-Brussels is the Brussels branch of MGT that has acted as the operator of the Euroclear System through its Euroclear Operations Centre since the creation of the Euroclear System in 1968. The Euroclear Operations Centre is a separate, independent operational unit established within MGT-Brussels to operate the Euroclear System.

In 1972, a package of rights described as the Euroclear System was sold to Euroclear Clearance System Public Limited Company, and English limited liability company ("ECS–PLC"). ECS–PLC purchased the rights to receive the revenues generated by the Euroclear System services, to approve participants, to determine eligible securities, to establish fees, and to make other similar decisions. MGT-Brussels retained all of the assets and means necessary to operate the Euroclear System and granted a license to ECS–PLC to use the Euroclear System trademarks.

[2] the Belgian Cooperative was established in 1987 to further facilitate communication between Euroclear and the international securities industry and to encourage participation in the Euroclear System. It received a license from ECS–PLC to exercise some of ECS–PLC's rights as owner of the Euroclear System. Neither ECS–PLC nor the Belgian Cooperative is an operating company. Among other thins, MGT-Brussels maintains all Euroclear System participant accounts on its own books, maintains all of the contractual relationships with Euroclear System participants and Euroclear System depositories in its own name, and provides all of the personnel, systems, trademarks, and operational capability used to deliver the Euroclear System services to Euroclear System participants. For a more complete description of the structure of the Euroclear System, refer to Section II of the Euroclear notice, *Infra* note 6.

[3] Copies of MGT-Brussels' application for exemption ("Euroclear application") are available for inspection and copying at the Commission's Public Reference Room (File No. 601–01).

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ab2–1.

[6] Securities Exchange Act Release No. 38589 (May 9, 1997), 62 FR 26833 (notice of filing of application for exemption from registration as a clearing agency) ("Euroclear notice").

[7] Letters from C.R. Trusler, Director, Nomura International plc (June 5, 1997); S. Guenzi, Senior Products Manager Custody H.O.–Financial Institutions, Credito Italiano (June 12, 1997); Harvé Pennanec'h, Head of Back-Office, Capital Markets Divison, Société Générale (June 16, 1997); D.G. Pritchard, Director, Global Collateral Support Unit, NatWest Markets (June 16, 1997); Preben Borup, Senior Vice President, BG Operations, and Tom Jensen, First Vice President, Head of Custody and Settlement, BG Operations, Bikuben Girobank A/S (June 17, 1997); and S.L. Richardson, Executive Manager, Operations, ANZ Bank (June 18, 1997). The comment letters for File No. 601–01 are available for inspection and copying in the Commission's Public Reference Room.

[8] A more complete description of Euroclear System operations is contained in the Euroclear notice, *supra* note 6.

[9] The contractual relationship between Euroclear and its participants is defined by the Terms and Conditions Governing the Use of Euroclear ("Terms and Conditions") as supplemented by Supplementary Terms and Conditions Governing the Lending and Borrowing of Securities through Euroclear ("Supplementary Terms and Conditions"), the Operating Procedures of the Euroclear System ("Operating Procedures"), and various other documents, all of which are governed by Belgian law. Among other things, the Terms and Conditions provide that Euroclear participants agree that their rights to securities held through the Euroclear System will be defined and governed by Belgian law.

[10] Collateral transactions are designed to enable Euroclear System participants to reduce their financing costs, increase their yields on securities, reduce their credit and liquidity exposures, and to manage market and operational risks.

[11] Government securities of the following countries are currently eligible for clearance and settlement in the Euroclear System: Argentina, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Italy, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, and the United Kingdom.

[12] When a securities transaction is settled "against payment," movement of the securities is made in return for a corresponding payment, usually cash. When a securities transaction is settled "free of payment," movement of the securities is made

receipt of valid instructions for a settlement between participants, the Euroclear System's computer system attempts to match instructions between corresponding counterparties on a continuous basis according to a defined set of matching criteria. Matching generally is required in order for the instructions to be settled except for certain actions specifically taken by participants (*e.g.*, transfers between accounts maintained by the same participant). Matching of an instruction is attempted until it is either matched or cancelled.

Internal settlement of transactions is accomplished by book-entry transfer and provides for simultaneous exchange of cash and securities. Settlement is final (*i.e.*, irrevocable and unconditional) at the end of each of the securities settlement processing cycles of which there are currently three per day.[13]

The overnight securities settlement process is completed early in the morning of the business day in Brussels for which settlement is intended. Daylight securities settlement processing is completed in the afternoon of each business day with settlement dated for that day. The daylight settlement cycle, which is restricted to internal settlements, permits participants to resubmit previously unmatched instructions or unsettled transactions and permits the processing of new instructions for same day settlement. All daylight instructions not settled are automatically recycled for settlement in the next overnight securities settlement cycle.

2. Bridge Settlement: Clearance and Settlement of Trades Between a Euroclear System Participant and a Cedel Member

Participants can also send instructions authorizing receipt and delivery of securities between the Euroclear System and the Cedel system, both free of payment and against payment. Simultaneous delivery versus payment ("DVP") is possible for settlement of trades between a participant in the Euroclear System and a Cedel member because of the electronic bridge established between the two organizations.

For settlement of trades between a Euroclear System participant and a Cedel member, matching of instructions consists of nine daily comparisons of delivery and receipt instructions. During these comparisons, each clearance system electronically transmits a file of proposed deliveries and expected receipts to the other clearance system. This exchange of information allows each clearance system to report matching results to its participants.[14]

3. External Settlement: Clearance and Settlement of Trades Between a Euroclear System Participant and a Local Market Counterparty

Participants can also send instruction authorizing receipt and delivery of securities free of payment and against payment between the Euroclear System and certain domestic markets' clearance and settlement structures. Euroclear has two types of relationships, direct and indirect links, with local market clearance systems. A direct link is where Euroclear has its own account with the local clearance system and holds securities and sends instructions directly in that clearance system. With an indirect link, an intermediary (*i.e.*, a depository) is used to perform Euroclear System settlement activities in the local market.[15] In certain markets, Euroclear may have both direct and indirect links for different instruments.

B. Securities Lending and Borrowing

Securities lending and borrowing is utilized to increase settlement efficiency for the borrower and to allow lenders to generate income on securities held in the Euroclear System. Lenders receive a fee for securities lending and do not incur safekeeping fees for securities lent. With standard lending and borrowing, there is no linkage between a particular borrower and a particular lender. In effect, participants borrow securities from the lending pools.[16] With reserved lending and borrowing, there is a linkage between the borrower and the lender, but the counterparty's identities are not disclosed.[17] Consequently with both standard and reserved lending and borrowing, borrowers' names and lenders' names are never revealed to one another.

Securities lending and borrowing is an integral part of the overnight securities settlement process. This integration permits Euroclear to determine borrowing requirements and the supply of lendable securities on a trade-by-trade basis throughout each overnight securities settlement processing. Generally, securities lending and borrowing is available only through the overnight securities settlement process.

C. Custody

Securitiess held by Euroclear System participants are held through a network of depositories. Depositories may hold securities on their premises or hold securities with subcustodians or with local clearance systems. Depositories of the Euroclear System may include custodian banks, including some MGT branches, central banks, local clearance systems, and Cedel. Depositories are

without any corresponding payment, such as when securities are pledged as collateral.

[13] Euroclear's internal securities processing consists of two overnight settlement cycles and one daylight settlement cycle.

[14] Bridge settlement was enhanced in September 1993 to allow for multiple overnight transmissions of instructions between Cedel and the Euroclear System. The bridge provides finality for DVP cross-system trades when the receiving clearance system confirms acceptance of a proposed delivery and that confirmation is received by the delivery clearance system.

[15] Securities held by participants in the Euroclear System are held by custodian banks or local clearing systems. Except where required by local law, Euroclear will not permit bank subsidiaries to serve as depositories. All securities held by a depository on its books for the Euroclear System are credited to a segregated custody account in the name of MGT-Brussels, as operator of the Euroclear System. Depositories receive instructions regarding the movement of Euroclear System securities directly from Euroclear. Euroclear participants do not directly deal with depositories regarding the settlement of securities transactions within the Euroclear System or the custody of securities. *See* Section II.C. *infra*.

[16] A participant that is an "automatic standard borrower" is eligible to borrow securities to execute delivery instructions when there are insufficient eligible securities available in its securities clearance accounts to effect a settlement in the overnight securities settlement process. A participant that is an "opportunity standard borrower" sends standard borrowing requests to Euroclear on a case-by-case basis according to expected borrowing needs.

A participant that is an "automatic standard lender" makes securities available to the lending pool during each overnight securities settlement cycle. Subsequent to each overnight securities settlement cycle, securities borrowed from the lending pool are allocated back to the lenders according to a given set of priorities. If the lendable position from automatic standard lenders for a given issue is expected to be insufficient to meet estimated borrowing demand in the next overnight securities settlement cycle, "opportunity standard lenders" may be contacted by Euroclear to make additional securities available for borrowing.

[17] A participant that wishes to reserve securities for future borrowing can do so by submitting a reserved borrowing request to Euroclear. Reserved borrowing differs from standard borrowing in that once a reserve borrower's request matches a lendable supply, the lender is committed to lend the securities, and the borrower is obligated to borrow them. Reserved borrowing minimizes the risk of settlement failure resulting from an inability to obtain a standard borrowing in the overnight securities settlement process due to a lack of supply in the lending pool.

An "automatic reserved lender" makes securities in its securities clearance accounts available on demand for reserved lending subject to the lender's selected options. When a reserved borrowing request is matched to securities automatically available for reserved lending, a reservation is initiated and the securities are blocked in the reserved lender's securities clearance account from the reservation date to the loan start date. "Opportunity reserved lenders" are contacted by Euroclear when the supply of lendable securities from automatic reserved lenders is not sufficient to cover reserved borrowing requests in a given issue.

selected based upon their custody capabilities, financial stability, and reputation in the financial community. All depositories and subdepositories are appointed with the approval of the Belgium Cooperative's board of directors and are reapproved on an annual basis. This network of depositories allows linkages with domestic markets to effect external deliveries and receipts of securities thereby facilitating cross-border securities movements.

Chase Manhattan Bank currently acts as the Euroclear System's depository in the United States for the limited purpose of holding positions in certain foreign and internationally-traded securities (*e.g.*, such as the Regulation S portion of certain global bonds issued by foreign private issuers, Yankee bonds, and book-entry debt securities issued by the World Bank) which are represented by certificates immobilized in The Depository Trust Company or by electronic book-entries on the records of a Federal Reserve Bank.

Securities deposited in the Euroclear System may be in either physical form (*e.g.*, bearer or registered) or in dematerialized form. Securities are held on the books of a depository in an account in the name of MGT-Brussels as operator of the Euroclear System. Where the depository is not also the local clearing system, securities may be deposited in the local clearance system where the depository is located.[18]

Each Euroclear System participant has one or more securities clearance account(s) with associated transit accounts. Securities held by participants in the Euroclear System are credited to the participants' securities clearance accounts or transit accounts. Euroclear System participants have the option to request the segregation of their own and client securities in separate securities clearance accounts.

Securities in the Euroclear System are held in fungible bulk. Under Belgian law and pursuant to the Terms and Conditions,[19] each participant is entitled to a notional portion, represented by the amounts credited to its securities clearance account(s) and transit account(s), of the pool of securities of the same type held in the Euroclear System.[20]

D. Liens, Rights, and Obligations

In addition to any pledge of specific accounts agreed to by a participant due to extensions of credit by MGT-Brussels[21] all assets held in the Euroclear System are subject to rights of set-off and retention.[22] Furthermore, participants' assets held in the Euroclear System (except for assets held for customers and identified as such pursuant to the Operating Procedures or by agreement with Euroclear) are subject to a statutory lien in favor of MGT-Brussels, as operator of the Euroclear System, pursuant to Belgian law.[23] Participants are also obligated to cover any cash or securities debit balances that they may incur.

E. MGT-Brussels Banking Services

MGT-Brussels, acting in its separate banking capacity and not as operator of the Euroclear System, provides certain banking services to Euroclear System participants. Banking services provided include the provision of credit to Euroclear System participants, triparty repo[24] and collateral monitoring services, and a securities lending guarantee.

1. Provision of Credit to Euroclear Participants

MGT-Brussels offers credit facilities to Euroclear participants on an uncommitted basis under limits periodically determined by MGT. Credit decisions are made according to MGT credit guidelines. Credit facilities are generally required to be secured and are normally collateralized by participant assets within the Euroclear System. In order to secure credit, participants affirm to MGT-Brussels that they are not pledging client securities and that no other liens have been granted to third parties on pledged securities.[25]

Securities that participants pledge to secure credit extensions from MGT-Brussels are valued at their market price which is adjusted according to the type of instrument, underlying currency, rating of the issue, the issuer, and the country of the issuer. For debt securities, accrued interest is added to market price for the purpose of calculating collateral value.

2. Triparty Repo and Collateral Monitoring

MGT-Brussels also offers monitoring services whereby participants can use the Euroclear System to facilitate repo settlement/collateral posting, substitution of securities, and margin monitoring.

3. Securities Lending Guarantee

As part of the Euroclear securities lending and borrowing program, MGT guarantees securities lenders the return of securities lent or the cash equivalent if the borrower defaults on its obligation to return such securities.

III. Comment Letters

The Commission received six comment letters in response to the notice of filing of the Euroclear application.[26] All were in favor of the Commission granting Euroclear an exemption from registration as a clearing agency. Many of the commenters noted there would be a reduction in risks and an increase in liquidity as a result of permitting transactions involving U.S. government and agency securities to be processed by the Euroclear System. Specifically, several commenters believed that under an exemption from clearing agency registration Euroclear could facilitate the use of U.S. government and agency securities as collateral thereby reducing the risks to credit providers and the costs to credit seekers. Commenters also believed that permitting Euroclear to clear and settle U.S. government and agency securities would increase liquidity and further deepen the market for these securities which would benefit the U.S. government and its taxpayers by keeping the costs of borrowing low.

Commenters also cited Euroclear's operating record and financial condition in support of the exemption. Commenters articulated their belief that

[18] All securities accepted by a depository are credited to a segregated custody account in the name of MGT-Brussels as operator of the Euroclear System at the depository or local clearance system or are credited to the depository's account at the local clearance system.

[19] *Supra* note 9.

[20] Under Belgian law, Euroclear is required to hold interests in the same amount of any securities that may from time to time be credited to the accounts of Euroclear System participants and is prohibited from pledging or otherwise using any such securities for its own benefit without the consent of the relevant account holder.

[21] *See* Section II.E. *infra*.

[22] When assets are held subject to the right of set-off, the holder of the assets may apply the assets to satisfy debts owned to the holder by the actual owner of the assets. When assets are held subject to the right of retention, the holder of the assets may refuse to return the assets to their owner if the owner is indebted to the holder.

[23] Article 41 of the Belgian Law of April 6, 1995.

[24] A triparty repo arrangement generally consists of three parties, the borrower, the lender, and a collateral agent (*i.e.*, MGT-Brussels). In this arrangement, the borrower initiates a repo by "selling" securities to the lender in exchange for cash from the lender. Simultaneously with this transaction, the borrower agrees to repurchase these securities on a specified or undetermined future date. The collateral agent maintains custody of the securities for the duration of the repo and handles all operation aspects of the transaction including distribution of income, substitutions, and mark to market securities valuations.

[25] In a limited number of circumstances, MGT-Brussels may agree to permit pledging of client securities or the securities of the related parties where the participant's legal and regulatory regime permits, appropriate legal opinions are delivered, and certain other conditions are met.

[26] *Supra* note 7.

MGT-Brussels' financial resources and its regulation by the Board of Governors of the Federal Reserve System ("Federal Reserve Board") are sufficient to ensure the safety and soundness of the Euroclear System.[27]

IV. Discussion

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition, to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[28] Registration of clearing agencies is a key element of the statutory objectives set forth in Section 17A.[29] Before granting registration to a clearing agency, Section 17A(b)(3) of the Exchange Act requires that the Commission make a number of determinations with respect to, among other things, a clearing agency's organization, rules, and ability to provide safe and accurate clearance and settlement.[30] Additionally, the Division of Market Regulation ("Division") has published the standards it applies in evaluating applications for clearing agency registration.[31] These standards are designed to help assure the safety and soundness of the clearance and settlement system.

Section 17A(b)(1), moreover, provides that the Commission:

> May conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of [Section 17A] or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of [Section 17A], including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[32]

As a result, in granting either exemptions from portions of Section 17A or from registration, the Commission requires substantial compliance with Section 17A and the rules and regulations thereunder based on a review of the standards.[33]

B. Evaluation of Euroclear's Application for Exemption

In the Commission's evaluation of Euroclear's application and the comments received, the Commission recognized that certain organizational, operational, and jurisdictional differences would prevent MGT-Brussels, as operator of the Euroclear System, from complying fully with all of the registration provisions set forth in Sections 17A and 19 of the Exchange Act and from meeting all the requirements set forth in the Standards Release. The evaluation was also made in the context of the limitations and conditions that the Commission is including in the exemption granted pursuant to this order. As discussed more fully below, Euroclear's exemption from clearing agency registration is subject to limitations on the type and volume of securities that it may process for its U.S. participants and requirements to submit certain information to the Commission on a periodic basis and at the Commission's request. In addition, MGT-Brussels is subject to regulatory oversight by the Federal Reserve Board.

1. Safeguarding of Securities and Funds

Sections 17A(b)(3) (A) and (F) of the Exchange Act require that a clearing agency be organized and its rules be designed to safeguard securities and funds in its custody or control or for which it is responsible.[34] The Commission believes that Euroclear substantially satisfies this standard. Among other things, the financial condition of, operational safeguards employed by, and the scheme of U.S. federal banking oversight of MGT-Brussels, as operator of the Euroclear System, should help to provide U.S. investors and the U.S. national clearance and settlement system with a level of protection in the areas of custody, clearance, and settlement risks that is comparable to those achieved with full clearing agency registration.

a. Organization and Processing Capacity. A clearing agency must be organized in a manner that effectively establishes operational and audit controls while fostering director independence.[35] The independent audit committee of MGT's board of directors is kept apprised of Euroclear's operations by MGT's regional and functional audit management. The head of MGT audit management has direct reporting lines to the audit committee of MGT's board of directors and to the Vice Chairman of MGT. MGT's audit management receives reports through Euroclear's separate audit division that is responsible for the internal audit process. In addition, the audit division has a direct reporting line to the general manager of Euroclear.

The internal audit process for Euroclear is based on a risk assessment methodology. Review of the participant, product, market, and service dimensions of Euroclear's business, including technology infrastructure, are considered in this risk based approach. The internal audit procedures include tests that are designed to independently assess the strengths and weaknesses of Euroclear's control environment.

Price Waterhouse currently acts as the independent auditors of MGT and MGT-Brussels, including Euroclear. Price Waterhouse conducts an annual audit of MGT's financial statements, which are included in the annual report of J.P. Morgan & Co. Incorporated on Form 10–

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[27] Two commenters believed that due to MGT-Brussels's financial posture, operational history, and present monitoring by the Federal Reserve Board, Euroclear should not be subject to any volume limitations with regard to the amount of U.S. government and agency securities Euroclear may process. Letters from C.R. Trusler, Director, Normura International plc (June 5, 1997) and S. Guenzi, Senior Products Manager Custody H.O.-Financial Institutions, Credito Italiano (June 12, 1997). A third commenter believed that any volume limitation should be only temporary. Letter from D.G. Pritchard, Director, Global Collateral Support Unit, NatWest Markets (June 16, 1997).

[28] 15 U.S.C. 78q–1.

[29] "Clearing agency" is defined in Section 3(a)(23) of the Exchange Act. 15 U.S.C. 78c(a)(23).

[30] 15 U.S.C. 78q–1(b)(3). *See also* Section 19 of the Exchange Act, 15 U.S.C. 78s, and Rule 19b–4, 17 CFR 240.19b–4, setting forth procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations.

[31] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release"). *See also,* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting registration as clearing agencies to The Depository Trust Company, Stock Clearing Corporation of Philadelphia, Midwest Securities Trust Company, The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository, National Securities Clearing Corporation, and Philadelphia Depository Trust Company).

[32] 15 U.S.C. 78q–1(b)(1).

[33] The Commission has previously granted exemptions from clearing agency registration, subject to certain volume limits, reporting requirements, and other conditions, to the Clearing Corporation for Options and Securities ("CCOS") and to Cedel. Securities Exchange Act Release Nos. 36573 (December 12, 1995), 60 FR 65076 ("CCOS exemptive order") and 38328 (February 24, 1997), 62 FR 9225 ("Cedel exemptive order").

The Commission also has granted temporary registrations that included exemptions from specific statutory requirements of Section 17A. In granting these temporary registrations, it was expected that the subject clearing agencies would eventually apply for permanent clearing agency registration. *See e.g.,* Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839 (order approving Government Securities Clearing with a temporary exemption from compliance with Section 17A(b)(3)(C)).

[34] 15 U.S.C. 78q–1(b)(3) (A) and (F). Euroclear's relationship with its participants is governed by various operating agreements, including the Terms and Conditions, the Supplementary Terms and Conditions, and the Operating Procedures which define the rights and responsibilities of Euroclear and its participants. *Supra* note 9 and *infra* Section IV.B.6.

[35] Standards Release, *supra* note 31, 45 FR at 41925–26.

K, in accordance with generally accepted auditing standards. It also conducts an annual review of Euroclear's internal controls, policies, and procedures in accordance with SAS–70 guidelines.[36] Both reports are made available to Euroclear participants. Price Waterhouse also reports to the Belgian Banking and Finance Commission and to MGT's audit committee.

Based upon the foregoing, the Commission is satisfied that Euroclear's organizational and processing capacity substantially satisfies the requirements of the Exchange Act as elaborated on in the Standards Release because Euroclear's internal organizational structure, including its system of internal and external audit, is reasonably designed to provide the necessary flow of information to MGT's board of directors which should allow the necessary monitoring of Euroclear's operations and management's performance to assure the operational capability and integrity of Euroclear.

b. Financial Risk Management. The Standards Release states that a clearing agency should establish a clearing fund and promulgate rules to assure an appropriate level of contributions in accordance with, among other things, the risks to which the clearing agency is subject for the protection of clearing agency participants and for the national system for clearance and settlement.[37]

As discussed in Section II.A. above, Euroclear provides DVP settlement for securities transactions which are then batched for processing in one of two overnight cycles or in the daylight cycle depending upon when the transactions are received. Euroclear itself does not directly extend credit to its participants. Instead, as discussed in Section II.E. above, MGT-Brussels, in its banking capacity, offers credit facilities to Euroclear participants on an uncommitted basis under limits established and in accordance with guidelines set by MGT. Such credit facilities are utilized to avoid transaction failures.

Euroclear does not maintain a clearing fund. However, Euroclear employs various financial and operational risk management mechanisms, including its organization, financial condition, insurance, information technology and systems security, and other operational safeguards to substantially reduce the risk of financial loss by Euroclear and its participants. Therefore, the Commission believes that Euroclear's rules and procedures and the methods by which Euroclear safeguards the financial security of its clearing facilities substantially satisfies the requirements of the Exchange Act.

(i) Risk Management Division and Committee

Euroclear has a separate risk management division that is responsible for risk policy. The risk management division focuses on identifying, analyzing, and managing the risks of operating a multicurrency, cross-border clearance and settlement system. It has developed various risk management tools for identifying and managing the risks of clearance and settlement and other market activities. In addition, Euroclear also employs a Risk Advisory Committee ("RAC") to review all aspects of risk prior to approval of new and existing markets, products, and services. The RAC is chaired by the head of Euroclear's risk management division and includes senior management from other divisions and reports directly to the Euroclear management team.

(ii) Financial Condition

MGT, which is the entity with ultimate fiscal responsibility for operations of the Euroclear System, is a U.S. bank that is "well-capitalized" and "well-managed" as those terms are defined under applicable U.S. Federal banking regulations.[38] MGT has over $13.5 billion in total capital and a total capital ratio of more than 11 percent[39] and access to billions of dollars of additional liquidity in the capital markets. Its senior debt is rated AAA by Standard & Poor's[40] and its long-term debt is rated Aa–1 by Moody's Investors Services.[41]

(iii) Insurance

Euroclear maintains certain insurance coverage against risk of physical loss or damage for securities in its custody, on the premises of its depositories, or in transit. Euroclear also maintains insurance to cover losses arising from forged securities.[42] Typically, Euroclear depositories are required to maintain insurance coverage with respect to securities that they hold on behalf of Euroclear in the same amounts and covering the same risks as they maintain with respect to securities they hold for their own account or for the account of other customers. This insurance coverage must be at least as comprehensive as the coverage customarily carried by banks in that local market acting as custodians.

(iv) Information Technology

Euroclear has an information technology division that is charged with the development and maintenance of its information technology infrastructure. This division is responsible for software engineering, application system development, and technical support for both systems software and the telecommunications networks. It provides communications help-desk facilities and conducts the day to day operation of Euroclear's data centers and contingency facilities.

Computer equipment utilized in the operation of the Euroclear System is located at two data centers and a business recovery facility. All significant systems include full back-up within Euroclear's computer center.[43] Emergency back-up power sources are provided through an independently sourced and routed main power supply, backed up by on-site diesel generators and batteries. A contingency center with a capacity of over 300 critical personnel and a back-up computer center each located at a different site provides the continuity of operations in the event of serious malfunctions at Euroclear's computer center.[44]

[36] Statement on Accounting Standards No. 70 ("SAS–70") issued by the American Institute of Certified Public Accounts sets forth the guidelines for examination of the internal controls established for computerized information systems and manual procedures relating to (i) securities clearance and settlement; (ii) securities lending and borrowing; (iii) money transfer; and (iv) custody. *See* Section IV.C.3. *infra*. The most recent SAS–70 report was issued on March 31, 1997 and covers the period from January 1, 1996 to December 31, 1996.

[37] *Supra* note 31, 45 FR at 41929.

[38] 12 CFR 208.33(b)(1) (definition of "well-capitalized") and 12 CFR 225.2(s) (definition of "well-managed"). *See also* 12 CFR 211.2(u) (definition of "strongly capitalized") and (x) (definition of "well managed").

[39] 12 CFR Part 208, Appendix A (defining total capital ratio).

[40] Standard & Poor's, "Morgan (J.P.) & Company Inc.," *Bank Ratings Analysis*, April 1997, at 1.

[41] Moody's Investor Service, "Opinion Update: Morgan Guaranty Trust Company of New York," *Global Credit Research*, February 7, 1997, at 2.

[42] Euroclear maintains a Financial Institution Bond ("FIB") in an amount of $155,000,000 per loss up to an annual aggregate maximum of $310,000,000 to cover losses of securities on premises or in transit. A separate companion policy written concurrently with the FIB covering electronic and computer crime ("crime policy") is subject to the same per loss and aggregate coverage. For losses exceeding the FIB and the crime policy, Euroclear maintains an exceed J-Form Bond in an amount of $340,000,000. For physical loss or forgery of securities on premises or in transit, Euroclear maintains coverage in an amount of $500,000,000 per occurrence. Euroclear also maintains various mail, air courier, and messenger insurance policies.

[43] Euroclear has provided the Commission with a written copy of its back-up recovery plan.

[44] In 1995, contingency procedures were further enhanced by the implementation of a remote dual copy facility that provides for immediate update of data at both the production and contingency computer centers.

(v) Other Operational Safeguards

Euroclear has substantially similar subcustodian, recordkeeping, and auditing policies and procedures as those utilized by registered clearing agencies.[45] Regarding the safekeeping of securities, Euroclear deposits all securities deposited in the Euroclear System with a network of depositories (subcustodians), which consists of major banks, CSDs and central banks, and some MGT branches.[46] The depositories either maintain actual possession of security certificates or with the prior consent of Euroclear deposit them in local CSDs or central banks. The standard Euroclear depository agreement requires the subcustodians to physically segregate any securities certificates held for Euroclear from any securities certificates held for their own account or for other customers.[47]

c. *U.S. and Other Regulatory Oversight.* In its capacity as operator of the Euroclear System, MGT-Brussels is a division of the foreign branch of a U.S. bank and accordingly is subject to the comprehensive supervision and regulation of the Federal Reserve Board. The Federal Reserve Bank of New York conducts annual on-site examinations in Brussels and otherwise regulates MGT-Brussels' operations, including its operation of the Euroclear System. MGT-Brussels also is subject to the comprehensive supervision of the New York State Banking Department and the Belgian Banking and Finance Commission and is authorized as a Service Company by the Securities and Investments Board under the U.K. Financial Services Act, 1986.

2. Fair Representation

Section 17A(b)(3)(C) of the Exchange Act requires that the rules of a clearing agency provide for fair representation of the clearing agency's shareholders or members and participants in the selection of the clearing agency's directors and administration of the clearing agency's affairs.[48] This section contemplates that users of a clearing agency have a significant voice in the direction of the affairs of the clearing agency.

Although Euroclear participants do not have the right to appoint MGT directors or members of Euroclear management, they have the right to become members of the Belgian Cooperative and can use this membership to influence the range of Euroclear services and the level of fees charged to them by Euroclear. The board of directors of the Belgian Cooperative consists of 23 voting members which are nominated from Euroclear participant organizations representing various financial sectors and geographical regions. Euroclear's goal was to fashion a board with a cross-functional composition in order to ensure that important strategic and policy issues are viewed with a broad market perspective.

The board meets four times a year with Euroclear management to discuss major policy and operational issues regarding the Euroclear System, including new product development and the level of fees. Moreover, Euroclear's participants are some of the world's leading banks, brokers, central banks, and other professional investors which are able to analyze the risks and benefits of clearing and settling transactions in the Euroclear System. Accordingly, the Commission believes that the method in which the Belgian Cooperative's directors are selected and interact with Euroclear's management adequately addresses the requirements of fair representation under Section 17A(b)(3)(C) of the Exchange Act.

3. Participation Standards

Section 17A(b)(3)(B) of the Exchange Act enumerates certain categories of persons that a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services.[49] Section 17A(b)(4)(B) of the Exchange Act states that a registered clearing agency may deny participation to or condition the participation of any entity that does not meet the financial responsibility, operational capability, experience, and competency standards set forth in the clearing agency's rules.[50] These criteria may not be used to discriminate unfairly among entities.[51]

Any organization that demonstrates it meets Euroclear's financial and operational criteria is eligible to become a Euroclear System participant. A prospective participant must demonstrate that it has adequate financial resources for its intended use of the Euroclear System and the ability to maintain this financial adequacy on an ongoing basis. It also must demonstrate that it has both the personnel and technological infrastructure to meet the operational requirements of the Euroclear System. Furthermore, it must show that it expects to derive material benefit from direct access to Euroclear and that it is a reputable firm. However, Euroclear does not require that a prospective applicant possess a particular regulatory status to become a Euroclear participant.[52]

Although Euroclear's admissions policy does not require regulatory status for its participants, entities enumerated in Section 17A(b)(3)(B) of the Exchange Act[53] may become Euroclear System participant if they meet Euroclear's operational and financial criteria. The Commission recognize that there is a wide variance in the level of regulatory control exerted upon Euroclear System participant by the various participants' home jurisdiction. Accordingly, even if Euroclear required a particular regulatory status as a condition to becoming a Euroclear System participant, there would be no assurances that this would provide more uniform admission or reliable protection for the Euroclear System, its participants, or investors because of the disparate levels of oversight. Because each of the enumerated categories of participants is eligible for Euroclear System membership and because Euroclear has accepted a wide range of participants based upon its standards of financial responsibility, operational capability, experience, and competence, the Commission is satisfied that

[45] For example, Euroclear is generally liable to Euroclear participants for its own negligent or willful misconduct.

[46] Generally, Euroclear depositories are liable to Euroclear for their negligent or willful misconduct and indemnify Euroclear for such liability. Euroclear is obligated to take steps that it reasonably deems appropriate to recover any loss to participants caused by the negligent or willful misconduct of any depository and pass on any recovery to the affected participants. But Euroclear does not warrant the performance of its network of depositories.

[47] In its application for exemption from clearing agency registration, Euroclear stated that in the nearly thirty years since Euroclear was established, there has not been a material loss or theft of securities from the Euroclear System. Euroclear also advised the Commission in its application that for its proposed activities involving U.S. government and agency securities, Euroclear will select a U.S. depository bank for such securities that is an adequately capitalized and well-managed clearing bank. The U.S. depository bank in turn would hold its positions through the Federal Reserve Bank of New York or a U.S. registered clearing agency.

[48] 15 U.S.C. 78q–1(b)(3)(C).

[49] 15 U.S.C. 78q–1(b)(3)(B). Section 17A(b)(3)(B) requires that the rules of a clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, or (iv) other entities designated by the Commission may become participants in such clearing agency.

[50] 15 U.S.C. 78q–1(b)(4)(B).

[51] 15 U.S.C. 78q–1(b)(3)(H).

[52] As an exhibit to its application for exemption from clearing agency registration, Euroclear submitted a "Participant Admissions Newsletter" dated February 11, 1994 which stated that Euroclear has revised its admission criteria so as to not require that an applicant be regulated by a government securities for banking regulatory authority in order to become a Euroclear System participant. However, Euroclear also stated that it did not believe that the types of firms utilizing the Euroclear System would change significantly due to this revision.

[53] 15 U.S.C. 78q–1(b)(3)(B).

Euroclear's participants standards adequately address the requirements of Section 17A of the Exchange Act.

4. Dues, Fees, and Charges

Sections 17A(b)(3) (D) and (E) of the Exchange Act provide for the equitable allocation of reasonable dues, fees, and other charges among clearing agency participants and prohibits a clearing agency from imposing or fixing prices for services rendered by its participants.[54] Fees charged by Euroclear are generally usage-based, calculated on a sliding scale (where applicable), and are priced in a competitive environment with other entities that offer international clearance and settlement services. Euroclear does not fix any prices, rates, or fees for services rendered by its participants. Accordingly, the Commission is satisfied that the method by which Euroclear provides for the equitable allocation of reasonable dues, fees, and other charges among its participants and the fact that it does not fix the prices of the services rendered by its participants adequately addresses the Exchange Act requirements.

5. Capacity To Enforce Rules and To Discipline Participants

Section 17A(b)(3)(A) of the Exchange Act requires a registered clearing agency to have the capacity to enforce compliance by its participants with its rules.[55] Furthermore, Sections 17A(b)(3) (G) and (H) require a registered clearing agency to have in place a system to discipline its participants for violations of its rules and that the procedures for applying such rules be fair and equitable.[56]

MGT-Brussels, as the operator of the Euroclear System, bilaterally contracts with each of Euroclear's participants to provide clearance and settlement and other securities services. Neither MGT nor MGT-Brussels is a self-regulatory organization ("SRO") as the term is defined in Section 3(a)(26) of the Exchange Act.[57] In particular, MGT-Brussels does not have any disciplinary authority over Euroclear participants other than the commercial discipline of refusing to provide services to those participants that fail to satisfy the terms of their contractual arrangements with MGT-Brussels regarding the use of the Euroclear System.

MGT-Brussels contends that the burdens associated with operating as a clearing agency through an SRO structure as envisioned under the Exchange Act would outweigh the benefits of such structure to the U.S. investing public. MGT-Brussels argues that it is already subject to significant regulatory oversight by the Federal Reserve Board as a foreign branch of a U.S. bank and that additional regulation as a U.S. registered clearing agency would be unnecessarily duplicative without adding any meaningful investor protection. MGT-Brussels maintains that it would be extremely difficult for it, as a foreign branch of a U.s. bank to act as a U.S. SRO and to impose meaningful oversight of Euroclear's U.S. broker-dealer participants. Moreover, MGT-Brussels notes that it functions in a multi-currency, cross-border regulatory environment, with an emphasis on international rather than U.S. markets which decreases the utility of U.S. regulatory oversight for its operations.

The Commission is sensitive to the myriad of issues which could arise in connection with requiring MGT-Brussels, in its capacity as operator of the Euroclear System, to register as a clearing agency and to be an SRO. Although Euroclear does not have formal disciplinary authority over its participants, it can influence its participants' activities by its admissions and termination policies, as well as through the credit extension by MGT-Brussels, acting in its separate banking capacity. Furthermore, if Euroclear fails to assure adequate compliance by its participants with Euroclear's financial and operational requirements or if Euroclear or its participants operate in a way that endangers the safety and soundness of U.S. markets of U.S. market participants, the Commission can alter or withdraw Euroclear's exemption.

Therefore, the Commission is satisfied that the goals of Sections 17A(b)(3) (G) and (H) requiring registered clearing agencies to have in place systems to enforce their rules and to discipline their participants for violations of their rules are substantially fulfilled under Euroclear's current structure and by the grant of an exemption.

6. Filing of Proposed Rule Changes

Section 19(b) of the Exchange Act requires registered clearing agencies to file with the Commission copies of all proposed amendments or additions to the clearing agencies' rules prior to implementation of such rule changes.[58] The Commission is vested with the authority to approve or disapprove such rule proposals in accordance with Section 19(b) of the Exchange Act, which includes a procedure to solicit public comment on proposed rule changes. Because Euroclear will not be a registered clearing agency, it will not be subject to the Section 19(b) rule change process.

As discussed earlier, the relationship between Euroclear and each of its participants is governed by the Terms and Conditions, the Supplementary Terms and Conditions, and the Operating Procedures.[59] Participants agree to be bound by the provisions of these documents as a condition of their participation agreement with MGT-Brussels.

Euroclear may amend the Terms and Conditions and the Operating Procedures at any time upon notice to its participants. In the case of amendments that do no adversely affect participants, Euroclear participants are deemed to have agreed to such amendments effective immediately. All amendments that adversely affect participants are binding on participants ten business days after dispatch of the notice.[60] Euroclear also may amend the Supplementary Terms and Conditions at any time upon notice to participants. However, all amendments to the Supplementary Terms and Conditions, regardless of whether they adversely affect Euroclear's participants, are deemed effective ten days after notice is given to the Euroclear participants in accordance with the Terms and Conditions.

While these procedures are not the substantive equivalent of the rule filing procedures of the Exchange Act to which registered clearing agencies are subject, the Commission believes that it is important that Euroclear's participants receive notice of changes to the Terms and Conditions, the Supplementary Terms and Conditions, and the Operating Procedures. Also, as discussed below in Section IV.C. of this order, Euroclear will be required to provide the Commission with current copies of the Terms and Conditions, the Supplementary Terms and Conditions, and the Operating Procedures and notices of any changes thereto.

C. Scope of Exemption

This order exempts Euroclear from registration as a clearing agency under Section 17A of the Exchange Act subject to conditions that the Commission

[54] 15 U.S.C. 78q–1(b)(3) (D) and (E).

[55] 15 U.S.C. 78q–1(b)(3)(A).

[56] 15 U.S.C. 78q–1(b)(3) (G) and (H).

[57] 15 U.S.C. 78c(a)(26).

[58] 15 U.S.C. 78s(b).

[59] *Supra* note 9.

[60] This delay in effectiveness does not apply to Section 22 of the Operating Procedures, governing Euroclear's Securities Lending and Borrowing Program. All amendments to Section 22, whether or not they adversely affect participants, are deemed to have taken effect ten days after notice of the amendments is given to participants.

believes are necessary and appropriate in light of the statutory requirements of the Section 17A objective of promoting a safe and efficient national clearance and settlement system and in light of Euroclear's structure and operation. The limitations set forth below reflect the Commission's determination to take a gradual approach toward permitting an international, unregistered clearing organization, such as Euroclear, to perform clearing agency functions for transactions involving U.S. government and agency securities for U.S. participants. This exemptive order and the conditions and limitations contained within are consistent with the Commission's recent order granting Cedel a conditional exemption from clearing agency registration.[61]

1. Securities Covered by the Exemption

This order grants Euroclear the authority to provide clearance, settlement, and collateral management services for U.S. participants'[62] transactions in (i) Fedwire-eligible[63] U.S. government securities,[64] (ii) mortgage-backed pass through securities that are guaranteed by the Government National Mortgage Association ("GNMAs"),[65] and (iii) any collateralized mortgage obligation whose underlying securities are Fedwire-eligible U.S. government securities or GNMA guaranteed mortgage-backed pass through securities and which are depository eligible securities (collectively, "eligible U.S. government securities").[66] The Commission believes that this limitation is necessary and appropriate because it will allow Euroclear to remain an unregistered clearing agency but will allow it to process its U.S. participants' transactions in U.S. government and agency securities, which are extremely liquid and are the most desirable securities to be utilized as collateral to reduce credit and liquidity risks of international transactions. In addition, Euroclear may request that the exemption be broadened to provide securities processing services for securities other than eligible U.S. government securities.

2. Volume Limits

The Commission is placing a limit on the volume of transactions in eligible U.S. government securities conducted by U.S. participants that can be settled through the Euroclear System. Specifically, the average daily volume of eligible U.S. government securities settled through the Euroclear system for U.S. participants may not exceed five percent of the total average daily dollar value of the aggregate volume in eligible U.S. government securities.[67] For purposes of this order, eligible U.S. government securities transactions settled through the Euroclear System will include (i) internal settlements[68] of transactions involving eligible U.S. government securities if a U.S. participant is on at least one side of the transaction; (ii) Bridge settlements[69] with Cedel where a U.S. participant is on the Euroclear side of the transaction; and (iii) external settlements where a U.S. participation is on the Euroclear side of the transaction.[70] Transactions involving the return of securities collateral, securities substitutions in triparty repo or other collateral or financing arrangements, and securities realignments where the same U.S. participant is on both sides of the transaction will not be considered to be transactions settled through the Euroclear System and consequently will not be subject to the volume limit.[71]

The total average daily dollar value of eligible U.S. government securities volume will be determined semiannually as the sum of (1) the average daily transaction value of all Fedwire eligible book-entry transfers originated on Fedwire as provided to the Commission by the Federal Reserve Board, (2) the average daily value of all compared trades in eligible U.S. government securities as provided to the Commission by the Government Securities Clearing Corporation ("GSCC"),[72] (3) the average daily value

[61] *Supra* note 33.

[62] For purposes of this order, "U.S. participant" means any Euroclear System participation having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer, and (iii) any broker-dealer registered as such with the commission even if such broker-dealer does not have a U.S. residence.

In the Euroclear notice, the Commission proposed that transactions of eligible U.S. government securities involving "affiliates" of U.S. participants be counted towards the volume limit. For this purpose, an affiliate was deemed to be any Euroclear System participant having an arrangement with a U.S. entity that is known to Euroclear which will prevent a settlement or credit default with respect to the Euroclear System participant. This provision was intended to parallel the Cedel exemptive order. But because Euroclear's operational structure makes it unlikely that Euroclear System participants would utilize such arrangements, the Commission believes that it is not necessary to employ the affiliate concept in the context of this order.

[63] Fedwire is a large-value transfer system operated by the Federal Reserve Board that supports the electronic transfer of funds and of book-entry securities.

[64] For purposes of this order, "U.S. government securities" shall include all "government securities" as defined in Section 3(a)(42) of the Exchange Act, 15 U.S.C. 78c(a)(42), except that it shall not include any (i) foreign-targeted U.S. government or agency securities or (ii) securities issued or guaranteed by the International Bank for Reconstruction and Development (*i.e.*, the "World Bank") or any other similar international organization.

[65] GNMAs, unlike the mortgage-backed securities guaranteed by the Federal National Mortgage Association ("Fannie Maes") and by the Federal Home Loan Mortgage Association ("Freddie Macs"), are issued in certificated form and therefore cannot be transferred over Fedwire.

[66] The definition of "eligible government securities" as set forth in this order is intended to parallel the definition of that term as used in the Cedel exemptive order. The definition as set forth here is also intended to clarify that, for purposes of both the Cedel and Euroclear exemptions from clearing agency registration, the Commission does not intend to capture those transactions involving securities that technically may fall within the definition of eligible U.S. government securities, but are securities which trade principally in non-U.S. markets, such as foreign-targeted government and agency securities and securities issued by organizations such as the World Bank.

[67] In the orders granting Cedel and CCOS exemptions from clearing agency registration, the Commission imposed volume limits on those entities. The CCOS exemptive order contained volume limitations of US $6 billion average net daily settlement for U.S. government securities and US $24 billion average net daily settlements for repurchase agreements in U.S. government securities. At that time, the CCOS volume limits were designed to limit CCOS's activity to approximately five percent of the average daily dollar value of transactions in U.S. government securities and in repurchase agreements involving U.S. government securities. In the Cedel exemptive order, the Commission determined that a percentage-based formula was more appropriate. Consequently, Cedel's volume limitation is 5% of the total average daily dollar value of the aggregate volume in eligible U.S. government securities.

[68] *Supra* Section II.A.

[69] *Id.*

[70] Pursuant to the reporting requirements described below, the Commission expects to receive, among other things, gross transactional volumes regarding all transactions in eligible U.S. government securities processed by the Euroclear System (*i.e.*, whether or not a U.S. participant is involved). In addition, the Commission expects to monitor the effects such transactions may have on U.S. markets and U.S. market participants.

[71] The delivery of eligible U.S. government securities in either a new or an open triparty repo, collateral, or financing transaction (collectively, "repo transactions"), will be treated as a "substitution" and therefore will not be subject to the volume limit unless it is the first delivery of such securities. Accordingly, if eligible U.S. government securities are delivered at the opening of any repo transaction, the initial delivery will count towards the volume limit but subsequent substitutions of eligible U.S. government securities will not. Similarly, if other securities are delivered at the opening of a repo transaction and eligible U.S. government securities are later substituted for such securities, the initial delivery of such eligible U.S. government securities will count towards the volume limit, but subsequent substitutions of eligible U.S. government securities will not.

[72] In the Cedel exemptive order, the Commission determined that the portion of the volume limit applicable to Cedel that is derived from GSCC's trade comparison data should be the average daily value of all compared trades less the netted value of such trades. This was done to avoid double-counting the netted transactions with those already accounted for in the reported Fedwire volume. After further study and discussions with industry

Continued

of all compared trades less the netted value of all such compared trades plus the average daily volume of all trade-for-trade transactions (*i.e.*, trades not included in the netting system) in eligible government securities as provided by MBS Clearing Corporation, (4) the average daily gross settlement value in eligible U.S. government securities as provided to the Commission by the Participants Trust Company, and (5) the average daily dollar value of compared trades in eligible U.S. government securities from any other source that the Division deems appropriate to reflect the aggregate volume in eligible U.S. government securities.

The Commission believes that the volume limit is appropriate in that it is large enough to allow Euroclear to commence operations in clearing and settling eligible U.S. government securities transactions involving U.S. participants and to allow the Commission to observe the effects of Euroclear's activities on the U.S. government securities market. Likewise, the Commission believes that the volume limit is sufficiently small in scope so that the safety and soundness of the U.S. government securities markets should not be compromised if Euroclear, MGT-Brussels, or any Euroclear participant experiences financial or operational difficulties.

3. Commission Access to Information

To facilitate the monitoring of compliance with the volume limit and the impact of Euroclear's operations on the U.S. government securities market under this order, Euroclear will be required to provide certain information to the Commission as a continuing condition of its exemption.[73] Specifically, Euroclear will be required to provide the Commission with quarterly reports, calculated on a twelve-month rolling basis, of (1) the average daily volume of transactions in eligible U.S. government securities for U.S. participants that are subject to the volume limit as described in Section IV.C.2. above and (2) the average daily volume of transactions in eligible U.S. government securities for all Euroclear System participants, whether or not subject to the volume limit.[74]

Furthermore, Euroclear is required to promptly provide to the Commission the following documents ("disclosure documents") when made available to Euroclear System participants:

(1) any amendments to or revised editions of (a) the Terms and Conditions, (b) the Supplementary Terms and Conditions Governing the Lending and Borrowing of Securities through Euroclear, and (c) the Operating Procedures of the Euroclear System;

(2) the annual report to shareholders of the Belgian Cooperative; and

(3) the annual report on the internal controls, policies and procedures of the Euroclear System ("SAS–70 Report").[75]

In addition, Euroclear will be required to file with the Commission amendments to its application for exemption on Form CA–1 if it makes any fundamental change affecting its clearance and settlement business with respect to eligible U.S. government securities as summarized in this order and in its Form CA–1 dated March 4, 1997, or in any subsequently filed amended Form CA–1, which would make the information in this order or in its Form CA–1 incomplete or inaccurate.[76] This method of notifying the Commission of proposed changes at Euroclear will assist the Commission in its overall review of Euroclear and its operations.[77]

As a continuing condition to the exemption, Euroclear is also required to notify the Commission regarding material adverse changes in any account maintained by Euroclear for its U.S. participants.[78] In addition, Euroclear will be required to respond to a Commission request for information about any U.S. participant about whom the Commission has financial solvency concerns, including, for example, a settlement default by a U.S. participant.[79]

4. Modification of Exemption

The Commission may modify by order the terms, scope, or conditions of Euroclear's exemption from registration as a clearing agency if the Commission determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[80] Furthermore, the Commission may limit, suspend, or revoke this exemption if the Commission finds that Euroclear has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the

representatives, the Commission has found that a significant number of the GSCC netted transactions do not pass across Fedwire but rather are processed internally through clearing banks such as the Bank of New York and the Chase Manhattan Bank. Consequently, the Commission now believes that because the risk of double-counting is small, it is more appropriate to utilize GSCC's gross average daily value of all compared trades to calculate the volume limit for eligible U.S. government securities applicable to Euroclear. The Commission will amend the Cedel exemptive order in the near future to permit Cedel to calculate its volume limit in accordance with the method set forth in the order that is applicable to Euroclear.

[73] The Division also will have available to it the annual reports on Form 10–K and the quarterly reports on Form 10–Q filed with the Commission by J.P. Morgan & Co. Incorporated, MGT's parent. Furthermore, Euroclear has represented that the Commission will be permitted to observe Euroclear System operations and to talk to Euroclear personnel on-site if the Commission so requests.

[74] In the Euroclear notice, the Commission proposed that Euroclear provide monthly the aggregate volume of all transactions in eligible U.S. government securities. Under the terms of the Cedel exemptive order, the Commission also required Cedel to provide this information on a monthly basis. After reviewing Cedel's monthly reports, the Commission has determined that the average daily volume of eligible U.S. government securities, reported quarterly, would be a more useful reporting format and will provide the Commission with adequate information regarding transaction volumes for monitoring purposes. The Commission will amend the Cedel exemptive order in the near future to permit Cedel to provide average daily volume of transactions in eligible U.S. government securities on a quarterly basis in accordance with the reporting requirements set forth in this order that are applicable to Euroclear.

[75] Euroclear must amend its Form CA–1 with respect to any changes to the information reported at items 1, 2, and 3 of its Form CA–1 to the extent that such changes are not reported in the disclosure documents.

[76] Only that portion of the Euroclear application on Form CA–1 affected by any such change must be filed with the Commission as an amendment. A resubmission of the entire Form CA–1 is not required.

[77] Neither the requirement to submit the disclosure documents nor the requirement to amend its Form CA–1 will be applicable to MGT-Brussels in its separate banking capacity and not as operator of the Euroclear System.

[78] For purposes of this order, the term "material adverse changes" will include (i) the termination of any U.S. participant; (ii) the liquidation of any securities collateral pledged by a U.S. participant to secure an extension of credit made through the Euroclear System; (iii) the institution of any proceedings to have a U.S. participant declared insolvent or bankrupt; or (iv) the disruption or failure in whole or in part in the operations of the Euroclear System either at its regular operating location or at its contingency center.

[79] If an information request relates to a U.S. participant that is a "bank," as such term is defined in Section 3(a)(6) of the Exchange Act, 15 U.S.C. 78c(a)(6), the Commission will, if necessary, coordinate with the "appropriate regulatory agency," as such term is defined in Section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34).

[80] The exemption provided by this order is based upon representations by Euroclear, its officers and attorneys, facts contained in the Euroclear application, and other information known to the Commission regarding the substantive aspects of Euroclear's proposal (collectively, "representations and facts"). Any changes in the representations or facts as presented to the Commission may require a modification of this order. Responsibility for compliance with all applicable U.S. securities laws rests with Euroclear and its U.S. participants, as appropriate. Euroclear also is advised that this order does not exempt Euroclear from the anti-fraud or anti-manipulation provisions of the Exchange Act or any of the rules promulgated thereunder.

Exchange Act for the protection of investors and the public interest.

V. Conclusion

The Commission finds that Euroclear's application for exemption from registration as a clearing agency meets the standards and requirements deemed appropriate for such an exemption.

It is therefore ordered, pursuant to Section 19(a)(1) of the Exchange Act, that the application for exemption from registration as a clearing agency filed by Morgan Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System (File No. 601–01) be, and hereby is, approved subject to the conditions contained in this order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39641; File No. SR–NASD–98–06]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to SelectNet Fees

February 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 30, 1998, the National Association of Securities Dealers, Inc. ("NASD") or "Association") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is herewith filing a proposed rule change to lower the fees charged under NASD Rule 7010(l) for the execution of transactions in SelectNet.[2] Under the proposed new SelectNet fee structure, fees would be assessed in the following manner: (1) $1.00 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a $0.25 fee will remain in effect for any member who cancels a SelectNet order. The new fees are effective February 1, 1998, and continue through a 90-day trial period commencing the day Nasdaq's SelectNet fee filing is published in the **Federal Register.**

Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7010. System Service

(a)–(k) No Change.

(l) SelectNet Service.

Effective February 1, 1998, [T]*t*he following charge*s* shall apply to the use of SelectNet:

Transaction Charge $2.50/side

Directed Order Charge $1.00 (per execution, entering party only)

Cancellation Fee $.25/per order

(m)–(n) No Change.

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. The text of these statements may be examined at places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to lower its SelectNet fees. Currently, both sides of a transaction executed in SelectNet are assessed $2.50 each.[3] Nasdaq, recognizing recent significant changes in SelectNet usage, is proposing a new fee structure that responds to this new trading environment and more closely aligns SelectNet fees with current market activity.

SelectNet transaction volume is at historic highs. In August 1997, more than 75,000 daily executions took place in SelectNet. This represented an almost fourfold increase in volume from average daily activity recorded in 1996. Since then, SelectNet volumes have remained at significantly increased levels, with more than 79,000 average daily transactions in November 1997 and over 88,000 in December 1997.

The growth in SelectNet usage can be attributed to a number of factors, most notably the introduction of the SEC Order Execution Rules ("Order Execution Rules") in January of 1997[4] and market maker decisions to electronically communicate with each other, in lieu of the telephone. Nasdaq also used the SelectNet system to create the access linkage with each electronic communication network ("ECN") that sought to display its prices in Nasdaq consistent with the requirements of the Order Execution Rules. Accordingly, SelectNet is the only means of accessing orders displayed in the Nasdaq quote montage by broker-dealers that are not subscribers to the ECN's own network. As such, growth in SelectNet utilization closely tracked the expansion in the number of Nasdaq stocks covered by the Order Execution Rules and the increased use of ECNs to display orders.

Responding to increased SelectNet activity, Nasdaq's new fees reduce SelectNet cost burdens on all users. For example, a directed, and subsequently executed, order under the new fee structure for directed orders will cost only $1.00, payable by the entering party. In contrast, the present SelectNet fee is $5.00 with $2.50 being assessed on both sides of the trade. The proposed $1.00 fee on the party entering a directed SelectNet order represents a 60% reduction in the fee charged only five months ago, and is 20% less than the current temporarily-reduced fee of $1.25.

Nasdaq has eliminated any execution fees for directed SelectNet orders

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[1] 15 U.S.C. 78s(b)(1).

[2] This filing complements SR–NASD–97–98, which extended Nasdaq's temporary fee reduction to $1.25 per side for all SelectNet transactions until January 31, 1998. Due to an error in the computer disk version of the filing sent to the SEC, the extension of the temporary fee reduction was incorrectly reported in the **Federal Register** as continuing until March 31, 1998. *See* Securities Exchange Act Release No. 39555 (January 15, 1998), 63 FR 3595 (January 23, 1998). Thus, as of February 1, 1998, the temporary SelectNet fee reduction extended by SR–NASD–97–98 will lapse, and new and lower SelectNet fees will be assessed as described in this filing.

[3] This fee has been temporarily reduced to $1.25 per side since October 1, 1997. *See* Securities Exchange Act Release No. 39248 (October 16, 1997), 62 FR 55296 (October 23, 1997). The fee will revert to $2.50 per side on February 1, 1998, for any orders not covered by the fee reduction (*i.e.*, execution of broadcast orders will continue to be charged at $2.50 per side).

[4] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

because Nasdaq recognizes that executing parties provide significant liquidity to the market on a regular and continuous basis. This liquidity, represented by the maintenance of executable quotes accessible through directed SelectNet orders, is of substantial benefit to all market participants. Nasdaq strongly believes that the continued provision of such liquidity should be encouraged and that the elimination of charges on directed order executions obtained through SelectNet is a way to help achieve that goal.

Nasdaq notes that under the Order Execution Rules, any party may have its trading interest reflected in a quotation displayed for possible execution by an incoming directed order. For example, a customer's limit order that improves a market maker's price must now be displayed in that market maker's quote. Under Nasdaq's proposal, it is conceivable that customer limit orders, and the market liquidity they represent, may be handled by market makers at a lower cost than was the case under the old fee structure. Likewise, Nasdaq market makers who maintain executable quotes will also incur no fees when providing liquidity by having their quotes accessed for execution by others through directed SelectNet orders. Moreover, broker-dealers that enter directed orders seeking to access liquidity will also have their fees significantly reduced for any executions they obtain through SelectNet. These fees are also equally applied, with all market participants being charged the same $1.00 directed order entry fee. In sum, these fee reductions should result in lower overall transaction costs for all SelectNet system users.

While the new fees start February 1, 1998, Nasdaq believes that a 90-day trial period, commencing the date Nasdaq's new SelectNet fees are published in the **Federal Register**, is appropriate due to uncertainty regarding SelectNet usage levels as a result of the fee changes. Nasdaq will continue to monitor usage levels and trading behavior with a view to future modification of SelectNet charges if warranted.

For the reason set forth above, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This filing applies to the assessment of SelectNet fees to NASD members, and thus the proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act Rule 19b–4 thereunder[5] because the proposal is establishing or changing a due, fee or other charge. At any time within 60 days of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–06 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3995 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. § 78(b)(3)(A)(ii).

[6] In reviewing the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39637; File No. SR–NASD–98–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Modifications to the Small Order Execution System

February 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 28, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") through its wholly owned subsidiary, Nadsaq Stock Market, Inc. ("Nasdaq"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one that effects a change in an existing order-entry or trading system of a self-regulatory organization under Section 19(b)(3(A) of the Act and Rule 19b–4(e)(5) thereunder, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Rule 4730(b)(10) to address problems associated with the rejection of orders in the Small Order Execution System ("SOES") when there is no market maker at the inside quote. Below is the text of the proposed rule change. Proposed new language is in italics; there are no deletions.

4730. Participant Obligations is SOES

(a) No Change.

[1] 15 U.S.C. 78s(b)(1).

(b) Market Makers.

(1)–(9) No Change.

(10) In the event that there are no SOES market makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into SOES will be *held in queue until executable, or until 90 seconds has elapsed, after which such orders will be* rejected and returned to their respective order entry firms.

(c) No Change.

* * * * *

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 Nasdaq 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 Nasdaq 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

When the SEC Order Handling Rules were implemented in January of 1997, Nasdaq modified the SOES execution process to reject orders back to the entering firm when an electronic communications network ("ECN") or an unlisted trading privilege ("UTP") participant was alone creating the Nasdaq inside quote in a Nasdaq National Market security.[2] This was necessary because ECNs were unable, at the time, to participate in an automatic execution system such as SOES. ECNs asserted that to do so might expose them to the risk of double executions, because if an order available through an ECN is also accessible through SOES, it may be subject to two executions: one from within the ECN and another from market participants using SOES. This in turn could cause the ECN to take a principal position, which is inconsistent with the ECN's role of acting solely as agent on behalf of its customers.

This has resulted in an unintended consequence, however, which has caused significant concern. Specifically, an ECN quote that effectively halts executions in SOES for a security also allows the ECN customer entering that order to essentially control the inside price and potentially create an advantage in SOES for this customer (or other customers using SOES) by jumping ahead of other SOES orders that might have executed first in that issue if they had not been rejected. This has become problematic because instances have been observed where the ECN changes its quote almost immediately, before it can be assessed through either SelectNet or its own internal system. Once this quote disappears and a new dealer inside has been established, new SOES orders enter the system which then execute as the first order against the first market maker at the new inside price.

Nasdaq plans to implement the following solutions to this potential problem. When an ECN or UTP participant is alone at the inside in a Nasdaq National Market security, executable SOES orders that are in queue or received at that moment will be held for a specified period of time. This "hold time," initially set at 90 seconds, is the maximum life of an order. Holding the queued orders for 90 seconds will give other market makers time to adjust their quotes to create a new inside, join the ECN at their price, or allow the ECN to move away from the inside. If one of these conditions is met and the order is still executable, it will execute. If any of these conditions do not occur, however, the order will time out, under normal time-out processing, and be returned to the entering firm at the end of the 90-second maximum life of the order. Nasdaq SmallCap securities will continue to execute against the next available SOES market maker at the ECN price.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) and 15A(b)(11) of the Act[3] in that it would facilitate the more orderly and equitable processing of customer orders entered into SOES, and eliminates the potential for participants to intentionally or unintentionally create an advantage among participants who access SOES.

Section 15A(b)(6) requires that the rules of a registered national securities association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Section 15A(b)(1) requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(5) thereunder,[4] because the foregoing proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that:

(1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not have the effect of limiting the access to or availability of the order-entry or trading system. In particular, investors and the public should benefit as the appropriate priority of SOES orders will be preserved, placing competitors on a more level playing field and protecting their access to the order-entry system.[5] Notwithstanding that this rule change is effective immediately upon filing, Nasdaq will nonetheless delay implementation of the proposed rule change until at least February 23, 1998, and at least 7 days after notice of such rule change on the Nasdaq Trader Web Site.[6] Nasdaq will provide notice to market participants of the exact date of implementation prior to the effective date. At any time within 60 days of the filing of such rule change, the Commission may summarily

[2] *See* Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order partially approving File No. SR–NASD–96–43).

[3] 15 U.S.C. 78o–3(b)(6) and (b)(11).

[4] 17 CFR 240.19b–4(e)(5).

[5] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] http://www.nasdaqtrader.com.

abrogate such rule change if it appears to the Commission that such action in necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASDAQ. All submissions should refer to File No. SR–NASD–98–05 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3998 Filed 2–17–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39634; File No. SR–NYSE–94–34]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Exchange Rule 92, "Limitations on Members' Trading Because of Customers' Orders"

February 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 15, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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

In its original form, the proposed rule change extended the applicability of Exchange Rule 92 to trades by a member or member organization on any market center and provided a limited exemption to permit member organizations to trade along with their customers when liquidating a block facilitation position or engaging in bona fide or risk arbitrage. Amendment No. 4 provides an additional limited exemption for hedging a facilitation position, as well as explanations of the manner in which the amended rule will operate.

The following is the text of the proposed rule change marked to reflect all of the proposed changes.[2] Additions to the current text of Exchange Rule 92 appear in italics while deletions appear in brackets.

Rule 92: Limitations on Members' Trading Because of Customers' Orders

[(a) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, his member organization or any other member, allied member or approved person, in such organization or officer thereof, is directly or indirectly interested, while such member personally holds or has knowledge that his member organization holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his member organization holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to sell such security in the unit of trading for a customer.]

(a) Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) any Exchange-listed security on the Exchange or any other market center for any account in which such member or member organization or any approved person thereof is directly or indirectly interested (a "proprietary order"), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.

(b) A member or member organization may enter an proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including and understanding of the relative price and sized of allocated execution reports, under the following conditions:

(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer's order is for 10,000 shares or more; or

(2) the member or member organization is creating a bona fide hedge and (i) the risk to be hedged is the result of a previously-established position, recorded as acquired in the course of facilitating a customer's order; (ii) the size of the offsetting hedging order is commensurate with such risk; and (iii) the customer's order is for 10,000 shares or more; or

(3) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transactions, and recording such transactions in an account used solely to record arbitrage transactions (an "arbitrage account").

(c) The provisions of this Rule shall not apply *to*:

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the proposed rule change incorporates all of the proposed changes made to the original rule proposal by Amendment Nos. 1, 2, 3, and 4. *See* Securities Exchange Act Release Nos. 35139 (Dec. 22, 1994), 60 FR 156 (Jan. 3, 1995) (notice of filing of proposed rule change, including Amendment No. 1); 36015 (July 21, 1995), 60 FR 38875 (July 28, 1995) (notice of filing of Amendment No. 2); 37428 (July 11, 1996), 61 FR 37523 (July 18, 1996) (notice of filing of Amendment No. 3). On January 20, 1998, the Exchange submitted a technical correction to Amendment No. 4 to better identify the cumulative proposed changes to Exchange Rule 92. *See* Letter from Betsy Lampert Minkin, Regulatory Development Project Manager, Exchange, to Michael Loftus, Attorney, Division of Market Regulation, Commission, dated January 12, 1998.

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders for customers; [or]

(2) [to] any purchase or sale of any security upon terms for delivery other than those specified in such unexecuted market or limited price order[.]*;*

(3) transactions by a member or member organization acting in the capacity of a market maker pursuant to Securities and Exchange Commission Rule 19c–3 in a security listed on the Exchange; and

(4) transactions by a member or member organization acting in the capacity of a specialist or market maker on another national securities exchange.

Supplementary Material

.10 A member or employee of a member or member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

.20 If both the propriety and customer orders which are the subject of the transaction under review were executed in another market center, the Exchange would refer the trading to that market's regulatory staff, unless that market center does not have a substantially similar rule relating to "trading along" activity executed in that market center. If the market does not have a substantially similar rule, Exchange Rules would govern the analysis.

If either the proprietary or customer order was executed on the Exchange and the other market center has a rule which is not substantially similar, the Exchange would pursue the matter under its Rules. However, if the rules are substantially similar, the rule of the market center where the proprietary trading occurred would govern the analysis of that trading. In any case, all investigations would be coordinated through existing Intermarket Surveillance Group procedures.

To be substantially similar, the difference in application of the rules to the transaction must be minor and technical in nature, and not materially different such as would be the case if the other rule contained an additional broad exemptive clause under which the proprietary trading is exempted.

.30 This Rule shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.

.40 For purpose of paragraph (b) above, the term "account of an individual investor" shall have the same meaning as the meaning ascribed to that term in Exchange Rule 80A. For purposes of paragraph (b)(1) above, the term "proprietary facilitation account" shall mean an account in which a member organization has a direct interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(3) above, the terms "bona fide arbitrage" and "risk arbitrage" shall have the meaning ascribed to such terms in Securities Exchange Act Release 15533, January 26, 1979. All transactions effected pursuant to paragraph (b)(3) above must be recorded in an arbitrage account.

[.10].*50* A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security on the Exchange as referred to in this Rule.

[.20].*60* See paragraph (c)(i) of Rule 900 (Basket Trading: Applicability and Definitions) and Rule 900 (Off-Hours Trading: Applicability and Definitions) in respect of the ability to initiate basket transactions and transactions through the "Off-Hours Trading Facility" (as Rule 900 defines that term), respectively, notwithstanding the limitations of this Rule.

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 Exchange 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 Exchange 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

1. Purpose

As previously amended, the proposed rule change would extend the applicability of Exchange rule 92 to trades by a member or member organization in NYSE-listed securities on any market center and provide limited exemptions to permit member organizations to trade along with their customers when liquidating a block facilitation position or engaging in bona fide arbitrage or risk arbitrage. The Exchange seeks to further revise the application of Exchange Rule 92 as set forth below.

(a) *Hedge Exemption.* The Exchange proposes to add to Exchange Rule 92 and exemption to permit member organizations to trade along with their customers when creating a bona fide hedge. The member or member organization would be allowed to trade along with a customer order of 10,000 shares or more where the customer is not an individual investor and has given express permission to allow the member organization to trade along, provided the hedging activity meets certain conditions. The member or member organization must be trading to hedge the risk of a previously-established position, recorded as acquired in the course of facilitating a customer order, and the size of the offsetting hedging order must be commensurate with such risk. this means that a member organization's proprietary hedging order that meets the above criteria could be represented along with a working order of a customer who had granted consent to do so.

The determination of what constitutes an offset or reduction of risk may be made by using any responsible method of calculating the size of the risk and type of securities which would appropriately hedge that risk.

(b) *Application to Other Market Centers.* The previously proposed amendments to Exchange Rule 92 contain prohibitions against a member or member organization entering an order for its own or a related account if the person entering the order has knowledge of a customer order capable of execution at the same price. This prohibition is proposed to apply whether the trade for the customer or the member or member organization in a NYSE-listed security occurs on the Exchange or on "any other market center." The Exchange now proposes to incorporate into paragraph .20 of the proposed rule's Supplementary Material

the manner in which this provision concerning "any other market center" would be applied, as described below.

If both the proprietary and agency trading which are under review were executed in another market center, the Exchange would refer the matter to that market's regulatory staff, unless that market center does not have a substantially similar rule relating to "trading along" activity executed in that market center. If the market does not have a substantially similar rule, Exchange rules would govern the analysis.

If either the proprietary or agency trading were executed on the Exchange and the other market center has a rule which is not substantially similar, the Exchange would pursue the matter under Exchange rules. However, if the rules are substantially similar, the rule of the market center where the proprietary trading occurred would govern the analysis of that trading. All investigations would be coordinated through existing Intermarket Surveillance Groups procedures.

To be "substantially similar," the difference in application of the rules to the transaction must be minor and technical in nature, and not materially different such as would be the case if the other rule contained an additional broad exemptive clause under which the proprietary trading is exempted.

2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act [3] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will enable member organizations to add depth and liquidity to the Exchange's market, while continuing to provide customer protection through the requirement of customer approval for trading along situations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

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 Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Inerested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3930 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39635; File No. SR–PCX–97–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Suspension of Its Automatic Execution System ("Auto-Ex") During Unusual Market Conditions

On June 4, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The filing was thereafter amended on August 8, 1997.[3] In this filing, as amended, the Exchange proposed amendments permitting suspension of its Automatic Execution System ("Auto-Ex") during unusual market conditions, and related actions. Notice of this proposed rule filing was published in the **Federal Register** On August 19, 1997 ("Notice").[4] The Commission did not receive comment letters on the filing.

I. Description of Proposal

The Exchange is proposing to modify its Rule 6.28 ("Unusual Market Conditions") to address situations involving system failures, ranging from "frozen screens" in an issue (where quote changes are entered into the system, but such changes are not reflected in the market being disseminated) to a floor-wide system malfunction of the POETS system (where all screen displays on the floor fail).[5] Rule 6.28 currently provides that whenever on Options Floor Official determines that "an unusual condition or circumstance" exists, because of an influx of orders or other unusual conditions or circumstances, and the interests of maintaining a fair and orderly market so require, such official may declare a "fast market" in one or more classes of option contracts.[6] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson, Office of Regulatory Policy, Exchange to Mandy S. Cohen, Division of Market Regulation, Commission dated August 7, 1997. A further technical amendment was filed on February 9, 1998. *See* Letter from Michael D. Pierson, Office of Regulatory Policy, Exchange to Mandy S. Cohen, Division of Market Regulation, Commission dated February 9, 1998.

[4] *See* Securities Exchange Act Release No. 38927 (August 12, 1997), 62 FR 44159 (August 19, 1997) (File No. SR–PCX–97–21).

[5] "POETS" is an acronym for the Pacific Options Exchange Trading System.

[6] *See also* PCX Options Floor Procedure Advice G–9 ("Fast Market Procedures").

proposed amendments are designed to provide additional safeguards and procedures to deal with such situations.

First, the Exchange is proposing to modify subsection (a) of Rule 6.28 to require the agreement of two Options Floor Officials before a "fast market" can be declared. Second, the Exchange is proposing to add a new subsection (b)(7), to allow the Options Floor Officials who have declared a fast market to suspend Auto-Ex if, because of an influx of orders or other unusual market conditions or circumstances, they determine that such action is appropriate in maintaining a fair and orderly market. The initial suspension of Auto-Ex is limited to five minutes and a Floor Governor must be notified immediately. Suspension of Auto-Ex may be continued for a longer period following determination by two Options Floor Officials and one Floor Governor (or a senior operations officer if no Floor Governor is available) that such action is appropriate. In the event that the three officials do not agree, a two-thirds majority prevails.[7] Upon suspension of Auto-Ex, all market and marketable limit orders thereafter entered through the Exchange's Member Firm Interface will be routed to a booth on the Exchange floor designated by the firm that entered the order. The order can then be taken to the crowd manually and represented by a floor broker.

The Exchange is also proposing to amend its Rule 6.87 ("Automatic Execution System"), by adding three new subsections relating to suspensions of Auto-Ex. Whenever a POETS system or vendor quote feed malfunction affects the Exchange's ability to disseminate or update market quotes on a floor-wide basis, the senior person then in charge of the Exchange's Control Room will be able to halt Auto-Ex on a floor-wide basis, upon declaration of a "fast market" by two Floor Officials.[8]

Similarly, if a POETS malfunction occurs and market markers are physically unable to update their quotations in an issue or issues at the same trading post or trading quad, two Floor Officials may declare a "fast market" and direct the order book official ("OBO") to turn off Auto-Ex in only the affected issue or issues.[9] Under either scenario, once the system malfunction has been corrected and the market quotes have been updated, two Floor Officials (or the senior person then in charge of the Control Room in the event of a floor-wide malfunction) may re-start Auto-Ex.[10]

Finally, the Exchange is also proposing to amend Rule 6.37 ("Obligations of Market Makers") by adding a new subsection (b)(4), which provides that if the interest of maintaining a fair and orderly market so requires, two Floor Officials may declare a fast market and allow market makers in an issue to make bids and offers with spread differentials of up to two times, or in exceptional circumstances, up to three times, the legal limits permitted under Rule 6.37(b)(1). The rule further directs such Floor Officials to consider the following factors in making the determination to allow wider markets: (A) whether there is an extreme influx of option orders due to pending news, a news announcement of other special events; (B) whether there is an imbalance of option orders in one series or on one side of the market; (C) whether the underlying security is trading outside the bid or offer in such security then being disseminated; (D) whether PCX floor members receive no response to orders placed to buy or sell the underlying security; and (E) whether a vendor quote feed for POETS is clearly stale or unreliable.

II. Discussion

The Commission has determined at this time to approve the Exchange's proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed PCX rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the PCX.[11] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 6 of the Act establishes specific standards for PCX rules against which the Commission must measure the Proposal.[12]

The Commission has evaluated the PCX's proposed rule change in light of the standards and objectives set forth in the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[13] Specifically, the Commission finds that the proposed rule change provides a reasonable mechanism for the Exchange to respond to system malfunctions that impact the integrity of Auto-Ex.

The Commission notes that this proposal only authorizes senior Exchange floor personnel to suspend Auto-Ex in circumstances that involve technical system malfunctions affecting the accuracy of Auto-Ex, and is limited to five minutes, unless extension is approved by additional Exchange officials. The Exchange indicates in its filing that the proposed rule change is similar to certain procedures followed by the Chicago Board Options Exchange ("CBOE") with regard to its automated system, the change to which were approved in 1995.[14] The Commission further notes that the proposed rule change is more restrictive than the CBOE procedures and provides greater safeguards, in that it does now allow control room personnel to unilaterally disengage Auto-Ex prior to approval of Exchange floor officials.

Moreover, the Commission believes that the Exchange has provided adequate procedures for use in the event of Auto-Ex suspension. In the event that the system is shut down, all limit orders entered through the Exchange's Member Firm Interface will be forwarded to a booth on the Exchange floor designated by the firm that entered the order and then taken to the crowd manually and represented by a floor broker.

Finally, the Commission believes that the allowing market makers to increase the spread differentials on particular issues in the event of a fast market by Exchange Officials and with such officials specific approval appropriately balances the interests of the various participants while allowing the Exchange and its market makers to respond to rapid changes in market conditions.

III. Conclusion

The Commission believes that the proposed rule change is consistent with Act, and, particularly, with Section 6 thereof.[15] Specifically, the changes contained in this rule filing are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the

[7] *Cf.* CBOE Rule 6.6(e).

[8] Proposed subsection (d)(1), *Floor-Wide POETS System Malfunction.*

[9] Proposed subsection (d)(2), *Non-Floor-Wide POETS System Malfunction.* Proposed subsection (d)(3) ("Other Unusual Conditions") further provides that if there are other unusual market conditions not involving a POETS System malfunction, two Floor Officials may suspend Auto-Ex in accordance with Rule 6.28(b).

[10] *Cf.* CBOE Rule 6.8, Interpretation and Policy .03.

[11] 15 U.S.C. 78s(b).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] Securities Exchange Act Release No. 35695 (May 9, 1995), 60 FR 26058 (May 16, 1995).

[15] 15 U.S.C. 78f.

public interest.[16] In addition, the Commission believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate to the purposes of Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PCX–97–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 98–3999 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–100]

Determinations Under Section 304 of the Trade Act of 1974: European Communities' Banana Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations, termination and monitoring.

SUMMARY: The United States Trade Representative (USTR) has determined that certain acts, policies and practices of the European Communities ("EC") that discriminate against U.S. banana marketing companies and distort international banana trade violate, or otherwise deny benefits to which the United States is entitled under, the General Agreement on Tariffs and Trade (GATT) 1994 and the General Agreement on Trade in Services (GATS). This determination is based on the report of a dispute settlement panel convened under the auspices of the World Trade Organization (WTO) at the request of the United States, Ecuador, Guatemala, Honduras, and Mexico and the report of the WTO Appellate Body reviewing the panel report. The Appellate Body report and the panel report, as modified by the Appellate Body report, ("the WTO reports") were adopted by the WTO Dispute Settlement Body (DSB) on September 25, 1997. Following the adoption of the reports by the DSB and during a WTO arbitration hearing convened on December 17, 1997 to establish "the reasonable period of time" for the EC to implement the WTO reports, the EC stated its intention to comply with its international obligations and to implement all the rulings and recommendations in the WTO reports within a "reasonable period of time," that is, by January 1, 1999. In light of the foregoing, the USTR will not take action under section 301 of the Trade Act of 1974 ("the Trade Act") at this time and has terminated this investigation. However, the USTR will monitor the EC's implementation of the WTO reports, and will take action under section 301(a) of the Trade Act if the EC does not come into compliance.

EFFECTIVE DATE: February 10, 1998.

ADDRESSES: 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Rachel Shub, Associate General Counsel (202) 395–7305; William Kane, Associate General Counsel (202) 395–6800; or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–3320.

SUPPLEMENTARY INFORMATION: On September 27, 1995, the USTR initiated an investigation under section 302(b) of the Trade Act (19 U.S.C. 2412(b)) regarding the EC's regime for the importation, sale and distribution of bananas and requested public comment on the issues raised in the investigation and the determinations to be made under section 304 of the Trade Act. 60 FR 52026 of October 4, 1995. This investigation specially concerned EC Council Regulation No. 404/93 and related measures distorting international banana trade and discriminating against U.S. marketing companies importing bananas from Latin America, including a restrictive and discriminatory licensing scheme designed to transfer market share in the wholesale distribution sector from U.S. banana marketing firms to firms of EC or African, Caribbean and Pacific ("ACP") nationality.

As required under section 303(a) of the Trade Act, the United States held consultations with the EC under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). After holding a first set of consultations with the EC on October 26, 1995, the United States and the governments of Guatemala, Honduras and Mexico decided to delay the request for a dispute settlement panel until Ecuador, the world's largest banana exporter, had completed its accession and could join the dispute settlement proceeding. Pursuant to a new request filed jointly by the governments of Ecuador, Guatemala, Honduras, Mexico and the United States ("Complaining parties"), a second set of WTO consultations with the EC was held on March 14, 1996. A dispute settlement panel was established on May 8, 1996.

Pursuant to Section 304(a)(1)(A) of the Trade Act (19 U.S.C. 2414(a)(1)(A)), the USTR must determine in this case whether any act, policy or practice of the EC violates, or otherwise denies benefits to which the United States is entitled under, any trade agreement. If that determination is affirmative, the USTR must take action under section 301 of the Trade Act (19 USC 2411), subject to the specific direction of the President, if any, unless the USTR finds that one of the circumstances set forth in section 301(a)(2)(B) exists.

Reasons for Determinations

(1) EU Acts, Policies and Practices

The WTO panel in this case circulated its report on May 22, 1997. It included numerous findings that the EC banana regime is inconsistent with the EC's WTO obligations. The EC appealed all of the panel's adverse findings, and the Complaining Parties cross-appealed three. On September 9, 1997, the Appellate Body issued its report confirming all the major panel findings against the EC regime, and reversing the panel report on two issues that had been decided in the EC's favor (agreeing with the Complaining parties). On September 25, 1997, the DSB adopted the Appellate Body and the panel report (as modified by the Appellate Body report). The WTO reports include findings that the following EC measures violate the EC's obligations under various provisions of the GATT 1994 and/or the GATS: The EC's discriminatory allocation of shares of its market to certain ACP countries and to certain countries signatory to the Banana Framework Agreement; (2) the EC's discriminatory rules for reallocating annual country shares in the event of a country's shortfall; (3) the EC's discriminatory distribution to EC and ACP banana distribution companies of "Category B" licenses to import bananas from non-EC, non-ACP countries (mainly Latin America); (4) the EC's requirements for obtaining licenses to import from Latin America, which impose burdens not imposed on imports from ACP counties; (5) the EC's distribution of licenses to ripeners in the EC, which discriminates against U.S. and Latin America firms in favor of EC firms; (6) the EC's discriminatory export certificate requirements; and (7) the EC's distribution to EC and ACP banana distribution companies of additional licenses, so-called "hurricane licenses," to import from Latin America. (The Complaining parties did not challenge

[16] In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

the EC's preferential tariffs for "traditional" ACP bananas.)

Thus, based on the results of the WTO dispute settlement proceedings, the public comments received and appropriate consultations, the USTR has determined that certain acts, policies and practices of the EC violate, or otherwise deny benefits to which the United States is entitled under, GATT 1994 and the GATS.

(2) U.S. Action

At a meeting of the DSB on October 16, 1997, the EC stated that it would "fully respect its international obligations with regard to this matter" and would require a "reasonable period of time to do so." On December 17, 1997, at a WTO arbitration hearing requested by the Complaining parties to determine the "reasonable period of time" pursuant to Article 21.3 of the DSU, the EC made it clear that the "reasonable period of time" it requested, i.e., until January 1, 1999, is for the purpose of implementing all the recommendations and ruling of the DSB adopted on September 25. On January 7, 1998, the WTO-appointed arbitrator circulated his determination that the period until January 1, 1999, would be the "reasonable period of time" for the EC to implement the DSB rulings and recommendations.

On the basis of the foregoing, the USTR finds that the EC's undertaking to implement all of the rulings and recommendations of the WTO reports within the established reasonable period of time pursuant to Article 21.3 of the DSU constitute for the purposes of section 301(a)(2)(B)(i) the taking of satisfactory measures to grant the rights of the United States under the GATT 1994 and GATS. Therefore, pursuant to section 301(a)(2) the USTR will not take action under section 301 of the Trade Act at this time and has terminated this investigation. However, pursuant to section 306 of the Trade Act, the USTR will monitor the EC's implementation of the WTO reports and will take action under section 301(a) of the Trade Act if the EC does not come into compliance.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 98–3919 Filed 2–17–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on July 24, 1997 [62 FR 39886].

DATES: Comments must be submitted on or before March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Edward Kosek, NHTSA Information Collection Clearance Officer at (202) 366–2589.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

Title: Surveys and Analysis of Consumer Information on the Domestic Content of New Cars and Light Trucks.

OMB No.: 2127–NEW.

Type of Request: Approval of a New Information Collection.

Affected Public: Consumers, vehicle dealers and manufacturers.

Abstract: NHTSA will conduct three surveys to collect information from potential and actual purchasers of new passenger cars, light trucks, and multipurpose passenger vehicles; new vehicle dealers; and domestic and foreign-based manufacturers of these vehicles.

Estimated Annual Burden Hours: 200 hours.

Estimated Number of Respondents: 925.

Need: Use of the information—under Executive Order 12866, "Regulatory Planning and Review" NHTSA is required to conduct periodic evaluations to assess the effectiveness of its existing regulations and programs. Since this regulation has been in effect for at least a full year, NHTSA intends to collect data through the administration of three surveys, to evaluate the effectiveness of the American Automobile Labeling Act.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 11, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4039 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 30, 1997, [62 FR 51175–51176].

DATES: Comments must be submitted on or before March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW., Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice of Landing Area Proposal.

OMB Control Number: 2120–0036.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals.

Abstract: 14 CFR Part 157 requires that each person who intends to construct, activate, deactivate, or change the status of an airport, runway, or taxiway shall notify the FAA.

Form Number: FAA Form 7480–1.

Annual Estimated Burden Hours: 2570 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 11, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4040 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Nantucket Memorial Airport, Nantucket, MA; Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Nantucket Memorial Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 2, 1998.

FOR FURTHER INFORMATION CONTACT: John Silva, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Nantucket Memorial Airport are in compliance with applicable requirements of Part 150, effective February 2, 1998.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Nantucket Memorial Airport. The specific maps under consideration are Noise Exposure Map Base Case and Noise Exposure Map Future Case, each of which is published in Nantucket Memorial Airport; Noise Abatement Study Update, dated January, 1998. FAA has determined that these maps for Nantucket Memorial Airport are in compliance with applicable requirements. This determination is effective on February 2, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, New England Region, Airports Division, 16 New England Executive Park, Burlington, Massachusetts 01803

Nantucket Memorial Airport, 30 Macy Lane, Nantucket Island, Massachusetts 02554

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, February 2, 1998.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 98–3955 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee renewal.

SUMMARY: Notice is hereby given of the renewal of the Aviation Rulemaking Advisory Committee. The Administrator

is the sponsor of the committee, which consists of members appointed by the Administrator as representatives of a broad spectrum of the aviation community. The committee provides the aviation public a means by which to have its interests in aviation safety rulemaking taken into consideration in the development of regulatory actions. The committee provides the FAA with the benefit of obtaining the input of affected parties before a proposal is ever issued, thus enabling the agency to produce better documents. The functions of the committee are solely advisory.

The Secretary of Transportation has determined that the formation and use of the committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the committee and executive committee will be open to the public.

FOR FURTHER INFORMATION CONTACT: Office of Rulemaking (ARM–1), 800 Independent Avenue, SW., Washington, DC 20591, Telephone: 202–267–9677.

Issued in Washington, DC, on February 11, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–3965 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3454]

Receipt of Petition for Decision That Nonconforming 1989–1991 Chevrolet Suburban Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989–1991 Chevrolet Suburban multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1989–1991 Chevrolet Suburbans that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 20, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether nonconforming 1989–1991 Chevrolet Suburban MPVs are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1989–1991 Chevrolet Suburbans that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1989–1991 Chevrolet Suburbans to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1989–1991 Chevrolet Suburbans, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1989–1991 Chevrolet Suburbans are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119, *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1989–1991 Chevrolet Suburbans comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side

rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars*: installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 11, 1988.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–4041 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3453]

Receipt of Petition for Decision That Nonconforming 1993 Audi 100 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Audi 100 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 Audi 100 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into an sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 20, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTS (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1993 Audi 100 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1993 Audi 100 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Audi 100 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Audi 100, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Audi 100 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly*

Anchorages, 212 *Windsheld Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner contends that the vehicle complies with the Bumper Standard found in 49 Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high-mounted stop light assembly.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a key microswitch and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport mechanism is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer, wired to the driver's seat belt latch. The petitioner states that the vehicle is equipped with driver's and passenger's side air bags in the front outboard seating positions and with seatbelts in all seating positions that are identical to those found on the vehicle's U.S. certified counterpart. As described by the petitioner, the vehicle is equipped with shoulder belts in the rear outboard seating positions and with a lap belt in the rear center seating position.

Additionally, the petitioner states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 11, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–4042 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33547]

IMC Global Inc.—Acquisition of Control Exemption—Trona Railway Company and Hutchinson & Northern Railway Company

IMC Global Inc. (IMC),[1] a publicly-held company headquartered in Illinois, has filed a notice of exemption to acquire control of Trona Railway Company (Trona), a Class III rail carrier operating in California, and Hutchinson & Northern Railway Company (H&N), a Class III rail carrier, operating in Kansas, as part of its acquisition of Harris Chemical Group, Inc. (Harris), a privately-owned Delaware corporation headquartered in New York, which is the corporate parent of Trona and H&N.

IMC's acquisition of Harris will be accomplished through a merger of IMC's subsidiary, IMC Merger Sub Inc. (Newco), with and into Harris, which controls, among other companies, the North American Chemical Company (NACC), which holds all of the outstanding shares of Trona, and the North American Salt Company (NASC), which holds all of the outstanding shares of N&H. Harris will continue, under the name IMC Inorganic Chemicals Inc., as the surviving corporation and wholly owned subsidiary of IMC, and the corporate existence of Newco will cease.

IMC intends to consummate this transaction within 60 days of the February 4, 1998 filing date of this notice of exemption, but not earlier than the February 11, 1998 effective date of the exemption.

IMC states that: (1) These railroads do not connect with each other; (2) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in its corporate family; and (3) the transaction does not involve a Class I rail carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C.10502(g), the board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33547, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Donald H. Smith, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006.

Decided: February 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–4048 Filed 2–17–98; 8:45 am]

BILLING CODE 4915–00–P

[1] IMC states that it is a noncarrier and that it controls no railroads operating in the United States.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice; correction.

SUMMARY: The Department of Transportation published a document in the **Federal Register** of February 11, 1998, concerning the meeting date and

closing date for building admittance to the Advisory Council on Transportation Statistics. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Carolee Bush, (202) 366–6946.

Correction

In the **Federal Register** issue of February 11, 1998, in FR Doc. 98–3427, on page 7049, second column, first paragraph under the DOT notice, correct the meeting date to read: Friday, March 6, 1998 (rather than Wednesday, November 12, 1997).

Also in the same issue and same document, on page 7049, third column, second paragraph, persons who planned to attend the meeting were told to contact Carolee Bush prior to November 10. That date should be corrected to read March 4.

Dated: February 12, 1998.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 98–4067 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–FE–P

Corrections

Federal Register
Vol. 63, No. 32
Wednesday, February 18, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of Currently Approved Information Collection

Correction

In notice document 98–3089 appearing on page 6511, in the issue of Monday, February 9, 1998, make the following corrections:

1. On page 6511, in the first column, the heading should read as set forth above.

2. On the same page, in the same column, in the 3rd line from the bottom, "confessional" should read "concessional".

3. On the same page, in the second column, in the *Request for Comments:* paragraph, in the 12th line, "equality" should read "quality".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ACE-21]

Amendment to Class D and Class E Airspace Areas; Manhattan, KS

Correction

In rule document 98–1229 beginning on page 2884, in the issue of Tuesday, January 20, 1998, make the following correction:

§ 71.1 [Corrected]

On page 2885, in the second column, in the tenth line, "(Lat. 30°08′27″N," should read "(Lat. 39°08′27″N,".

BILLING CODE 1505-01-D

federal register

Wednesday
February 18, 1998

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 243

Passenger Manifest Information; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

[Docket No. OST–95–950]

RIN 2105–AB78

Passenger Manifest Information

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule requires that certificated air carriers and large foreign air carriers collect the full name of each U.S.-citizen traveling on flight segments to or from the United States and solicit a contact name and telephone number. In case of an aviation disaster, airlines would be required to provide the information to the Department of State and, in certain instances, to the National Transportation Safety Board. Each carrier would develop its own collection system. The rule is adopted pursuant to the Aviation Security Improvement Act of 1990.

DATES: This rule is effective March 20, 1998. Compliance with this rule is not required until October 1, 1998, except with respect to the plans in § 243.13, which must be filed by July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Marvich, Office of International Transportation and Trade, DOT, (202) 366–4398; or, for legal questions, Joanne Petrie, Office of the General Counsel, DOT, (202) 366–9306.

SUPPLEMENTARY INFORMATION:

Background

During the immediate aftermath of the tragic bombing of Pan American Flight 103 over Lockerbie, Scotland on December 21, 1988, the Department of State experienced difficulties in securing complete and accurate passenger manifest information and in notifying the families of the Pan American 103 victims. The Department of State did not receive the information for "more than seven hours after the tragedy" (Report of the President's Commission on Aviation Security and Terrorism, p. 100). When the Department of State did acquire the passenger manifest information from Pan American, in accordance with airline practice, it included only the passengers' surnames and first initials, which did not permit the Department of State to carry out their legal responsibility of notifying the family members in a timely fashion.

Statutory Requirements

In response to the Report of the President's Commission on Aviation Security and Terrorism, Congress and the Administration acted swiftly to amend Section 410 of the Federal Aviation Act. P.L. 101–604 (entitled the Aviation Security Improvement Act of 1990, or "ASIA 90," and which was later codified as 49 U.S.C. 44909), which was signed by President Bush on November 16, 1990, states:

SEC. 410. PASSENGER MANIFEST

(a) REQUIREMENT.—Not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State: (1) not later than 1 hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight; or (2) if it is not technologically feasible or reasonable to fulfill the requirement of this subsection within 1 hour, then as expeditiously as possible, but not later than 3 hours after such notification.

(b) CONTENTS.—For the purposes of this section, a passenger manifest should include the following information:

(1) The full name of each passenger.

(2) The passport number of each passenger, if required for travel.

(3) The name and telephone number of a contact for each passenger.

In implementing the requirement pursuant to the amendment made by subsection (a) of this section, the Secretary of Transportation shall consider the necessity and feasibility of requiring United States carriers to collect passenger manifest information as a condition for passenger boarding of any flight subject to such requirement.

(c) FOREIGN AIR CARRIERS.—The Secretary of Transportation shall consider a requirement for foreign air carriers comparable to that imposed pursuant to the amendment made by subsection (a).

The ANPRM and Subsequent DOT Activity Leading to the NPRM

In order to implement the statutory requirements, the Department of Transportation first published an advance notice of proposed rulemaking (ANPRM) on January 31, 1991 (56 FR 3810). The ANPRM requested comments on how best to implement the statutory requirements. Among possible approaches, the ANPRM noted that the Department might require airlines to collect the data at the time of reservation and maintain it in computer reservations systems. Alternatively, the ANPRM noted that the Department might require each airline to develop its own data collection system, which would be approved by the Department. The ANPRM posed a series of questions about privacy concerns, current practices in the industry and potential impacts on day-to-day operations.

Twenty six comments were received in response to the ANPRM. Commenters included the Air Transport Association of America (ATA), the National Air Carrier Association (NACA), the Regional Airline Association (RAA), Alaska Airlines, American Trans Air, the American Society of Travel Agents (ASTA), the group "Victims of Pan Am Flight 103," the Asociacion Internacional de Transporte Aereo Latinoamericano (AITAL), a combined comment filed by four foreign air carriers and one association of foreign air carriers (Air Canada, Air Jamaica, Balair, Condor Flugdienst GmbH, and the Orient Airlines Association), Aerocancun, Air-India, British Airways, Japan Airlines, Lineas Aereas Paraguayas, Nigeria Airways, Royal Air Maroc, Swissair, the Embassy of Switzerland, the Embassy of the Philippines, the United States Department of State (Assistant Secretary for Consular Affairs), the U.S. Department of the Treasury (U.S. Customs Service), the Commissioner of Customs, the United States Government Interagency Border Inspection System (IBIS), System One Corporation, and two individuals, Ms. Edwina M. Caldwell and Ms. Kathleen R. Flynn. In addition, the views of Meetings and Incentives in Latin America, an Illinois travel and tour company, were included in the docket because of a communication to a Department official after the ANPRM was issued. The comments were summarized in the notice of proposed rulemaking published in 61 FR 47692, September 10, 1996.

In January 1992, President Bush announced a "Regulatory Moratorium and Review" during which federal agencies were instructed to issue only rules that addressed a pressing health or public safety concern. During the course of the moratorium, the Department asked for comments on its regulatory program. Comments that addressed the passenger manifest information statutory requirement were filed by ATA, Northwest Airlines, American Airlines, Air Canada, and Japan Airlines. ATA included the passenger manifest proposal among ten DOT and FAA regulatory initiatives that, if implemented, would be the most onerous for the airline industry. ATA (supported by Northwest) recommended that if additional passenger manifest information were to be required, it

should be limited to the information that is required by the U.S. Customs Service's APIS program. American Airlines listed the passenger manifest rulemaking in its top five (out of over 100) pending aviation rulemakings that should be eliminated/substantially revised. Air Canada said that if air carriers were required to adopt the APIS standard advocated by ATA, its costs (and those of other foreign air carriers) would be unnecessarily raised. Japan Airlines said that any requirement to collect personal data from air passengers would conflict with the Constitution of Japan, would be costly, and, to the extent that it was anticipated that such data would be shared with the APIS program, should be the subject of prior public discussion.

In the FY 1993 DOT Appropriations Act, Congress provided that none of the FY 1993 appropriation could be used for a passenger manifest requirement that only applies to U.S.-flag carriers. This provision was repeated in the five subsequent DOT Appropriations through FY 1997. The provision stated:

> None of the funds provided in this Act shall be made available for planning and executing a passenger manifest program by the Department of Transportation that only applies to United States flag carriers.

In light of the totality of comments and the fact that aviation disasters occur so rarely, DOT continued to examine whether there was a low-cost way to implement a passenger manifest requirement. In 1995, DOT considered seeking legislative repeal or modification of the statutory requirements. In the November 28, 1995, Unified Agenda of Federal Regulations, the passenger manifest entry stated that DOT "is recommending legislation to repeal the requirement [of passenger manifests] because of the high costs and small benefits that would result."

The Cali Crash

On December 20, 1995, American Airlines Flight 965, which was flying from Miami to Cali, Colombia, crashed near Cali. There were significant delays in providing the State Department with a complete passenger manifest. Even when it was provided, the manifest was of limited utility to State because it lacked sufficient data. Department of Transportation staff met with American Airlines to explore the logistical, practical and legal problems that the airline encountered in the aftermath of the crash, and ways these problems could be ameliorated in the future. We also met with high level representatives of the State Department to discuss State's needs and concerns on this matter. The events surrounding this crash led DOT to reconsider its view that the passenger manifest requirements under ASIA 90 were unnecessary.

Public Meeting

On March 29, 1996, DOT held a public meeting on implementing a passenger manifest requirement. The notice announcing the public meeting (61 FR 10706, March 15, 1996) noted that a long period of time had passed since the 1991 advance notice of proposed rulemaking, and that a public meeting during which stakeholders could exchange views and update knowledge on implementing such a requirement was necessary as a prelude to DOT proposing a passenger manifest information requirement. The notice enumerated ten questions concerning information availability and current notification practices, privacy considerations, similar information requirements, information collection techniques, and costs of collecting passenger manifest information.

The meeting was attended by approximately 80 people. To facilitate discussion, representatives of three family survivor groups (The American Association for Families of KAL 007 Victims, Families of Pan Am 103/Lockerbie, and Justice for Pan Am 103), the Air Transport Association, the Regional Airlines Association, the National Air Carrier Association, the International Air Transport Association, the American Society of Travel Agents, U.S. Department of State, U.S. Customs Service, and DOT formed a panel. Members of the audience, who included representatives of foreign governments, were invited to participate in the discussion and did so. The discussion lasted nearly 5 hours and covered a wide variety of topics. At the end of the meeting, it was the consensus that one or more working groups headed by the Air Transport Association would be formed to further explore some of the issues raised.

Memorandum of Understanding

ATA convened an initial working group that consisted of representatives of Families of Pan Am 103/Lockerbie, the American Association for Families of KAL 007 Victims, the National Air Disaster Alliance (a group representing families of victims of several aviation disasters), the Department of State, and several U.S. airlines, with IATA in attendance. DOT was not a participant in the group. The working group made progress in facilitating communication among divergent interests and in creating a workable system that should reduce confusion and improve the efficiency of the efforts of both the airline and the Federal Government following an airline crash.

As a result of the working group, the Department of State has entered into Memoranda of Understanding (MOU) Reflecting Best Practices and Procedures with 14 U.S. air carriers since November 1996. These carriers are American, Continental, Delta, Northwest, Trans World, United, US Airways, American Trans Air, Miami Air International, Southern Air Transport, Tower Air, World Airways, North American and Midwest Express. The MOUs provide a basis for cooperation and mutual assistance in reacting to aviation disasters occurring outside the United States with the goal of improving the treatment of victims' families. The MOUs contain provisions relating to passenger manifests, the exchange of liaison officers between the Department of State and the air carrier, and crisis management training in which personnel are exchanged between the parties so as to become more familiar with each other's internal procedures. The Department of State regards the MOUs as a cooperative effort that includes the issue of passenger manifests. The Department of State does not regard the MOUs as a substitute for the rulemaking process concerning passenger manifests because the MOUs do not address collection of emergency contact name and phone number. In addition, participation in the MOUs is voluntary and not every airline will enter into an agreement. The MOU envisions that the airlines are in the best position to provide initial notification to family members of passengers who were involved in aviation disasters, and that the airlines should provide the initial notification. The Department of State is still responsible for providing notification, even if the family has already been provided notification by the airline.

TWA Flight 800

On July 17, 1996, TWA Flight 800, which was flying from New York to Paris, crashed off Long Island, New York. Local government officials publicly commented on difficulties in determining exactly who was on board the flight and in compiling a complete, verified manifest. TWA caregivers were generally praised for their efforts in the crash aftermath. Although this was an international flight, the crash occurred in U.S. territorial waters and, therefore, the Department of State had no specific role in family notification and facilitation for U.S. citizens. The

Department of State received inquiries from foreign governments regarding the fate of their citizens, and worked closely with foreign governments and foreign citizens in the aftermath of the crash. Family notification was a problem following the disaster; indeed, some family members stated that they never received notification from TWA that a loved one was on board the aircraft, even after repeated phone calls to the airline.

The Notice of Proposed Rulemaking

Taking into account the experiences of the airlines, family members, and the government following American Airlines 965, TWA 800, and the process leading to the MOU, the Department of Transportation published a Notice of Proposed Rulemaking (NPRM) in 61 FR 47692, September 10, 1996. This notice proposed to require that each air carrier and foreign air carrier collect basic information from specified passengers traveling on flight segments to or from the United States ("covered flights"). U.S. carriers would collect the information from all passengers, and foreign air carriers would only be required to collect the information for U.S. citizens and lawful permanent residents of the United States. The information would include the passenger's full name and passport number and issuing country code, if a passport were required for travel. Carriers would be required to deny boarding to passengers who did not provide this information. In addition, airlines would be required to solicit the name and telephone number of a person or entity to be contacted in case of an aviation disaster. Airlines would be required to make a record of passengers who declined to provide an emergency contact. Passengers who declined to provide emergency contact information would not, however, be denied boarding. In the event of an aviation disaster, the information would be provided to DOT and the Department of State to be used for notification. DOT proposed to allow each airline to develop its own procedures for soliciting, collecting, maintaining and transmitting the information. The notice requested comment on whether passenger date of birth should be collected, either as additional information or as a substitute for required information (e.g. passport number).

Presidential Directive and Inter-Federal Government Memorandums of Understanding for Domestic Aviation Disasters

On September 9, 1996, President Clinton issued a Presidential Directive designating the National Transportation Safety Board (NTSB) as the agency to coordinate the provision of federal services to the families of victims following an aviation disaster in the United States. Following issuance of the Presidential directive, the NTSB entered into memorandums of understanding (MOUs) with the Departments of Justice, Defense, Transportation, State, Health and Human Services and the Federal Emergency Management Agency. In general, the MOUs commit the agencies to provide the NTSB with whatever logistical and personnel support is needed to fulfill the Board's newly-acquired family support role. The MOU between the NTSB and DOS requires each to maintain close liaison and coordination, including exchange of information. Neither the Presidential Directive nor the above-referenced MOUs alter State's role as the Federal Government's notifier of the families of the U.S. citizens who are killed in aviation disasters outside the United States.

The Aviation Disaster Family Assistance Act of 1996

On October 9, 1996, President Clinton signed Pub. L. 104–264. Title VII, the "Aviation Disaster Family Assistance Act of 1996" (ADFAA), was later codified as 49 U.S.C. 40101 note. The ADFAA pertains to aviation disasters occurring within the United States and its territories. It provides, in part:

Sec. 1136. Assistance to Families of Passengers Involved in Aircraft Accidents

(a) In General.—As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life the Chairman of the National Transportation Safety Board shall—

(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the federal government for the families of the passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families;

(2) designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) Responsibilities of the Board.—The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a).

* * * * *

(d) Passenger lists.

(1) Requests for passenger lists.—

(A) Requests by director of family support services.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) Requests by designated organization.—The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) Use of information.—The director of family support services and the organizations may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

Section 703 of the Act (§ 41113) further requires each certificated U.S. air carrier to file a plan to address the needs of families of passengers involved in aircraft accidents. Among other things, the plan must include "[a] process for notifying the families, before providing any public notice of the names of the passengers," "[a]n assurance that the notice * * * will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified)", and "[a]n assurance that the air carrier will provide to the director of family support services * * * immediately, upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

Finally, section 704 of the Act instructs the Secretary of Transportation to appoint a Task Force comprised of the Federal Government, the industry, as well as individuals representing the families of the victims of aviation disasters to review how to improve the assistance provided to families following an aviation disaster. Section 704(b)(6) instructs the task force to develop:

[R]ecommendations on methods to improve the timeliness of the notification provided by air carriers to the families of

passengers involved in an aircraft accident, including—

(A) An analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within 1 hour of the accident and an analysis of such steps to ensure that such list would be available within 3 hours of the accident;

(B) An analysis of the added costs to air carriers and travel agents that would result if air carriers were required to take the steps described in subparagraph (A);

(C) An analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in subparagraph (A); and

(D) An analysis of the implications for personal privacy that would result if air carriers were required to take the steps described in subparagraph (A) .

The Domestic Passenger Manifest ANPRM

On March 13, 1997, DOT published an advance notice of proposed rulemaking (62 FR 11789) on a potential passenger manifest requirement for domestic air travel. The ANPRM was designed to solicit information which could be used by the Task Force in assessing the costs and benefits of a requirement for enhanced domestic passenger manifests. The ANPRM requested information on operational and cost issues related to U.S. air carriers collecting basic information (e.g., full name, date of birth and/or social security number, emergency contact and telephone number) from passengers traveling on flights within the United States. The ANPRM discussed the problems experienced in the aftermath of a crash, statutory authority for requiring passenger manifest and emergency contact information, regulatory history, past domestic aviation disasters, and economic considerations. It asked commenters to respond to thirteen detailed questions on the following topics: (1) Basic approach; (2) information requirements and the capacity of computer reservations systems; (3) frequent flyer information; (4) privacy considerations and fraud issues; (5) coverage of potential domestic passenger manifest information requirements and the differing implications, if any, for different types of air carriers that might be covered; (6) sharing of domestic passenger manifest information within and among air carriers; (7) implications for different types of air carrier operations (point-to-point) and the current frequency of flights; (8) interactions between domestic positive baggage matches and a domestic passenger manifest information requirement; (9) domestic passenger manifests and electronic tickets; (10) implications for high frequency corridors, high frequency facilities and peak load capacity; (11) recurring costs of such a system; (12) fixed costs of such a system; and (13) integration of manifest requirements with processes for expedited positive identification and notification. Fifty-seven comments were filed in response to the ANPRM from a wide variety of interests. We are currently reviewing the comments. We will review the implementation of the international passenger manifest requirements as we determine how to proceed with this rulemaking.

The Task Force on Assistance to Families of Aviation Disasters

In March 1997, as requested in the ADFAA, Secretary Slater appointed 22 people to serve on the Task Force on Assistance to Families of Aviation Disasters. The Task Force, which was co-chaired by DOT Secretary Slater and NTSB Chairman Jim Hall, issued 61 recommendations to the Congress on October 29, 1997. Four of those recommendations concerned how to improve the passenger manifests used by the airlines to establish points of contact with the families of passengers. Pursuant to the ADFAA, the Task Force also issued findings on the cost of implementing a passenger manifest system. These recommendations and findings were based, in part, on the comments to the ANPRM.

The Task Force recommended that airlines have readily available for every flight, either in a passenger manifest or through some other system, the following data: the full name for each passenger; a contact phone number for each passenger; and a contact name for each passenger. The Task Force recommended that while each passenger should be encouraged to provide the information, furnishing contact name and phone number would not be a prerequisite to boarding the flight. Further, the Task Force recommended that all information provided by a passenger for passenger manifest reasons must only be used in the case of an emergency. DOT abstained from voting on these recommendations due to the ongoing rulemakings.

All members of the Task Force, including the Air Transport Association (ATA), found that the full name of every passenger should be included on the manifest. The Task Force as a whole also agreed that, in conjunction with the passenger's name, a contact phone number is the second most important data element in the notification process. It was also recognized that a contact name would aid the notification process. Task Force members representing the ATA, the Regional Airline Association (RAA) and the National Air Carrier Association (NACA), which represents charter carriers, stated that the increased costs of obtaining the contact name data element were not justified by the benefit this data element provided. The remainder of the Task Force disagreed, finding that with only a contact phone number, awkward situations could result, thereby making the notification process more difficult and time-consuming.

The Task Force reviewed the costs of implementing a system requiring full name, contact name and phone number. First, the Task Force found that an air carrier should be able to "verify" a passenger manifest within three hours of beginning the verification process. The Task Force did not find it possible or beneficial, however, to require an airline to have a manifest "verified" within one hour. The Task Force deliberations did not find significant costs to air carriers to "verify" a manifest within three hours. Second, the Task Force found that the annual cost of implementing a passenger manifest as outlined in the recommendation would be between $32 and $64 million for both air carriers and travel agents if it took 40 seconds to collect the additional data elements, and between $48 and $96 million if it took an additional 60 seconds. The Task Force did not address the issue of passengers who booked reservations and then, subsequently, did not board the flight.

Korean Air Flight 801

On August 6, 1997, Korean Air Flight 801, a flight between Seoul, Korea and Guam, a territory of the United States, crashed about 5 miles southwest of the Guam International Airport. There were 231 passengers, 20 flight attendants and 3 flight deck crew members on board. Twenty-nine people survived the crash. There were many problems encountered by anxious and worried family members because Korean Air did not have prompt, complete and accurate flight manifest information and procedures to notify the families. For example, there were significant delays in providing information to concerned families at Seoul's Kimpo Airport, in both responding to callers and notifying the families.

The Foreign Air Carrier Family Support Act

The Foreign Air Carrier Family Support Act (Pun. L. 105–148,111 Stat.

2681) was signed into law by President Clinton on December 16, 1997. The legislation was prompted by the Korean Air Flight 801 disaster. The Act requires foreign air carriers to develop family assistance plans comparable to that required by the Aviation Disaster Family Assistance Act for U.S. air carriers. The new requirements have been carefully drafted to apply to accidents that occur within the United States jurisdiction. The existing requirements for U.S. air carriers were adjusted for the foreign air carriers to be consistent with our international obligations. For example, foreign air carriers may provide substitute measures for certain provisions of the Act, such as compensation to an organization designated by the NTSB for services and direct assistance provided to families as a result of the aviation disaster.

Comments to the International NPRM

Forty six comments were received in response to the NPRM. Commenters included the Air Transport Association of America (ATA); the National Air Transportation Association (NATA); American Airlines; Northwest Airlines; Trans World Airlines; United Air Lines; North American Airlines; Carnival Air Lines; Gran-Aire; Hawaiian Airlines; the Air Line Pilots Association (ALPA); the American Society of Travel Agents (ASTA); Passages: A Travel Company; American Express Travel Related Services; the American Association for Families of KAL 007 Victims; the U.S. Department of Justice (Immigration and Naturalization Service); ; Mr. Richard P. Kessler, Jr.; Ms. Brenda Sheer; Ms. Liana Ycikson; a group of three individual citizens (Cayetano Alfonso; Nora Ramos; and Victoria Mendizabel); and a group of four students from Florida International University (My Trinh; Chau Trinh; Walter Hernandez; and Joanne Flores); the International Air Transport Association (IATA); the Arab Air Carriers Organization; the Orient Airlines Association; the European Civil Aviation Conference (ECAC); Air Canada; Aerolineas Argentinas; Qantas Airways; Scandinavian Airlines System; All Nippon Airways; Air New Zealand; Varig; Lauda Air; British Airways; Turkish Airlines; Swiss Air; Lufthansa; Japan Airlines; Cathay Pacific Airways; Laker Airways; Air Pacific; the Embassy of Belgium; a combined comment from the Embassies of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and the European Commission; the Embassy of the United Kingdom (Britannic Majesty's); the British Airports Authority; and the International Civil Aviation Organization (ICAO).

In addition, as noted above, the Department received valuable testimony and advice from the Family Assistance Task Force meetings. Although their focus was on the passenger manifest issue on domestic flights, many of the issues and persons affected by this international rule are identical. The meetings of the Task Force were tape recorded and several written comments were filed.

Summary of Comments

The Air Transport Association of America (ATA) filed comments on behalf of its members (Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide Airlines, Evergreen International Airlines, Federal Express, Hawaiian Airlines, KIWI International Air Lines, Midwest Express, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airways, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Air [now US Airways]). American Airlines, Northwest Airlines, Trans World Airlines, and United Air Lines filed individual comments, as well.

ATA stated that its members stood ready to fulfill their responsibilities to collect and transmit passenger manifest information. ATA said that based on lessons learned during recent negotiations of a voluntary Memorandum of Understanding (MOU) between U.S. air carriers and the Department of State on cooperation and mutual assistance following air disasters outside the United States, any passenger manifest information requirement must: (1) apply to all carriers on all flights to and from the United States, and (2) delineate clearly U.S. Government agency responsibilities in handling passenger manifest information.

ATA stated that for legal and practical reasons passenger manifest information requirements must apply to all passengers on all flights, and not just to U.S. citizens and permanent legal residents on foreign air carrier flights. First, there will be no public tolerance for a post-aviation-disaster scenario in which more information is available to family members inquiring about passengers with a U.S. tie, either due to travel on a U.S. airline or U.S. citizenship or permanent residency, as compared to family members whose loved ones have no such tie.

Second, such a distinction contradicts the equality-of-treatment policy that the Department has expressed in *Agreements Relating to Liability Limitations of the Warsaw Convention Show-Cause Order* (Order 96–10–7 (Oct. 7, 1996)). Third, the proposed rule's U.S. and foreign carrier provisions are not "comparable," the standard found in the underlying statutory language. Fourth, uniformity will result in properly assigning information collection responsibilities for code-share flights that foreign-flag carriers operate to and from the U.S. On these points, American Airlines said that: whereas the proposed rule omits coverage of some foreign passengers on the basis of privacy considerations, there is no citizenry to whom privacy is more sacred than U.S. citizens; the Department is legally able under the International Security and Development Cooperation Act of 1985 (Pub. L. 99–83) to impose a passenger manifest information requirement covering all carriers and all passengers; and while the nationality of passengers is not always clear due to dual citizenship and mixed-nationality families, in the event of an aviation disaster the Department of State would want to know about all U.S. citizens aboard the flight, including those with multiple passports and nationalities.

ATA further stated that disparate U.S. Government information requirements impose unnecessary compliance costs on air carriers (and thereby passengers), and there is thus a need for U.S. Government agencies to coordinate current and contemplated information requirements with customer convenience and carrier operational practices. ATA stated that first and last name should be acceptable in any passenger manifest information requirement, as they are in the U.S. Customs Service's Advance Passenger Information System (APIS). ATA noted that international travelers, in particular, could have long last names or multiple middle names. Northwest noted that the advantages of collecting only first and last names would be reduced collection times and minimized demands on computer data fields. ATA said that date of birth should be able to be used as a substitute for passport number. Northwest said that date-of-birth digits are easier to comprehend and are fewer in number than passport number digits and recording them would therefore be less tedious, time-consuming and prone to error; that collecting date of birth when booking a seat would be easier than collecting passport number because passengers

know their dates of birth, whereas most do not know their passport numbers and rarely have their passports with them when they book a flight; and that unless date of birth is sufficient compliance, passengers and carriers will be greatly inconvenienced by the need to have a second conversation, whether over the telephone or at the airport, to provide passport information. United said that the use of date-of-birth information, rather than passport number information, would avoid the problem of collecting identification data from passengers on international flights to points where passports were not required; would facilitate the identification of passengers on such flights; and would simplify the development of programs and personnel training for collection of data by assuring that all international flights are subject to the same passenger manifest information requirement.

ATA stated that the treatment of two related areas of passenger response to requests for information should be reworked. First, ATA was very concerned that the proposed rule would deny boarding to passengers who do not provide name and passport number. ATA said that the proposed rule did not justify such an action, and the underlying statute did not mandate it. ATA alternatively suggested that the passenger should be allowed to decide whether or not to provide this information. That is, passengers would be given the option of providing all categories of passenger manifest information. No passenger manifest information would be mandated, although air carriers would be obligated to solicit all categories of passenger manifest information. On this point, United stated that if the purpose of collecting passenger manifest information was to enhance notification, then the passenger should be allowed to opt out. United posed a situation where an air carrier was collecting passenger manifest information by having passengers fill out boarding pass stubs, which the airline would then collect at the gate, and asked if a flight should have to be delayed for a passenger that refused to submit some of the required information or to give up his place on the flight. United pointed to the privacy rights of the passenger refusing to provide some of the passenger manifest information, and to the fact that many tickets would be non-refundable at that point, a fact potentially contributing to a disruption in the boarding process. Second, ATA thought that air carriers should not be required to record those passengers who did not provide contact information. United said that the carrier's responsibility should be met by offering the passenger the opportunity to participate, and that the absence of contact information would be sufficient evidence that the passenger has declined to provide it.

ATA then stated that the information requirements in the proposed rule raised two other significant issues that were unrelated to the content of the categories of data to be collected. First, ATA said that there is a clear difference between collecting information from passengers and verifying the information that passengers provided; that verification would be intrusive and time-consuming; and that carriers should not have to "police" the collection of information from passengers. Second, ATA said that the fact that the proposed rule would have passenger manifest information go to State and DOT raised important questions about the roles of government entities and the appropriate use of such information. On the latter point, ATA said that ASIA 90 is structured such that section 203 passenger manifest information requirements (49 U.S.C. 44909) support Department of State family-assistance responsibilities elsewhere in Title II (22 U.S.C. 5503–04). ATA said that there is no provision in the law for DOT to get manifest information and DOT has no manifest-handling functions under the law. ATA added that there now exists a series of Memoranda of Understanding between the National Transportation Safety Board (NTSB) and seven Executive Branch agencies regarding post-aviation disaster procedures and that, moreover, under the Aviation Disaster Family Assistance Act of 1996, air carriers must submit to NTSB and DOT aviation disaster plans to address the needs of families of passengers involved in aviation disasters. ATA said that what is needed in the aftermath of an aviation accident are clear, predictable lines of authority. ATA said that a clearer definition is needed of the Government's role in notification and the purpose for which DOT would use passenger manifest information. ATA stated that a related concern is the need to safeguard passenger manifest information, and that multiple recipients of this information created the very real possibility of its unauthorized or uncoordinated release, which could create confusion and be especially harmful to family members. American stated that it strongly believes that the information should only be provided to State, and that it was deeply concerned that broadly disseminating (to State, to DOT, and, per recent legislative and regulatory decisions, perhaps to the NTSB) passenger manifest data that is sensitive, and may change repeatedly as information is updated from the site of an incident, could only consume valuable time and might well lead to inconsistent and confusing communications to the next of kin and the public. ATA said that another issue requiring attention is that of how an air carrier is to respond to demands for passenger manifest information from other Federal Government agencies or other levels of government. ATA said that a final rule should provide thoughtful and clear guidance regarding such requests.

ATA said that the triggering event for transmission of a passenger manifest needed to be clarified. ATA noted that section 44909 was traceable to recommendations related to acts of terrorism and not to isolated on-board accidents, and suggested redefining "aviation disaster" as: "loss of life due to crash, fire, collision, or sabotage/missing aircraft/air piracy." TWA said that the proposed rule covers incidents in which there appears to be no need to contact the U.S. Government, and suggested that the definition of an aviation disaster be changed to cover only those instances where the death or serious injury of a passenger occurs. TWA said that the proposed rule triggers the passenger manifest production process too early. TWA said that DOT must realize that the manifest is created as passengers turn in their boarding passes and their baggage is confirmed for boarding on the aircraft. TWA said that the airline cannot thus have a complete manifest in the instance of "an emergency in which all passengers might not have boarded the aircraft" that is mentioned in the proposed rule since those passengers that have not yet boarded the aircraft will not be on the manifest. TWA suggested that DOT limit the definition of incident to one that occurs after the door is closed and the manifest created.

ATA said that additional counter space at foreign airports would be the biggest implementation problem. ATA said that while the Preliminary Regulatory Evaluation gave an indication of the cost implications of the proposed rule, the costs there were understated because the estimate for the time needed at check-in (40 seconds) was very optimistic and the estimate of the time needed at reservation (40 seconds) was too low because passengers would pause to find their passports or would have to call back with passport numbers. ATA said that passengers would be further delayed by

passenger manifest information processing problems at airports, especially overseas, where no additional counter space was available.

ATA said that the detailed enforcement and penalty provisions in the proposed rule were extraordinary for a rulemaking under DOT's economic regulations, especially since the aviation industry had been developing an MOU with State in this area. ATA asked DOT to take into account the fact that carriers would, in many cases, be relying on third parties to collect manifest information, and said it believed that any passenger manifest final rule should be implemented cooperatively. ATA said that, alternatively, if the detailed enforcement and penalty provisions were kept in a final rule, then DOT needed to make clear that it would apply a "reasonable person" standard in enforcing the rule. TWA objected to specific references in the proposed rule to civil and criminal penalties. TWA noted the ambitious notification periods in the underlying statute, advocated industry and government cooperation in developing procedures that will result in expedited notification of the relatives of crash victims, said that the last thing the airline needs is for DOT to bring an enforcement proceeding in the aftermath of an aviation accident when the carrier may already be receiving adverse publicity that threatens its existence, and also said that there would be no deterrent effect from an after-the-fact enforcement proceeding because airline crashes occur so rarely. United also mentioned the detailed enforcement and penalty provisions in the proposed rule as a specific, particular concern and urged the Department to emphasize cooperation between air carriers and the U.S. Government in fulfilling the requirements of the underlying legislation.

ATA urged that any final rule be implemented in 180 days (rather than the 90 days in the proposed rule) primarily because third parties would be involved and depended upon to handle booking and airport processing duties that encompass passenger manifest information collection. ATA noted that airlines would have to work with the travel agent community to develop procedures, create interline procedures to handle passengers connecting from other carriers (which could be especially demanding on commuter air carriers), and develop new procedures for air carrier CRSs. United noted that while a passenger manifest requirement had been under consideration for some time, each air carrier would need to develop its own compliance program. United said that this work could not begin until a final rule was issued, and that it could not be fully accomplished (including training passenger service personnel) in 90 days.

Northwest said that military air charters should be specifically excluded from any passenger manifest requirements in a final rule because in these so-called "MAC charters," which involve essentially a wetlease of aircraft and crew to the U.S. Government, the U.S. Government alone handles passengers and is solely in possession and control of all passenger and manifest information. Northwest stated that one interpretation of the phrase in the proposed rule, "information on individual passenger shall be collected before each passenger boards the aircraft on a covered flight segment" was that the proposed rule would require collection of manifest information separately for each covered flight segment, and asked for clarification in the final rule that passengers may provide manifest information at the time of booking for their entire one-way or round-trip itinerary, with updates made when checking in at the airport.

In response to a DOT request for comment regarding the collection of citizenship data for passengers aboard U.S. air carriers traveling to destinations that did not require a passport, TWA said that the collection of citizenship information on such flights would seem to be of marginal utility in the notification process, and that DOT has neither explained what benefit the citizenship information would provide when the airline does not have the full name and passport number of the passenger, nor why it proposed to impose this obligation only on U.S. airlines. TWA noted that if DOT decided to require citizenship information, it should be collected by both U.S. and foreign carriers.

Finally, American stated that since the traveling public is sensitive to any changes that affect air travel, public awareness of any new passenger manifest procedures adopted as part of a final rule would be critical to their successful implementation. American said it believes that DOT, together with the airline industry, would need to undertake a wide-ranging education campaign on a final passenger manifest rule.

American said that there are two levels of notification: (1) Notification as to whether a passenger was on board a flight involved in an incident, and (2) notification as to whether a passenger is alive, injured, deceased or unaccounted for. American contended that the second level is particularly subject to change as updated information is received from the site of the incident. While American listed reasons why it thought that the air carrier was in the best position to perform both levels of notification, it said that, at the same time, it understood why some feel that the carrier is an inappropriate party to have contact with families, given its involvement in the incident, and that American would not, therefore, fight for a role in the notification process if its presence is not welcome. In that case, however, American said that DOT must clarify whether it wants the carriers to cede the notification duty to a third party, and, if so, identify that third party. American said that it is imperative that there be no confusion as to where the notification duty lies; that otherwise the task of notification—difficult under the best of circumstances—will be confused and mishandled; that the confusion will only inflict more pain on loved ones; and that without a clearly delineated duty, the notification process will not be accomplished with the compassion that it deserves.

TWA said charters and code-share flights both present complex problems regarding passenger manifest information. TWA said that while in the proposed rule DOT would make all direct and indirect air carriers involved in either such arrangement responsible for providing the manifest, and threatened that the carriers will have to be vigilant because they would be jointly and individually responsible for compliance, DOT cannot wash its hands of the matter in this way.

Regarding charters, TWA said that the charter operator may provide the carrier with a manifest, but the airline has no way of checking its accuracy; that for many charter flights, airlines allow open seating for anyone who has documentation from the charterer; and that the airline does not have the names of the charter passengers in its computers, and would be most unlikely to meet the 1-hour deadline for providing the list to the government. TWA said there would be special problems with military charters, where the military undoubtedly want to control the notification process.

TWA said that code-share flights present more pervasive problems. TWA said that while DOT seems to believe that both code-share carriers would be responsible for the flight, the language of the proposed rule applies only to "covered flights operated by air carriers and foreign air carriers."

TWA identified two types of code-shares. The first is a marketing code-share agreement, under which a U.S.

carrier code is placed on a foreign flag flight, only the foreign air carrier is the operator. The U.S. carrier has sold seats as agent (and receives a commission for doing so) for the other airline, and, with respect to those sales, it is neither the direct air carrier, nor an indirect air carrier. (Example provided: Lufthansa flight from New York to Frankfurt, United is acting as agent for Lufthansa, receiving a commission on every UA-code ticket it sells. Lufthansa, as operator, has the passenger name records (PNRs) for all passengers, including those traveling on United's code. Both carriers cannot be responsible. United would have no records of passenger booked through Lufthansa and cannot be responsible for those it [United] booked either, since it may not know if they showed up and boarded the Lufthansa flight.) TWA concludes from this that Lufthansa alone, as operator of the flight, should be responsible for the manifest.

The second type of code-share is a blocked-space flight, such as operated by Delta and Swissair. In that case, Delta may have blocked 100 seats on a Swissair flight, and may be an indirect air carrier with regard to those seats. Delta would have PNRs for passengers it places in those seats, but it may not have operational control of the check-in process, and, just like United, may not know if its passengers actually traveled. Under these circumstances, it would be unfair to impose the passenger manifest obligations on the code-share carrier that is not operating the aircraft.

Two smaller air carriers that fly large jets, North American Airlines (North American) and Carnival Air Lines, filed comments. North American, a charter airline with 3 large aircraft and about 150 employees, said that charter carriers will be hardest hit by the proposed rule because a greater proportion of their flights are to international destinations. Carnival said that carriers that operate in limited international service, such as itself, would be disproportionately affected by a passenger manifest information requirement because it would require more extensive information and changes in procedures to accommodate only a small number of international passengers.

North American said that full name, phone number (including area code), and home city is all the data needed for notification, and that air carriers should not be forced to collect more information, such as APIS data. North American said that the proposed collection of passport numbers is a waste of time since a passport is valid for ten years and the information on the passport application often quickly becomes out of date. North American saw no need for collecting date of birth information. The carrier was skeptical that people would provide date-of-birth information, and believed that many people would view a request for it as an invasion of privacy, that asking for it would invite lawsuits based on age discrimination (e.g., in the case of people bumped from flights), and that collecting it would unduly slow down the airline ticketing and information gathering processes.

Carnival said that many passengers do not have passports available when booking a trip or may not have yet obtained a passport. Carnival estimated that collecting the information in the proposed rule at time of check-in would increase its current check-in time of 4 minutes per passenger by 25 percent, or 60 seconds, to 5 minutes. Carnival said that its associated check-in personnel costs would increase by a like percentage and that Carnival could not sustain such an increase in its low-fare international operations.

North American said that charter airlines doing business with tour operators are aware that a travel agent selling a ticket for a tour operator will likely refuse to reveal information about the passenger for fear that the tour operator will try to sell direct to the passenger in the future. North American said that the result of this dynamic, in the case of a disaster, is that notification can take longer, because the travel agency that has the passenger information may be closed for the evening or weekend.

North American said that the best way across all types of air carriers to collect information would be along the lines of the Pan Am 103 family suggestion (i.e., perforated stub on the boarding card that could be torn off upon boarding the flight and kept by the airline). However, North American noted that this process would be cumbersome and require more time than the 40 seconds per passenger at check-in found in the NPRM. (North American estimated at least a minute in check-in processing, in addition to any time earlier that passengers needed to check in.)

North American said that all the extra boarding time needed to implement a passenger manifest information requirement would eat into aircraft utilization, and noted that while DOT had in the NPRM calculated the costs, in terms of manpower, for a passenger manifest system, the greatest cost, that of tying up an expensive asset like a $60 million Boeing 757 jet due to the extra time involved to collect passenger manifest information, had been ignored.

North American said that charter air carriers were very concerned about a possible perception by passengers that manual collection of passenger manifest information (that is, non-CRS collection of this information) by a carrier could somehow indicate that such a carrier was unsafe. To allay such unfounded fears on the part of the public, North American said that only bare bones absolute minimum essential information should be gathered and that passenger manifest information requirements should be widely publicized so that it would not appear that one class of air carrier was being singled out over any other.

Both North American and Carnival suggested that implementation of a passenger manifest information requirement should be delayed or precluded based on the fact that they are not large air carriers. North American suggested delaying implementation of a passenger manifest information requirement for an airline flying 10 or fewer large aircraft, regardless of the airline's revenues. Carnival said that DOT should consider entirely exempting smaller carriers, which it defined as those transporting less than 250,000 international passengers annually, from the proposed requirements. Carnival said that, at the very least, such smaller carriers should be given an implementation date of not less than one year later than the effective date of any final rule.

North American also said that the phrase "best efforts" should be defined in advance of a final rule because of the enforcement penalties contemplated in the NPRM (i.e., airlines must exercise best efforts to get emergency contact information); that it makes sense to keep passenger manifest information for 24 hours after a covered flight, but not if the flight was canceled or if boarded passengers are deplaned without incident; that providing data within one hour to the Department of State is simply not practical in the event of an aviation disaster aboard a small carrier, particularly if the disaster happened during a holiday or off hours; that small carriers should not be required to provide a 24-hour phone number to the DOT, only a phone number that is operative when the carrier has aircraft airborne; that DOT should provide a list of the foreign countries exempted under any passenger manifest information requirement; and that the final rule should be drafted to state clearly that none of the passenger manifest information collected by airlines should be provided to any government agency except in the case of a disaster.

Finally, North American said that it would be wise for telephone companies to have a standby 800 number assigned to each airline that could be activated instantly in the case of an air disaster. North American also said that changes to the law were needed to require telephone companies to waive the privacy of unlisted phone numbers in the case of an airline or government agency trying to locate next-of-kin in the aftermath of an aviation disaster.

Gran-Aire, an individual air carrier, and the National Air Transportation Association (NATA), a trade association, filed comments regarding the proposed rule and Part 135 on-demand air charter operators (Part 135 operators). Both said that the proposed rule should not apply to Part 135 operators.

NATA maintained that there was no justification in the NPRM for including Part 135 operators, that the Preliminary Regulatory Evaluation that accompanied the NPRM had not included the costs of Part 135 operators, and that such operators had been excluded from DOT's ANPRM. NATA urged DOT to reconsider the negative effects of including nearly 3,000 Part 135 operators, who typically carry less than 9 passengers per flight and use turbine-powered aircraft that are less likely to be involved in fatal accidents. NATA said that Part 135 operators know their passengers, who must arrange travel privately (Part 135 operators do not publish schedules). NATA said that Part 135 operators already have notification and reporting mechanisms in place in the unlikely event of an accident or incident with the aircraft or passengers, and that compliance with the proposed rule would do nothing to enhance these mechanisms. NATA stated that Part 135 operators currently are exempt from the need to have DOT economic authority and asserted that imposing passenger manifest requirements on them would fly in the face of sound rulemaking.

Regarding the specifics of the proposed rule, NATA said that forcing a Part 135 operator to ask a business traveler to give the name of an emergency contact at the beginning of a Part 135 flight (perhaps to the person who would eventually pilot the flight) would create an extremely uncomfortable situation; requiring air carriers to make and keep records of those passengers unwilling to list an emergency contact was unnecessary, especially because Part 135 operators know their customers; soliciting date of birth would be just another reporting burden and invasion of privacy that would serve no purpose in aiding notifying families of passengers in the event of a disaster on a Part 135 flight; and requiring Part 135 operators to provide the U.S. State Department with a list of passengers within one hour of an aviation disaster would be impractical and unattainable since when an accident occurs on a Part 135 on-demand air charter flight, all carrier resources are usually needed for urgent lifesaving measures.

Finally, NATA said that none of the four ways to ameliorate the costs and potential burdens of the proposed rule on small air carriers that are listed in the NPRM apply to small, Part 135 operators; that filing a MOU with the Department of State amounted to asking carriers to comply with the requirements of the proposed rule, but through a different U.S. Government agency; and that extending the effective date for compliance of Part 135 operators with a final rule was the only means by which DOT suggested addressing the huge costs on small operators.

The Air Line Pilots Association (ALPA), representing 44,000 pilots who fly for 37 U.S. airlines, said that it had reviewed the NPRM and concurred with it as written.

The American Society of Travel Agents (ASTA), representing about 16,000 U.S. agency locations and members in about 168 foreign countries, and American Express Travel Related Services Company (American Express), one of the largest U.S. travel agencies also with hundreds of travel locations outside the United States, favored DOT imposing a single system for collecting passenger manifest information that would rely on a form for such information being made available at the gate areas of airports. A passenger would fill out a form as he or she waited for a flight, airlines would collect the forms, and gate attendants (who, according to ASTA, are typically engaged, anyway, in compiling ticket coupons and boarding passes) would put them into an envelope labeled with the flight number and turn the envelope into a central airport depository. ASTA said that in the event of a disaster, the envelope for the flight could be quickly retrieved and the needed information copied and supplied to the U.S. Government. Passages, a travel agency based in Los Angeles, said that given the rarity of air crashes it appeared to be a waste of time and computer space to collect the additional passenger manifest information for every flight.

ASTA and American Express said that employing a single system: was the only way to assure that the passenger manifest information collected would be complete and would match the actual persons on a flight (American Express noted that a travel agent has no way of knowing if a passenger that it books actually boards a flight since passengers routinely change travel plans at the last minute directly with the carrier); would avoid the need to reprogram computers or establish hundreds of varying and confusing procedures to collect, centralize and reproduce the few pieces of passenger manifest information; would avoid the alternative of dozens of different airline systems, many of them requiring some degree of involvement from travel agencies, and resultant chaos; would result in one, simple rule that the public could easily understand; and would make enforcement easier. ASTA said that if, alternatively, there was an attempt to gather the information using airline CRSs, some passengers could not provide it because they would not have their passports with them, or would not yet have obtained passports. ASTA said it believed that if passengers had to be asked to provide passenger manifest information at airport check-in, some would object on privacy grounds and that conflict, confusion and delay at the gate area would result.

Passages said that the assumption of 45 to 60 seconds to collect the additional passenger information in DOT's NPRM was in error. Passages said about 70 percent of its reservations were made by secretaries of businessmen who call back several times because they lack complete information and their bosses are "on the fly" and unavailable, and said these secretaries would have no idea of the particulars requested in the proposed rule. Passages anticipated also that requests for the additional passenger manifest information in the NPRM would be met with the response, "none of your business." ASTA said that 40 seconds was a gross underestimate of the average time that would be required to solicit, explain, answer questions about, and collect the additional passenger manifest information in the NPRM. American Express gave a figure of $1 million annually as the cost of the proposed rule for its U.S. locations alone, and said that this was an unacceptably large amount given the erosion in travel agent margins that have occurred since imposition of airlines commission cap in 1995. American Express said that it was safe to assume that if airlines were allowed to shift the burden of collecting the mandated passenger manifest information to travel agents, they would not offer to cover the additional travel agent costs. Regarding travel agent wages, Passages said its principals earn $28,000 per year and ASTA mentioned, as a source for such data, the results of

a survey of travel agency compensation that appears annually in *Travel Counselor* magazine, a publication of the Institute of Certified Travel Agents.

The American Association of Families of KAL 007 Victims supported the proposed rule with two further explanations. First, it said that in the face of world wide deregulation and privatization of the air carrier industry, uniform standards on information gathering should be developed either by DOT or by the air carrier associations. Second, it said that information gathering enforcement provisions that would apply to air carriers that did not adhere to the standards, rules and regulations of the national or international air carrier trade associations should be included in a final rule.

Richard P. Kessler, whose wife, Kathleen, died on ValuJet Flight 592 on May 11, 1996, supported the proposed rule and said that it should be implemented for the good of the flying public and their families. He said that his understandings were that passenger manifest information was needed by the Department of State since it was to become the official point of contact for families in the aftermath of an aviation disaster that occurred outside the United States, and for aviation security, national security, and border control purposes. He noted that while section 204 of P.L. 101–604 required the Department of State to "directly and promptly notify families of victims of aviation disasters * * * including timely written notice" and tasked the Secretary of State with this responsibility, families of victims of the December 1995 American Airlines' crash outside of Cali, Colombia, were forced to make first contact with the Department of State. Mr. Kessler said he found economic arguments in opposition to the proposed rule to be incredible and asked how one could place a dollar figure on the proposed rule.

Ms. Brenda Sheer stated that in light of the experience following past aviation disasters, it was of the utmost importance that airlines collect basic information on all passengers. She proposed that airlines distribute information cards to all passengers at the time of check-in (parents and guardians would be responsible for filling out cards for children under 13 years of age) that would request full name; passport number and issuing country code, if a passport is required for travel; either drivers license number or social security number; and emergency contact number of a person or entity. She said that the cards would be collected by airlines at the time of boarding and the agent collecting them would be responsible for verifying the name on the card using a passenger's picture identification. She noted that this verification procedure would prevent any passengers attempting to fly under transferred tickets or false names from boarding the flight. She said the cards would be put into a box and kept confidential for 24 hours unless an aviation disaster occurred. Ms. Sheer said the benefit of such a plan for passengers was that they could feel secure that their families and loved ones would not have to experience additional suffering in the event of a disaster; the benefits of such a plan for airlines were that additional staff would not be needed and additional training would not be required to implement it. Ms. Sheer said that passengers would need to have their information cards filled out and identification ready at the time of boarding, and that passenger and airline efforts would have to be coordinated, in order for the plan to succeed.

Ms. Liana Ycikson supported collecting passenger manifest information consisting of full name, date of birth, address, and emergency contact telephone number. She said there needed to be an efficient way to contact family members of the victims of an aviation disaster before their names were announced by the media. She suggested not affiliating the collection of passenger manifest information with the U.S. Customs Service because some people are uncomfortable dealing with the U.S. Customs Service. She suggested that passenger manifest information be kept as part of frequent flyer information and a passenger's frequent flyer number be printed on boarding passes (the pulled boarding passes from a flight could then serve as a record of who boarded the flight). Alternatively, she suggested that an automated flight activation system—a system for flights designed to work in a fashion similar to automated credit card activation systems—could be set up to collect passenger manifest information. She envisioned that under such a system, each flight would have a unique number attached to it. A passenger would have to call a toll-free telephone number prior to the flight and, in response to electronic voice prompts, give passenger manifest information in order to "activate" himself for the flight. To safeguard the personal nature of the passenger manifest information, Ms. Ycikson said that only a check mark should show up on airlines' information screens to indicate those passengers that had provided the necessary information: that is, the information itself should not appear.

Caytano Alfonso, Norma Ramos, and Victoria Mendizabel filed comments as a group. They said that air carriers were in the best position to meet the goals and objectives of the NPRM and should be responsible for collecting passenger manifest information. Because of their concerns about the invasion of individual passenger privacy, however, they said that passenger manifest information should be used only in the event of an aviation disaster and that in no instance should it be kept for more than 24 hours or to create an ongoing data base. They said that the basis for their concerns about personal privacy was the fact that regulations for passenger manifest information fall under 49 CFR 449 (Security), and that elsewhere in 49 CFR 449 provision is made for the sharing of information among 10 separate intelligence units of the U.S. Government, DOT, and the FAA. They believed that U.S. air carriers as well as foreign air carriers should be equally burdened and be responsible for collecting passenger manifest information from all passengers. Finally, they said that DOB should not be substituted for passport number and should not be required as an additional data element because DOB can be obtained from the Department of State through passport-number-accessed records, and air carriers should not be further burdened by having to collect both types of information.

Four students from Florida International University (My Trinh, Chau Trinh, Walter Hernandez, and Joanne Flores), who are frequent air travelers, said that they submitted comments because of their concerns that the proposed rule would potentially raise airline ticket prices substantially and cause passenger delays. They said that passengers should not have to be at the airport hours before they depart to stand in lines to provide passenger manifest information and thus delay vacations and business trips, and that the costs of the proposed rule outweighed its benefits. They said that airlines should be required to collect only passenger name and passport number, and should be held responsible for quickly compiling a list of passengers in the aftermath of aviation disaster so that they could respond to families that "called-in" to the airline. They stated that they did not believe that airlines should be held responsible for "calling-out" to a person listed on an emergency contact form. They believed that if the proposed rule were

implemented, the U.S. Federal Aviation Administration would need to assist airports through increased expenditures from the Airport Improvement Program (AIP) to accommodate the increased passenger congestion at airports that would result. They pointed out that the additional time of 40 seconds per passenger at check-in that is postulated in the proposed rule to provide passenger manifest information does not take into account delays for passengers that need extra assistance, such as disabled passengers, small children flying alone, passengers who need language translation services, and pets traveling unaccompanied by a passenger.

The U.S. Department of Justice, Immigration and Naturalization Service (INS), pointed out that DOT's proposed rule imposed one passenger data collection standard on U.S. carriers (collection/solicitation of information from all passengers), and another passenger data collection standard on foreign carriers (collection/solicitation of information from U.S. citizens). INS noted that nonimmigrant aliens were excluded completely from information collection under this approach. INS proposed, instead, that a single standard, based on the Advance Passenger Information System (APIS), be established for satisfying Pub. L. 101–604 passenger manifest requirements. INS noted that were this to be done, the U.S. Department of State could access within seconds passenger manifest information for passengers on a flight to or from the United States that ended in disaster.

As part of this approach, INS proposed that both U.S. and foreign air carriers be required to collect basic information for all passengers consisting of: (1) full name, (2) passport number and issuing country code (if a passport is required for travel), (3) date of birth, and (4) gender. INS noted that the additional required data elements would further enable the law enforcement and intelligence communities to perform database checks in support of any investigation in the event of an aviation disaster. Regarding optional emergency contact information, INS proposed that the optional emergency contact information be limited to a U.S.-located emergency contact in order to conform with the preexisting INS requirement to collect the U.S. destination address for nonimmigrant aliens at entry.

INS noted that: the APIS system provides enforcement, facilitation, and automation benefits to the Federal Government, the air carriers and traveling public; the Federal Inspection System (FIS) had since 1990 been actively utilizing APIS, a subsystem of the mainframe-based Interagency Border Inspection System (IBIS); APIS had been designed to support the overlapping information requirements of over twenty government agencies; and stand-alone, PC-based software [PCAPIS] was available so that less-automated air carriers could participate in APIS. INS said, furthermore, it foresaw that future developments in automating arrival and departure data collection at U.S. ports-of-entry would involve electronic transmittal of manifest information processed through APIS. INS pointed out that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) tasked INS with undertaking a study and developing a plan for further automating arrival and departure data collection at U.S. ports-of-entry and with developing an automated entry-exit control system.

Associations of foreign air carriers, individual foreign air carriers, and foreign countries filed comments in which they objected to the United States imposing a passenger manifest requirement on foreign air carriers. Commenters included the International Air Transport Association (IATA); the Arab Air Carriers Organization (AACO); the Orient Airlines Association (OAA); Air Canada; Aerolineas Argentinas; Qantas Airways; Scandinavian Airlines System; All Nippon Airways; Air New Zealand; Varig; Lauda Air; British Airways; Turkish Airlines; Swiss Air; Lufthansa; Japan Airlines; Cathay Pacific Airways; Laker Airways; Air Pacific; the Embassy of Belgium; a combined comment from the Embassies of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and the European Commission; and the Embassy of the United Kingdom (Britannic Majesty's). In general, these commenters shared similar views and, therefore, to prevent duplication, we have summarized the foreign comments as a whole.

The foreign commenters said that foreign airlines have demonstrated historically their concern regarding notification by constantly updating and strengthening their own internal emergency response guidelines, that the proposed rule was not achievable, and that it would disrupt and delay airport operations worldwide. They said that passenger manifest requirements of any sort must be negotiated directly with foreign governments bilaterally or through ICAO and noted that section 201 of the Aviation Security Improvement Act of 1990 directed the Secretary of State to make improved availability of passenger manifest information a principal objective of bilateral and multilateral negotiations with foreign governments and ICAO.

They said, in particular, that the proposed rule raised major issues with respect to inappropriate unilateral regulatory action on the part of the United States because it: (1) Mandated a legally enforceable obligation, collection of manifest data, be imposed on airlines at points outside the United States; (2) mandated that carriers (of any flag) refuse boarding to passengers of certain nationalities who refuse to provide certain information at points outside the United States; (3) obligated carriers (of any flag) to transmit and disclose to U.S. authorities data held outside the United States; (4) mandated that carriers (of any flag) be able to produce a passenger manifest on demand by U.S. authorities at points outside the United States; (5) would impose civil and criminal penalties on carriers of any flag, whose conduct at points outside the United States failed to comply with U.S. law; and (6) would prohibit carriers from providing data collected under the U.S. mandate to anyone other than U.S. authorities, including the government of the country where a flight originates, without consent by DOT.

They said that the prohibition on supplying collected passenger manifest information to anyone other than the U.S. Government in the aftermath of an aviation disaster is contrary to certain provisions of ICAO Annex 17—Aviation Security (RP 9.14 and the introductory paragraph of Standard 9.1), which call on States to cooperate with local authorities. They also said that the European Union Common Data Privacy Directive of 24 October 1995, which is to be adopted and implemented in EU Member States' national legislation by October 1998, provides:

> The Member States shall provide that the transfer to a 3rd country of personal data which is undergoing processing or are intended for processing after transfer may take place only if, without prejudice or compliance with the national provision adopted pursuant to the other provisions of this Directive, the 3rd country in question ensures an adequate level of protection. [Article 25]

They said that the United States is likely to be included on the EU's list of countries without adequate levels of protection, and, therefore, transfer of data to the U.S. would violate the EU's Common Privacy Directive. In addition, they said that the proposed rule was inconsistent with the U.S.-Austria Air

Services Agreement, Article 5, which provides that the law of each country shall be applied to aircraft of either country when in that country's territory; contrary to the U.S.-Turkey bilateral agreement; potentially conflicted with the German Data Protection Act (Bundesdatenschutzgesetz—BDSG); would conflict with the laws of Denmark, Norway, and Sweden, which would prohibit furnishing collected information to the U.S. Government; conflicted with U.K. law, which prohibits the different treatment of U.S. citizens from other nationalities; conflicts with the Constitution of Japan, which guarantees the right of privacy and protects from mandatory disclosure exactly the type of personal information that would be collected under the proposed rule; conflicts with Article 21 of the Swiss Criminal Code, which would prohibit any carrier (Swiss or other) from complying with any manifest rules that might be adopted with respect to flights whose last point of departure to the United States is Switzerland; and ignores the fact that foreign laws apply to foreign carriers in the event of an aviation catastrophe (i.e., foreign laws may not authorize a foreign carrier to release any information on its passengers until it has coordinated with the regulatory bodies of its own country or of those in whose territory the event has occurred). They said that if victims' families are unable to get accurate and prompt information because of the vagaries of the proposed rule's application, families will be disappointed, and carriers and the U.S. authorities will be subject to renewed criticism.

The commenters said that compliance with a passenger manifest information requirement would have the following negative impacts: measurable delays for the traveling public; a loss of confidence in the safety of international civil aviation precipitated by collecting next of kin information from passengers as they boarded their flight; slower passenger processing times at reservation and check-in; higher levels of congestion at already overtaxed airport terminals (where additional check-in desks are needed and space is available, they will be created, but where space is not available, airport operators will be forced to seek ways to expand terminal capacity to deal with the increased congestion); and diversion of check-in agents' attention away from security concerns due to additional demands to collect passenger manifest information. They said, in particular, that the proposed rule was incompatible with through check-in procedures worldwide (e.g., because the present system at many of the locations where the passenger will initially board an aircraft do not have the data fields necessary for emergency contact parties and telephone numbers).

The foreign commenters said that they objected to any effort to expand the proposed rule beyond DOT and the Department of State to suit the purposes of other, non-associated programs such as the Advance Passenger Information System (APIS) of the U.S. Customs Service.

They also said that the proposed rule contravenes several Standards contained within Annex 9—Facilitation of the Chicago Convention: (1) Standard 2.1—Governmental regulations and procedures applicable to the clearance of aircraft shall be no less favorable than those applied to other forms of transportation; (2) Standard 2.6—Contracting States shall not normally require the presentation of a Passenger Manifest, but when this type of information is required it may also be provided in an alternative and acceptable manner (IATA said that if the type of information referred to in 2.6 is required, it should be limited to the items shown in the format of a Passenger Manifest set forth in Appendix 2, which limits Passenger Manifests to specific flight information: Operator, Marks of Nationality, Flight Number, Date of Flight, Point of Embarkation and Disembarkation, and to the Surname and Initials of individual passengers); and (3) Standard 3.1—Regulations and procedures applied to persons traveling by air shall be no less favorable than those applied to persons traveling by other means of transport. IATA said that it has no records that the United States has filed differences to Standards 2.1, 2.6, and 3.1.

The foreign commenters said they anticipated that legal actions (individual or group) would be brought against carriers by passengers who had been denied boarding for refusing to allow mandated information to be collected and that defending against such suits would be time consuming and unnecessarily burdensome on the aviation industry. They said that DOT should indemnify airlines that are found liable for damages to a passenger that has been queried and/or denied boarding in accordance with any Passenger Manifest Information final rule.

They offered several points as just-cause to delete the requirement in the proposed rule that airlines deny boarding to a passenger who refuses to provide full name and passport number and country of issue: (1) The Data Protection laws of many States, while not expressly prohibiting collection or transmission of personal data, offer the individual the right to control how the data can or will be used; (2) airline tickets represent a contract between the traveler and the transportation provider that guarantees carriage, provided the traveler complies with the rules and regulations of the carrier as filed in its tariff documents and, thus, denial of boarding due to the passenger's refusal to comply with a law not recognized in the country of boarding cannot be justified, and would likely result in breach of contract lawsuits; (3) many airlines believe that a traveler's decision to allow personal data and emergency data to be collected and forwarded to any government agency is a personal choice made after a careful consideration of the potential impact on self and family and thus, instead of coercing compliance through threats of denial of boarding, the proposed rule should, instead, focus on methods to encourage systems by which passengers can voluntarily submit data prior to boarding any international flight, regardless of origin or destination; and (4) the rule, if implemented as currently drafted, would have significant operational impact on both airline and the traveling public, due to other related requirements imposed under ICAO Annex 17—Security (any individuals denied boarding would require that any baggage checked by that individual be removed from the aircraft as well, and doing so would involve significant flight delays since most baggage on international flights is placed in containers and loaded well before the passenger boarding process commences).

The commenters were critical of the fact that a description of the Memorandum of Understanding (MOU) that was mentioned in the NPRM was not included as part of the NPRM, and said also that non-U.S. air carriers did not participate in the Working Group that developed the MOU. They said that specific MOU language was needed so that it could be evaluated.

They said that it was in recognition of the difficulties of implementing a passenger manifest requirement that Congress decided in section 704 of the Aviation Disaster Family Assistance Act of 1996 to create a task force to examine such issues, and DOT should await the work of the task force before adopting any rules in this area.

One small foreign air carrier said that the administrative burden of a passenger manifest requirement would be too great and, therefore, small air carriers should

be exempted from any final rule. It suggested doing so by exempting air carriers that meet the definition of "small business" in 13 CFR 121.201.

Air Canada recommended that U.S.-Canada flights be exempt from any passenger manifest information requirement. Air Canada said that the U.S.-Canada aviation market was more like the intra-U.S. aviation market than other U.S.-foreign country aviation markets: the U.S.-Canada market is characterized by many transborder short-haul flights (often employing commuter aircraft) whereas other U.S.-foreign country markets are characterized by long-haul flights. It said that imposing a passenger manifest information requirement on shuttle-type U.S.-Canada transborder operations would be overly burdensome because compliance could mean that pre-flight check-in times would be extended to the point that they would be longer than the duration of the flight itself. Air Canada also pointed out that 96 percent of its U.S.-Canada passenger traffic was subject to INS and Customs preclearance, whereby passengers submit Customs and INS documents to the U.S. Federal Inspection Services prior to a flight's departure for the United States. Air Canada said that while this process requires it to ensure the collection of information similar to the information in the proposed rule, it does not require Air Canada to collect and maintain the information internally, as the proposed rule would. Air Canada said that it would be costly to develop and maintain such a system for collection and storage of passenger manifest information, and that doing so would be superfluous to the extent that similar passenger information is already supplied as part of the pre-clearance program.

On the details of the proposed rule, the foreign commenters said that the reporting obligation should apply only in instances that occur as part of the airlines' flight operation phase, which commences when the aircraft door closes upon completion of the boarding process and ends when the aircraft is fully stopped at the flight segment's destination, and the cabin door opened prior to passenger disembarkation. Loosening the definition to when "any" passengers have been boarded or who still remain on the aircraft would potentially lead to reporting requirements for incidents that occur on the ground in airport terminal environments. Such incidents should remain under the control of airport operators and local authorities.

In terms of recordkeeping, the foreign comments stated that carriers who opt to store in CRS/automated formats should not be required to maintain the information beyond the normal purging cycle. In addition, these commenters stated that requiring carriers who might be collecting manually to hold beyond completion of flight would be impractical.

The International Civil Aviation Organization (ICAO) provided information on the applicability of articles of the Convention on International Aviation (Chicago Convention) to the proposed rule. ICAO said that Article 29 of the Chicago Convention required every aircraft engaged in international navigation to carry certain documents, including, for passengers, "a list of their names and places of embarkation and destination," and that Annex 9 to the Convention stipulated, in Standard 2.6, that presentation of the passenger manifest document shall not normally be required, and if passenger manifest information is required, it should be limited to the data elements included in the format prescribed in Appendix 2 of Annex 9, i.e., names, places of embarkation and destination, and flight details. ICAO said that implied in Article 29 and Standard 2.6 are both the requirement to collect passenger manifest information prior to the flight and a limitation on the amount of information collected. ICAO noted that the adoption of Standard 2.6 contemplated a paper document that would have to be delivered by hand. ICAO stated that the concept of a limitation on the amount of information to that which is essential to meet the basic objectives of safety, efficiency, and regularity in international civil aviation is also applicable to electronic data interchange systems such as Advance Passenger Manifest Information (API), in which additional (but not unlimited) data may be transmitted to the authorities in exchange for a more efficient inbound clearance operation. ICAO stated that it is widely recognized that in any system involving the exchange of information (automated or not), it is the collection of data that is the major expense, and that additional data collection requirements should, therefore, result in benefits that exceed costs. ICAO stated that a "benefits exceeds costs" principle was inherent in the adoption, by the Eleventh Session of the Facilitation Division of ICAO, of API systems as a Recommended Practice. ICAO noted that the information collected from inbound flights under the API system consists of (and is limited to) the data in machine readable lines of the passport plus flight information, and that carriers that transmit this information to U.S. Customs in advance of the flight have enjoyed large reductions in inspection delays at major ports of entry.

ICAO noted furthermore that under Article 22 of the Chicago Convention, contracting States are obligated to adopt all measures to facilitate international air navigation and prevent unnecessary delays, and that Article 13 requires compliance with a State's laws and regulations" * * * related to entry, clearance, immigration, passports, customs, and quarantine * * * upon entrance into or departure from, or while within the territory of that State." ICAO said that in operational terms, a new procedure connected with arrival or departure of a flight can be justified if it serves to improve productivity of operations and if it improves compliance with the above-mentioned laws and/or enhances aviation security.

ICAO noted that the new collection requirements in the proposed rule—collecting the name and telephone number of an emergency contact for each passenger, and API and emergency data for outbound flights—are not designed to meet any of the objectives of the Chicago Convention. Rather, ICAO noted that the stated purpose of the proposed rule is to enable the U.S. Government to notify families or foreign governments more quickly in the event of an aviation disaster. ICAO noted also that the United States has not filed a difference to Standard 2.6 for the additional passenger information in the proposed rule.

ICAO also stated that Article 37 of the Chicago Convention recognizes that standardization of regulations and procedures is vital to international civil aviation and obligates contracting States to comply to the extent possible with ICAO standards and recommended practices. Specifically, ICAO stated that facilitation standards have been developed because standardized aircraft departure and arrival routines are considered essential to the efficiency of aviation operations worldwide. ICAO said that implementation of the passenger manifest requirement as described in the proposed rule would represent a radical departure from internationally accepted procedures for departing flights and would set a precedent that could inspire similar variances in many other States, to the detriment of the international aviation system.

The European Civil Aviation Conference (ECAC) submitted the text of a message from the President of ECAC that had been adopted by the ninety-eighth meeting of the Directors General

of Civil Aviation of the European Civil Aviation Conference. In the message, ECAC formally requested that the proposed rule be withdrawn for legal reasons (the proposed rule represents an extraterritorial application of U.S. law; breaks the Chicago Convention, in particular Articles 22 and 23, and Annex 9—Chapters 2 and 3; and is not compatible with legislation of Member States in the field of data protection) and practical reasons (the proposed rule is contrary to ECAC goals of facilitating and expediting the passenger flow at airports; creates a discrimination between air carriers since some might be exempted based on national laws prohibiting them from collecting the required data; will not produce reliably accurate data; and will result in time-consuming and inconvenient procedures causing extended check-in times and a need for additional check-in counters and staff).

British Airports Authority (BAA), the owner and operator of seven airports in the United Kingdom (Heathrow, Gatwick, Stansted, Glasgow, Edinburgh, Aberdeen, and Southampton) said that it had strong reservations about the practicality of the proposed rule and opposed it in its current form. BAA said that it was wholly impractical to require carriers either to obtain or verify passenger manifest information at airport check-in areas. BAA said that the average check-in time at present for passengers on U.S. services at its airports was 2.5 to 3.3 minutes, depending on the air carrier concerned. BAA said that it could not provide the additional check-in capacity that would be required by the increased check-in times needed under the proposed rule (40 seconds or more) even if airlines were prepared to pay for the extra costs of additional check-in capacity. BAA said that another means for collecting passenger manifest data needed to be found, perhaps one that would involve collecting the information at the point of sale and then verifying it at the departure gate immediately before passengers board the aircraft.

The Final Rule

In response to the comments, this final rule adopts the proposal with a number of significant changes. In addition, we have made a number of clarifications and minor changes throughout the rule. In almost all cases, the changes reduce the regulatory burden. The most important changes are the exemption of most small U.S. and foreign air carriers from the coverage of the rule, the simplification and equalization of what information must be collected or solicited, and the elimination of a MOU with the State Department as an alternative means of compliance. For clarity, we will discuss the rule section-by-section and then address issues that do not fit into this framework.

List of Subjects

Because of the concerns of some commenters, we have eliminated the reference to security. This rule is a part of the aviation economic regulations and is not a Federal Aviation Administration operational regulation. The rule has no direct bearing on security.

Authority

We have added two statutes (Title VII of Pub. L. 104–264 and Pub. L. 105–148) to the authority section to reflect recent Congressional enactments in this area. The primary authority for this rule, however, remains Pub. L. 101–604, which was codified as 49 U.S.C. 44909. During the 1993 recodification of the Transportation laws, there was some reorganization and rewording of the requirements. As noted by the introductory material in the recodification, the rewording was not intended to make any substantive change. To avoid confusion and most closely represent the drafters' intent, we have chosen to use the Public Law version in our analysis and cite both the Public Law and codified version in our authority citation.

Purpose

In response to the comments, this section has been streamlined and the references to DOT, DOS and the statutory authority have been removed. The change acknowledges that federal agencies have a responsibility to communicate among themselves, and to try to reduce the burden on the air carrier, at an exceptionally stressful time, of communicating simultaneously with multiple federal agencies. While there are ancillary benefits, the purpose of the rule is to provide DOS with information which will enable them to notify the families of the U.S. citizens killed overseas. The section now provides, "[T]he purpose of this part is to ensure that the U.S. government receives prompt and adequate information in case of an aviation disaster on specified international flight segments." The rule does not prohibit airlines from providing initial notification to family members following an aviation disaster. The rule itself is silent on the subject. The Department of State and Transportation have advocated in various fora that airlines should provide the initial notification to the families of the victims of aviation disasters. Similarly, the Task Force found that the airlines are in the best position to notify families in the immediate aftermath of an aviation disaster. The purpose of the rule is to allow the Department of State to carry forward its legal obligation of notifying, in a timely fashion, families of U.S. citizens who die outside the United States. The Department of State is required to do this regardless of any previous notification received by a family.

Definitions

In the definition of "air piracy," we made a minor grammatical correction for clarification. The term is now defined as, "any seizure of or exercise of control over an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent."

Several commenters asked us to modify the definition of "aviation disaster." Several airlines commented that the rule should be triggered only after the plane's doors have closed. Although this makes sense from an operational point of view, we are concerned about the possibility of some terrorist act, that by design or mistake, takes place during boarding or disembarkation. If an aviation disaster occurs during boarding, the airline would only be responsible for a manifest listing the passengers that have boarded, which would presumably be created from the boarding passes or tickets lifted at the gateway. We do not agree with IATA's comments that the airport operator is responsible in such a case. An airport operator would have no way of knowing the names of passengers who had boarded.

ATA objected to the inclusion of on-board accidents and TWA objected to situations only involving substantial damage to the aircraft. We have changed the rule accordingly. The definition of "aviation disaster," is now, " (1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury, and in which the death or injury was caused by a crash, fire, collision, sabotage or accident; (2) A missing aircraft; or (3) An act of air piracy.

A new definition, "covered airline," was added in the final rule in order to simplify references in the rule. A "covered airline" is defined as, "(a) certificated air carriers, and (b) foreign

air carriers, except those that hold Department of Transportation authority to conduct operations in foreign air transportation using only small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds)." This new definition exempts the smallest airlines that operate aircraft with 60 or fewer seats or have a maximum payload capacity of 18,000 pounds or less from the rule. If an airline operates both large and small aircraft—that is, aircraft more than 60 seats and aircraft with 60 or fewer seats—all covered flight segments of the airline are covered regardless of the size of the aircraft used on a particular flight segment.

By definition, a certificated air carrier does not include air taxi operators or commuter air carriers operating under 14 CFR Part 298. Some air taxis and commuters have voluntarily chosen to become certificated for a variety of reasons. In some cases, the certification was at the urging of larger, code-sharing airline partners. In others, certification confers some operational, legal or public relations advantage. If an air taxi operator or commuter air carrier is certificated, it is covered by the rule.

Our definition of foreign air carriers that are covered by the rule mirrors the U.S. definition as closely as possible considering the different legal authority applicable to foreign operators. The rule exempts the smallest foreign air carriers who are operating *only* small aircraft. These airlines are primarily trans-border air taxis operating between the U.S. and Canada, and to a lesser extent between the U.S. and Mexico and the U.S. and the Caribbean. If an airline, such as Air Canada, operates both large and small planes, the flights on the small planes would still be covered because the airline holds authority to fly large airplanes.

There have been a number of clarifications in the definition of "covered flight" in the final rule. The definition now reads: "[c]overed flight segment means a passenger-carrying flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States." We have added the term "segment" because some flight numbers cover multiple flight segments. The rule only applies to the segment to or from the U.S. We have also added the qualifier "passenger-carrying" to make clear that the rule does not apply to cargo or ferry flights.

The rule does not apply to flight segments between two foreign points. As a practical matter, carriers may voluntarily collect or maintain the information collected from covered flights for these foreign-to-foreign segments, consistent with local law, in order to have the same rule apply to all their operations.

We have changed the term "emergency contact" to "contact" at the request of a number of commenters. Some airlines believe that passengers will be anxious if they are asked for an emergency contact, and that the airline will need to engage in a dialogue regarding whether there is a problem involving the flight and the nature of the emergency. Comments and discussion of the Task Force indicate that use of the term "contact name and phone number" (as opposed to "emergency contact name and phone number") could make the collection of the information less burdensome but still provide the Department of State with information that will allow it to carry out its responsibilities. The air carrier must, however, make clear that the contact should be someone not traveling with the passenger who can be reached in the event of an emergency. If an airline prefers to use the term "emergency contact" it is free to do so.

In addition, we have added a statement clarifying that the contact should be a person not on the covered flight. The definition of "contact" now reads, "a person not on the covered flight or an entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger." If an airline chooses to meet the requirements of this part by referencing on-going databases, such as frequent flyer accounts or an in-house frequent traveler computer profile, the airline needs to confirm that the listed contact is not a current traveling companion.

In response to the many comments on requirements connected to collecting the full name of the passenger, we have made an important modification to the definition of "full name." The term is now defined as, "the given name, middle initial or middle name, if any, and family name or surname *as provided by the passenger*." (emphasis added) This change lessens the burden on the airlines by making it clear that the airline need not verify that the name provided by the passenger is the legal name of the passenger. For the purposes of the regulatory evaluation, we assumed that most airlines will choose to record names consisting of first name, middle initial and last name.

In the past, many, if not most, airline manifests included only the passenger's first-name initial and last name. In addition, there was often not much emphasis placed on accurately spelling the passenger's name. There have been many operational changes in airline systems over the last decade that all contribute to the collection of a full, and accurate, name of the passenger. Between new federal security requirements and voluntary airline security procedures, most airlines require a passenger to show photo identification while checking in. On many international flights, this is accomplished by requiring a passenger to show a valid passport before he or she is allowed to board. For travel to countries not requiring a passport, many passengers show a driver's license or other government identification. Similarly, in an effort to stem unauthorized transfer of airline tickets, airlines have become much more careful about listing the full name of a passenger, including an appellation such as Mr. or Ms. Because of notification problems experienced by various airlines in the aftermath of aviation disasters, most airlines have paid much more attention to gathering the full name of the passenger. Finally, many airlines are now using electronic ticketing on some or all of their flights and, as a result, are paying close attention to collecting the correctly-spelled, full name of the passenger.

We are aware that a dogmatic insistence that an airline collect the full legal name of a passenger, and to deny boarding to the passenger if the airline is unable to obtain it, would lead to unnecessary mischief and operational confusion. As noted by some commenters, some passengers have multi-part names, such as Mary Jo Smith-Jones. Others might have a legal name, but are known by a different name such as a nickname or a combination of initial of the first name and full middle name. The possibilities seem as endless as the number of passengers. The purpose of this definition is to obtain as full a name as the passenger will voluntarily provide. We have, therefore, added the qualifier to the definition, "as provided by the passenger." Based on the absence of comments, we believe that all, or virtually all, airlines currently collect first and last name. As a practical matter, the rule merely requires airlines to collect, if provided, a middle initial or middle name. In addition, the airline must provide the full name collected to the Department of State.

We made only minor editorial changes to the definition of "passenger." The primary change is to revise "person not occupying a seat" to "person occupying a jumpseat." The definition now reads, "every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and a person occupying a jump seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part."

We removed the definition of "passport issuing country code" because passport information is no longer required to be collected. We made no change to the definition of "United States."

In response to the comments and in consultation with the State Department, we changed the definition of "U.S. citizen" to eliminate application of the rule to lawful U.S. permanent residents. The rule envisions that it is up to passengers to identify whether they are U.S. citizens, either by presenting a U.S. passport when travel documents are required or used for travel, or in response to the solicitation for information. Airlines have no duty to inquire beyond this self-identification.

Applicability

This section was streamlined to incorporate the new definitions. It provides, "[t]his part applies to covered flight segments operated by covered airlines. (See § 243.3 of this part)." The Aviation Disaster Family Assistance Act of 1996 exempted air taxis from having to file family assistance plans. We follow that Congressional lead in this rule. Small airlines that code-share with large airlines, in general, have voluntarily obtained DOT certification and, thus, will be covered by the rule. Air taxi operators that operate independently usually operate very locally and often only on demand. In case of an aviation disaster, they carry few passengers and would find it less of a burden to identify who is on board and notify the families than a carrier operating a large jet. Because of this and because applying the rule to these very small carriers would result in relatively significant cost and operational burdens with fewer benefits, we are not covering either U.S. or foreign air carriers operating only small aircraft.

Information Collection Requirements

We have substantially reduced the information collection requirements and equalized the treatment of U.S. and foreign air carriers in the final rule. In the NPRM, U.S. air carriers would have been required to collect the full name, passport number and issuing country code for each passenger. Foreign air carriers, on the other hand, would have been required to collect only the full name and passport number for U.S. citizens and lawful permanent residents of the United States. In the final rule, both U.S. and foreign airlines are only required to collect the full name (no passport number or issuing country code) for U.S. citizens. We eliminated the proposed coverage of other passengers because the purpose of the rule is to provide the Department of State with information to notify the families of U.S. citizens that die outside the United States.

If the passenger provides a contact name and phone number, the passport number is not needed because the passport number was only being used to get a contact name and phone number. In addition, obtaining the passport number is unlikely to be effective in obtaining contact information. Most passports are good for ten years, so that any information that is voluntarily provided on the application may not be current. The passport contact may also be a traveling companion of the passenger. The elimination of this data element will save time and money. With our more liberal definition of full name, as a matter of practice all carriers should already be in compliance, or close to compliance, with this requirement.

The final rule provides that if a covered airline does not obtain the full name of the passenger, the passenger should not be boarded. Some commenters were very concerned about this provision in the NPRM, particularly when it applied to the additional data elements. The airlines were concerned about angry passengers and unseemly and unnecessary delays at the boarding gate by requiring passport number as a prerequisite for boarding. Our changes have addressed these concerns.

Commenters stated that there will be no public tolerance for a post-aviation-disaster scenario in which there is more information available for the families of U.S. citizen victims. The purpose of this rule is to provide the Department of State with information which enables it to meet its statutory responsibility of notifying the families of U.S. citizens who die outside the United States. The U.S. government is not responsible for notifying the families of the citizens of foreign countries upon the death of a foreign citizen. (In practice, the airline involved in the aviation disaster notifies the families of all passengers.) Accordingly, the rule does not require either U.S. or foreign air carriers to provide information on non-U.S. citizens to the U.S. government for purposes of notifying the families of those foreign nationals of the death of a loved one.

If a U.S. or foreign air carrier believes that the public will not tolerate faster notification by the air carrier about U.S. citizen passengers than non-U.S. citizen passengers, the air carrier may extend the practice required by this rule to all of their passengers. Likewise, if a foreign government wants to require air carriers flying to or from their country to collect such information for its citizens, the Department would fully support such a requirement.

The rule also requires covered airlines to solicit a contact name and telephone number. It is up to the passenger whether or not to provide it. Airlines should not pressure the passenger; the government requirement is only to ask for the information. Airlines should not state or imply that it is a government requirement. Similarly, an airline cannot deny boarding under the authority of this rule if a passenger chooses not to provide a contact. As noted in the definition section, a contact can be whoever or whatever the passenger wants it to be. There is no requirement that it be a family member, next-of-kin, a friend or a business or social group.

The requirement to solicit prior to boarding does not necessarily mean that the airline needs to solicit before every covered flight segment. For example, the airline could solicit prior to the first covered flight segment, or through its frequent flyer program. For multiple segments, if each passenger is given the opportunity to provide contact information prior to the first flight segment, and it is clear to the passenger that the contact should not be traveling with the passenger on any flight segment, then the burden is upon the passenger to provide a contact not traveling with the passenger for any of those flight segments. The air carrier is then not responsible for soliciting this information prior to each flight segment.

The rule requires covered airlines to maintain a record of the information collected pursuant to this section. We have deleted the specific requirement that an airline maintain a record of those who decline to provide contact information. A covered airline is still

required to provide the Department with evidence, upon request, that all passengers were solicited for contact information and that the airline collects and maintains the information provided by its passengers.

The most dramatic change in this section is the addition of a new paragraph dealing with code-share operations. The provision provides, "[t]he covered airline operating the flight segment shall be responsible for ensuring compliance with paragraph (a) of this section." We have placed the responsibility on the operating air carrier because the ticketing air carrier would not know if a passenger actually boarded the plane. We leave it up to the code-share partners, however, to work out a system that is most convenient and operationally effective for them in the markets served. If the flight segment is not operated by a covered airline, even though the ticketing carrier is a covered airline, there is no duty to collect the information or meet the other requirements of the new Part 243.

Procedures for Collecting and Maintaining the Information

Consistent with the proposal, the final rule continues to permit covered airlines to use any method or procedure to collect, store and transmit the required information, subject to several listed conditions. We anticipate that most scheduled airlines will use their computer reservation systems. Others may use a "shoebox" approach in which passengers fill out a simple form that is handed in at check-in or before boarding. As the rule is implemented, we expect other, creative solutions to be developed, including reference to an external database such as expanded frequent flyer records. Thus, we disagree with the comments from ASTA and American Express Travel Related Services Company that the rule should require a single system for collecting passenger manifest information. We are trying to use as light a hand as possible by setting a performance standard rather than mandating how very different types of airlines conducting very different types of operations must comply.

As in the NPRM, the final rule provides that the information on individual passengers must be collected before each passenger boards the aircraft on a covered flight segment. We anticipate that the information will be collected by whoever sells the ticket. In response to the comments, we have eliminated the requirement that the information be kept for at least 24 hours after the completion or cancellation of the covered flight segment. Instead, the information need only be kept until all passengers have disembarked from the plane. Airlines are, however, free to keep the information longer. At least one airline asked whether it might retain the information for the return flight on a round-trip ticket. The answer is "yes," given that the passenger understands at the time of the solicitation that the request covers the return portion of the trip.

The final rule also clarifies who may receive the contact information under the rule. The final rule provides, "the contact information collected pursuant to section 243.7(a)(2) of this part shall be kept confidential and released only to the U.S. Department of State, the National Transportation Safety Board (upon NTSB's request), and the U.S. Department of Transportation pursuant to oversight of this part. This paragraph does not preempt other government or governmental agencies that have an independent, legal right to obtain this information." The purpose of this rewording is to clarify the roles of the various federal agencies under this part. Under the ADFAA, NTSB will only request the information when the aviation disaster occurs within the United States. In addition, we want to make it explicit that this rule does not prevent other governments, whether foreign, state or local, or governmental agencies, such as law enforcement, from obtaining this information under their own independent legal authority.

After further consideration, we decided to add an additional, explicit provision banning covered airlines from using the contact information for any commercial or marketing purpose. Contact information is personal and is provided by passengers with the expectation that it will not be used for other purposes The new paragraph provides, "[t]he contact information collected pursuant to section 243.7(a)(2) of this part shall only be used by covered airlines for notification of family members or listed contacts following an aviation disaster. The information shall not be used for commercial or marketing purposes."

Transmission of Information After an Aviation Disaster

In response to the comments, the rule now provides that air carriers must provide passenger manifest only to the State Department and, upon request, to the NTSB. For airline convenience, we have provided the full title of the State Department contact (the Managing Director of Overseas Citizen Services, Bureau of Consular Affairs) as well as a telephone number that is staffed 24 hours a day at which he or she can be reached. We have eliminated the proposed requirement for routine transmission of the information to DOT. DOT's role is now limited to enforcement oversight of the rule. To ensure that airlines are in compliance with the rule, DOT may request a manifest for a given flight, or check to see if the contact information is being solicited.

Because of the statutory responsibilities of the NTSB for aviation disasters occurring in the United States, the section provides that the Director of Family Support Services at NTSB must be given a copy of the manifest upon request. If the aviation disaster is clearly one in which the State Department will not have the lead responsibility (such as KAL Flight 801), the State Department may inform the airline to provide ongoing updates to NTSB rather than to the State Department. In rare circumstances, there may be duplicate transmission responsibilities, at least for a period of time. The purpose of this section is to provide, to the maximum extent possible, a single Federal Government contact point.

Finally, the rule simplifies the NPRM requirement concerning the speed with which the information has to be transmitted. The statutory language provides that, "[i]f it is not technologically feasible or reasonable to fulfill the [1-hour requirement,] then [the information shall be transmitted] as expeditiously as possible, but not later than 3 hours after [the airline learns of the disaster]." The final rule requires transmission of the information, "as quickly as possible, but not later than 3 hours after the carrier learns of an aviation disaster involving a covered flight segment operated by that carrier." This has the same effect as the Congressional standard: to get the information out as quickly as possible. When the Family Assistance Task Force considered this issue, it concluded that transmission of a complete manifest within three hours would provide for as prompt notification of families as would transmission within 1-hour. In addition, we have made a number of editorial clarifications throughout the section.

Filing Requirements

This section requires a covered airline to file with DOT a brief statement summarizing how it will collect the passenger manifest information required by this part and transmit the information to the Department of State following an aviation disaster. The description must include a contact at the covered airline, available at any time the covered airline is operating a covered flight segment, who can be

consulted concerning information gathered pursuant to this part. Each covered airline must file any contact change as well as a description of any significant change in its means of collecting or transmitting manifest information on or before the date the change is made. This brief statement and the requirement to notify DOT of significant changes is designed to assist DOT oversight of this part, as well as allow DOS to anticipate how the information will be collected and how it will be transmitted.

We have made several substantive changes to the language in the NPRM. In response to comments, we eliminated the requirement for a 24-hour contact at the airline. Instead, the contact must be available at any time the covered airline is operating a flight. Many charter operators and airlines operating only a few airplanes do not have personnel on duty 24 hours a day. An aviation disaster can only happen during the operation of the flight. The modification meets the regulatory purpose while avoiding undue burdens on these carriers.

The filings must be submitted to OST Docket 98–3305 at the Department of Transportation. All of the information relating to this rule will be maintained in the docket and be available for public inspection. (The Department retains the right to redact non-procedural information such as phone numbers of carrier contacts.) The summary statement must be filed by July 1, 1998. We have chosen this date so that we can ensure airline compliance and work with those who need additional guidance well in advance of the effective date of the rule. New carriers must file this information before beginning operations. Finally, there were a number of editorial and conforming changes throughout this section.

Conflict With Foreign Laws

As is apparent by the number of comments on this issue, this topic generated intense controversy. We believe that we have addressed virtually all of these concerns with the changes in the regulatory requirements and the exemption provisions for instances in which our rule would conflict with foreign law. In terms of flexibility for foreign air carriers, we note that we have exempted carriers operating small aircraft and maintained the applicability only to flight segments to or from the United States. As noted previously, we believe most carriers are already collecting full names. The additional burden is simply soliciting (but not requiring) contact information, filing a brief statement with DOT summarizing the airline's program with a contact phone number at the airline, and transmitting the manifest information to the State Department following an aviation disaster on a covered flight.

Several foreign carriers alleged that the proposal was inconsistent with certain standards and recommended practices of Annex 9, the facilitation annex. Specifically, they alleged that the rules are inconsistent with Annex 9, Standards 2.1 (regulations applicable to clearance of aircraft shall be no less favorable than (applicable to other forms of transportation), 3.1 (regulations applied to persons traveling by air shall be no less favorable than applicable to other forms of transportation), and 2.6 (States should not normally require a passenger manifest, but may require such information in an alternative and acceptable manner).

We do not believe that these rules are inconsistent with the provisions of Annex 9. No specific documentation is required, absent an aviation disaster. In such a case, the required information is consistent with Article 26 of the Convention relating to aircraft accident investigation and notification of next of kin. The information required to be collected or solicited by the rule is not materially different from other requirements applicable to customs, immigration and health on entry into the United States. To the extent that the solicitation of information may differ from that applicable to other forms of transportation, e.g., international passenger ships, the requirements apply specifically to situations peculiar to international aviation, and are more favorable, rather than less favorable, at least in terms of notification of next of kin in the event of an aviation disaster.

The final rule provides a specific exemption process so that covered airlines will not be required to solicit, collect or transmit information under this part in countries where such solicitation, collection, or transmission would violate applicable foreign law. In order to meet our statutory responsibilities, the carrier must file a petition requesting a waiver on or before the effective date of this rule, or on or before beginning service between that country and the United States. These issues will be decided by the DOT decisionmaker (see 14 CFR 302.22a) and an order will be issued memorializing that decision, just like any other exemption application under 49 USC Subtitle VII. To expedite our review and to ensure that we have a complete understanding of the request, the rule requires that the airline's petition include copies of the pertinent foreign law (including a certified translation) and opinions of appropriate legal experts setting forth the basis for the conclusion that collection would violate such foreign law. (If several carriers are serving the same place, they are, of course, free to file a single, joint waiver application.) The Department will also accept statements from foreign governments on the application of their laws.

The final rule provides that DOT will notify the covered airline of the extent to which it has been satisfactorily established that compliance with all or part of the data collection requirements of this part would constitute a violation of foreign law. The Department will maintain an up-to-date listing in OST Docket 98–3305 of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law. Carriers need not apply for a waiver to serve a country on this list.

In response to the comments, DOT is exploring whether to take the issue of passenger manifests to ICAO to allow for international deliberation on this issue. That decision does not, however, effect the provisions of this rulemaking.

Enforcement

The final rule provides that DOT "may at any time require a covered airline to produce a passenger manifest including contacts and phone numbers for a specified covered flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any covered airline further information about collection, storage and transmission procedures at any time. If the Department finds a covered airline's system to be deficient, it will require appropriate modifications, which must be implemented within the period specified by the Department. In addition, a covered airline not in compliance with this part may be subject to enforcement action by the Department." The changes in this section are merely editorial.

A number of carriers were offended by the section in the NPRM concerning civil and criminal penalties. The section merely restates potential statutory penalties for violation of any of the aviation economic regulations. It is completely within DOT's prosecutorial discretion whether to take enforcement action in a given case, and what type, and amount, of penalty to seek. Our objective is compliance, not enforcement. It is the Department's intention to help the industry to come into compliance with this part and to work with airlines that are trying to comply. Because restating the penalty

provision added no legal authority and caused confusion about our intention, we have eliminated it from the final rule. Our underlying statutory authority remains the same.

Waivers

The NPRM included a provision that if an airline entered into an acceptable Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following an aviation disaster, DOT would waive compliance with certain parts of this rule. At the time we issued the NPRM, the MOU working group was still negotiating the terms of the MOU and, therefore, we did not include the specific terms of the MOU. As noted earlier, fourteen airlines to date have entered into a MOU with State. Contrary to our hopes at the time of the NPRM, the MOU does not cover all the statutory requirements and is viewed by the State Department and DOT as a supplement to, rather than a replacement for, this rule. We have, therefore, dropped this section from the rule. We believe that the MOU process has been very helpful in focusing attention on many of these issues, facilitating communications between the different parties, and ensuring that a process is in place so that all sides can respond quickly and effectively after an aviation disaster.

Effective Date

The final rule provides two effective dates for different parts of the rule. As noted above, a covered airline must file a summary in the DOT docket by July 1, 1998, describing how it will collect and transmit the required information. We are providing a very long leadtime (October 1, 1998) before carriers are required to solicit and collect the information and meet the other requirements of the rule. Earlier compliance is, however, authorized. Although the final rule is not complex, it will require training of many airline industry personnel, changes to computer reservation systems, and/or printing and distribution of "shoebox" cards, depending on the method selected by each airline to comply with the rule. In addition, we want to provide adequate time for airlines to develop and implement innovative approaches to compliance. The airlines asked for 180 days to implement the rule. We are reluctant to have the rule go into effect in the summer, which is the busiest travel time. We have, therefore, decided to provide more time than the airlines requested, so that the rule can be implemented at a quieter travel time at the beginning of the month, rather than on a date calculated from publication in the **Federal Register**.

Advance Passenger Information System

When we issued the NPRM, we were exploring whether it would be appropriate to piggyback the passenger manifest requirements onto existing federal systems. It was our hope to avoid duplication of information and to contribute to the efficient movement of air passengers on flights to or from the United States. In particular, we were exploring whether the Advance Passenger Information System (APIS) of the U.S. Customs Service could be used in conjunction with, or in place of, the requirements of this rule. After exploring the issue thoroughly, we concluded that it could not for a number of reasons. APIS is used to expedite clearance of low risk passengers entering the United States and is, therefore, only directly applicable to inbound flights to the U.S. Participation is voluntary. APIS uses both full name and date of birth, which is more than our rule requires.

Economic Considerations

(**Note:** This section relies heavily upon the Final Regulatory Evaluation that accompanies this final rule; a copy of the Final Regulatory Evaluation is available in the Docket.)

In fashioning the final rule, the Department has adopted an approach that should result in the effective transmission, by U.S. and foreign carriers alike, of information after an aviation disaster in the least costly manner. This final rule is significant under the Department of Transportation's regulatory policies and procedures because of the public and Congressional interest associated with the rulemaking action. The final rule was submitted to the Office of Management and Budget for review under E.O. 12866.

The final rule takes the form of a performance specification, that is, it is structured to give those affected by it the flexibility to minimize any necessary costs of soliciting and collecting passenger manifest information. In the final rule, the Department has attempted to accommodate the major (sometimes conflicting) concerns voiced by air carriers, travel agents, and others in their comments to the ANPRM and NPRM regarding the ease and costs of implementing a passenger manifest information requirement. First, the final rule should eliminate barriers to soliciting and collecting passenger manifest information at the time of reservation, the method that has been recognized by most as being best because it lessens the possibility of congestion at the airport. Moreover, the final rule applies only to certificated U.S. air carriers and their foreign air carrier counterparts and these air carriers and their travel agents are most likely to employ sophisticated electronic systems for handling passenger information. The final rule eliminates passenger passport number as a required element of passenger manifest information and puts nothing in its place. Passport number was cited above all else by air carriers and travel agents alike as making collecting passenger manifest information at the time of reservation impossible to achieve in a cost-effective manner. Commenters said that individuals might not have their passport with them or might not yet have procured a passport when reserving. Commenters also said that the individual reserving might not be the passenger and thus would not know the passenger's passport number. Commenters said that all of these situations would lead to call-backs. The final rule also allows passenger manifest information to be solicited and collected once from a passenger and held for the passenger's entire round trip.

Second, as in the proposed rule, the final rule stipulates that passenger contact name and telephone number must be solicited, but not necessarily collected. While we would expect that most passengers would choose to provide passenger contact information because they would realize that, in the event of an aviation disaster, their family members might be spared some pain and suffering because they would be notified more quickly, passengers are not required to provide this information. It is ultimately left up to the passenger to decide whether to provide the contact information. Since the passenger manifest information requirement is structured in this fashion, so long as an air carrier can be assured that passenger contact information has been solicited at the time of reservation, we would not expect that air carriers would need to verify this information at the airport. Since the need to verify passenger manifest information at the airport is minimized, the likelihood that the final rule will contribute to increased airport congestion is greatly reduced.

Third, the final rule would accommodate a system whereby passengers that join international flights at an international gateway airport gate could be confronted with a sign or notice at the gate informing them that, if they are a U.S. citizen, they may wish to complete a form available at the desk that could be useful in case of an

emergency. The fact that transit and interline transfer passengers (or any other passengers, for that matter) were provided such a notice would constitute compliance with the final rule.

Fourth, the requirement that U.S. air carriers solicit or collect passenger manifest information from all passengers has been modified to a requirement that U.S. air carriers solicit or collect passenger manifest from only U.S. citizens. The effect of this modification is to substantially reduce the number of passengers from whom information is required to be collected by U.S. air carriers. Moreover, in the final rule, both U.S. and foreign air carriers must collect passenger manifest information from only U.S. citizens, and not (as in the proposed rule) from permanent legal residents of the United States, as well. The effect of this change is to spare U.S. and foreign air carriers alike the uncertainties and difficulties surrounding trying to identify U.S. legal permanent residents, who, as pointed out by many commenters, may not be traveling on U.S. passports.

Even with these cost saving features, we estimate (see below) that the annual recurring costs of implementing section 203 of Pub. Law 101–604 will be $22.1 million. In calculating the costs of the final rule, the Department has made a major methodological improvement to the simple economic model used in the NPRM and has made more realistic the parameters used in the model. The parameter changes often reflect comments received in response to the NPRM. As result of the methodological improvement, the model now represents more accurately the changing costs of air carriers and travel agents as assumptions are changed regarding whether passenger manifest information is collected once or twice per round trip journey. In the NPRM, air carrier and travel agent costs did not change as assumptions were changed regarding whether passenger manifest information was collected once or twice per round trip journey. The model used in the NPRM did, however, take into account changes in the value of time forgone by passengers depending on whether passenger manifest information was collected once or twice per round trip journey. Air carrier and travel agent costs were constrained in this fashion in the NPRM to accommodate the statement in British Airways' comments to the ANPRM that the costs found in its comments were the minimum needed to implement any passenger manifest information requirement. But constraining costs in this fashion is obviously unrealistic. If passenger manifest information is collected once on each leg of a round trip, it is obviously going to cost more than if passenger manifest information is collected only once per round trip journey. It is probably going to cost twice as much in the former, as compared to the latter, case.

The parameters used in the economic model are: passengers taking round trips on scheduled air service for whom passenger manifest information needs to only be collected one time per round trip (85 percent); the number of reservations made per passenger boarded (1.75:1); additional time to collect passenger contact name (20 seconds); additional time to collect passenger contact telephone number (20 seconds); additional time to collect passenger middle initial (2 seconds)—it is assumed that, by and large, air carriers are currently collecting passengers first and last names; additional time to collect passenger first name (9 seconds)—assumed to be collected only from those few passengers from whom first and last names are not currently collected. Following comments received to the NPRM and a presentation that took place last summer before the DOT/NTSB Task Force on Assistance to Families of Aviation Disasters, in the model all charter air service passengers provide passenger manifest information by filling out a form at the airport at each end of their round-trip journeys. It is estimated that it will take a charter passenger 30 seconds to fill out a form at the airport that would request the scaled-back information found in the final rule.

The model parameters described above have been chosen to depict as realistically as possible how passenger manifest information will likely be solicited and collected under the passenger manifest information requirement in the final rule. They have important implications for the estimated costs of the final rule as does the amount of additional information required in the final rule. The estimates of the costs of the final rule are based on an additional information requirement in the final rule consisting of: (1) Passenger middle initial for most passengers (passenger first name for some passengers), (2) contact name, and (3) contact telephone number. Estimates of the costs of the NPRM were based on an additional information requirement in the proposed rule of: (1) Passenger first name, (2) passenger passport number, (3) contact name, and (4) contact telephone number. The differences in the information requirements for cost estimate purposes derive from the facts that, subsequent to the NPRM, it was determined that air carriers and travel agents, by and large, today collect passengers first and last names and passenger passport number was dropped.

The amount of time that it is assumed to take to solicit and collect passenger manifest information (it is assumed that all passengers provide voluntary contact information in the Final Regulatory Evaluation) was discussed at length in the NPRM. The Department used a total of 40 seconds in the NPRM as an estimate of the amount of time it would take to solicit and collect all four elements of passenger manifest information or, roughly, about 10 seconds per element. A sensitivity analysis of the time to collect passenger manifest information was also performed that used a total of 60 seconds to collect all four elements of passenger manifest information, or roughly about 15 seconds per element.

In the Final Regulatory Evaluation, it is estimated to take a total of 40 seconds to solicit and collect the two voluntary elements of passenger manifest information. Thus, the Department has, based on comments received to the NPRM and other information, increased its estimates (to 20 seconds each for these two elements) of the amount of time it would take to collect passenger manifest information. It is estimated to take two additional seconds to collect middle initials from most passengers who now give their first and last names when they reserve, and 9 additional seconds to collect first names from the small number of passengers who now give their last names and first initials when they reserve. The Department, moreover, believes that the time needed to solicit and collect the voluntary elements of passenger manifest information, passenger contact name and passenger contact telephone number, likely will decrease over time as passengers become accustomed to providing the information.

In developing the estimates for the amount of time it would take to solicit and collect the information in the final rule, the Department examined the results of a survey of seven air carriers that was included in the comments of the Air Transport Association of America to the Department's advance notice of proposed rulemaking (ANPRM) on Domestic Passenger Manifest Information. In the ANPRM, a domestic passenger manifest information requirement that paralleled the passenger manifest information requirement found in the NPRM that preceded this final rule was postulated. The Department found it necessary to modify the ATA survey results to adjust

them for, among other things, duplicate information collections, unjustifiably high-end results, passenger information that is already today collected, and the fact that passport number has been dropped from the final rule (the domestic counterpart to passport number was social security number/date of birth). As modified by the Department, the ATA survey results are not significantly different from the estimates outlined above for the time needed to solicit and collect the elements of passenger manifest information in the final rule.

The estimate used in the Final Regulatory Evaluation for the total hourly compensation (wage plus fringe) of air carrier reservation agents and travel agents is $15.07, which is taken from a Bureau of Labor Statistics proxy occupational category for these workers. It is an update to 1996 of the $14.66 figure used in the NPRM. The estimate used for the value of an hour of time forgone by passengers while they are being solicited for and providing passenger manifest information is $26.70. This figure is taken from recent Departmental guidance on the valuation of travel time in economic analysis. It supplants a much-higher $48.00 per hour figure for the valuation of passenger time that was used in the NPRM.

The Department estimates that the annual recurring costs of the final rule, which would be borne by covered air carriers, travel agents, and U.S.-citizen passengers (who forego time while being asked for and providing the information) would be about $22.1 million per year. These costs would break out as follows: air carriers $1.9 million (U.S. air carriers $1.1 million and foreign air carriers $0.8 million); travel agents $5.8 million; and U.S. citizen passengers on covered air carriers ($14.3 million). The one-time cost of the rule (primarily computer reservations systems modification costs that would be borne by air carriers and also training costs) is estimated to be about $15.0 million. The present value of the total costs of the final rule over ten years is estimated to be about $175.4 million.

There is one direct notification benefit of the final rule: more prompt and accurate initial notification to the families of U.S.-citizen victims of an aviation disaster that occurs on a covered flight to or from the United States (on a U.S. or foreign air carrier) and outside the United States. This benefit is available to the families of those passengers that chose to provide passenger manifest information. Based on the recent fatal accident history on the types of air carriers that would be covered by the final rule (and assuming that all passengers provide passenger manifest information) the Department estimates that, were the final rule in effect over a recent ten-year period, a total of 239 families of U.S. citizens would have received such direct notification benefits. Compared to the present value of the total costs of the proposed rule over ten years, the cost of the more prompt and accurate initial notification to these direct beneficiaries, on a per victim basis, is $734,000.

No accounting is made in these calculations for more prompt and accurate initial notification of families of U.S.-citizen victims of aviation disasters that occur on covered flights to and from the United States, and for which the disaster occurs within the United States (e.g., TWA flight 800 or Korean Air flight 801). None was made because the Department of State has no responsibilities regarding the notification of families of U.S.-citizen victims of an aviation disaster that occurs within the United States, even if the flight involved is an international flight. The primary focus of the statute is to provide information to the Department of State. However, since under the final rule, passenger manifest information would have to be collected for all flights to and from the United States for transmission to the Department of State in the event of an aviation disaster that occurred outside of the United States, it is quite possible that having it on-hand would also lead to more prompt and accurate initial notification of the families of U.S.-citizen victims (assuming, again, that all passengers provide passenger manifest information) of an aviation disaster on such a flight that occurs within the territory of the United States. Such families are considered to receive indirect notification benefits from the rule. If these families of U.S. citizens are accounted for, in addition to the families of U.S. citizens counted above, then, were the rule in effect for a recent ten-year period, the Department estimates that more prompt and accurate notification of the families of a total of 443 U.S.-citizen victims of aviation disasters would have taken place. The cost of the more prompt and accurate initial notification to these direct and indirect beneficiaries, on a per victim basis, now is about $396,000.

A different perspective on the cost of the final rule can be gained from assuming that the recurring annual costs of the final rule to travel agents, air carriers, and U.S.-citizen passengers on covered trips are all paid by the U.S.-citizen passengers, and then asking what do they pay per trip. Employing this line of reasoning (this is an "as if" analysis since who will be able, or not be able, to pass along the costs of imposing a passenger manifest information requirement is not calculated in the Final Regulatory Evaluation) for the final rule requires us to also identify and subtract from total annual recurring costs of the final rule those additional time costs that the final rule imposes on passengers that make, and then cancel, reservations (the additional costs to travel agents and air carriers from these individuals stay in the calculation). Since the calculation is based on cost per trip, we must also identify the mix of passenger one-way and round trips. The result of this calculation is that for each of the 31.2 million passenger trips taken (where a passenger trip is either a round trip or a one-way trip), the U.S.-citizen passengers that travel pay about $0.50 extra per trip because of the passenger manifest information requirement in the final rule.

The direct and indirect benefits of the final rule regarding more prompt and accurate initial notification of the families of U.S.-citizen victims of an aviation disaster on a flight to and from the United States that occurs outside the United States (direct) and within the territory of the United States (indirect) were outlined above. An idea of the magnitude of the reduction in initial notification time of families of U.S.-citizen victims of aviation disasters that occur outside the United States that might occur under the rule may be gained from examining the notification experience in the Pan Am Flight 103 aviation disaster. There, according to the Report of the President's Commission on Aviation Security and Terrorism, some families of victims were notified by Pan American within about nine hours or less after the disaster occurred, and all families were notified by Pan American within about 43 hours or less after the disaster occurred. Compliance with the final rule in the case of Pan Am Flight 103 should have reduced notification times (to the extent that passengers chose to provide passenger contact information) by a maximum of about six hours for the first group of families of victims, and by a maximum of about 40 hours for the remainder of the families of victims.

A third direct benefit of the rule lies outside the realm of notification benefits and was not mentioned above. The third direct benefit of the rule is an expected general increase in the disaster response capability of the Department of State following an aviation disaster. According to the Report of the

President's Commission on Aviation Security and Terrorism:

> Failure to secure the [passenger] manifest quickly had a negative ripple effect on the State Department's image in subsequent activities.
>
> Thereafter, the Department appeared to lack control over who should notify next of kin, an accurate list of next of kin, and communications with the families. (p. 101)

The final rule should provide the Department of State with information on the families of victims of an aviation disaster soon after it occurs, so that the Department of State can establish an early link with the families.

Some idea of how much more quickly the Department of State might, under the rule, receive passenger manifest information following an aviation disaster may be gained from examining the Pan Am Flight 103 aviation disaster experience. There, the Department of State was given by Pan American an initial passenger manifest, consisting of surnames and first initials, about 7 hours after the disaster occurred. A passenger manifest containing more complete passenger information together with contact information was provided to the Department of State about 43 hours after the disaster occurred, and, at that time, Pan American also notified the Department of State that all families of victims had been notified. The results of compliance with the rule in the case of Pan Am Flight 103 should have resulted in the provision of a passenger manifest together with passenger contact information (to the extent that passengers chose to provide passenger contact information) to the Department of State three hours after the disaster occurred.

Finally, while the Department believes that the simple economic model and parameters used above resulted in reasonable estimates of the costs of the final rule, the Department has, as part of its examination of the cost of the final rule, relaxed several of the assumptions used in the model in order to obtain "outer bound" estimates of the costs of the final rule. These outer bound estimates are provided for information purposes only. For purposes of deriving the outer bound estimates: (1) The ratio of reservations made to passengers that actually board the aircraft is 2:1 (instead of 1.75:1 above), (2) passenger manifest information not kept as part of frequent traveler information by travel agents or frequent flyer information by air carriers (instead of passenger manifest information being kept for 25 percent of passengers above), (3) fixed costs are assumed to be $30 million (instead of $15 million above), (4) the value of the time that passengers forego while being solicited for and providing passenger manifest information is valued at $32.90 per hour (instead of $26.70 above), (5) the time to collect passenger contact information is 26 seconds each for contact name and contact telephone number (instead of 20 seconds each above) and other times to solicit and collect passenger manifest information (e.g., the time needed to solicit and collect contact passenger middle initial for most passengers and the time needed to solicit and collect passenger first name for some passengers) increase by a factor of 1.3, and (6) the time it takes charter passengers to provide passenger manifest information on a form at the airport is 39 seconds (instead of 30 seconds above)—this is also an increase by a factor of 1.3.

The effect of these new assumptions is to a little more than double the Department's estimates of the costs of the final rule. The annual recurring costs of the rule now become $45.4 million (instead of $22.1 million above) and break out as follows: air carriers ($3.5 million—instead of $1.9 million above)—split between U.S. air carriers ($2.0 million—instead of $1.1 million above) and foreign air carriers ($1.5 million—instead of $0.8 million above); travel agents ($10.5 million—instead of $5.8 million above); and passengers' time forgone ($31.3 million—instead of $14.3 million above). The present discounted value of the future cost stream for these outer bound estimates over ten-years is now $359.7 million (instead of $175.4 million above). The associated outer bound cost per enhanced notification of the direct notification benefits of the final rule now becomes, on a per victim basis, about $1.5 million (instead of $734,000 above) and the outer bound cost per enhanced notification of the final rule that takes into account both direct and indirect notification benefits is now, on a per victim basis, about $812,000 (instead of $396,000 above). The cost per passenger per trip now becomes about $0.94 (instead of $0.50 above).

Regulatory Flexibility Act

The Regulatory Flexibility Act was enacted by the United States Congress to ensure that small entities are not disproportionately burdened by rules and regulations promulgated by the Government. At the same time, P.L. 101–604 mandates that "the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State." After notice and comment, and with the concurrence of the Small Business Administration (SBA), DOT's predecessor in the area of aviation economic regulation, the Civil Aeronautics Board, defined small entity for the purpose of the aviation economic regulations in 14 CFR § 399.73. The definition states, in part, "a direct air carrier * * * is a small business if it provides air transportation only with small aircraft * * * (up to 60 seats/18,000 pound payload capacity)." Under 14 CFR Part 298, air taxi operators and commuter air carriers are defined, among other things, as air carriers operating only small aircraft.

In its efforts both to comply with both Pub. L. 101–604 and not to disproportionately burden the smaller air carriers and travel agencies, the Department is: first, exempting non-certificated U.S. air carriers, which consist of 909 air taxi operators and 22 commuter carriers from the rule's requirements; second, it is allowing those carriers subject to the rule the flexibility to develop their own passenger manifest data collection systems. This will allow them to choose the most efficient process suitable to their operations.

Some air carriers that operate only aircraft with up to 60 seats/18,000 pound payload capacity have voluntarily chosen to obtain a DOT certificate; if an air carrier is certificated, it will need to comply with the rule. We estimate that 49 air taxis and commuter carriers have voluntarily obtained a certificate.

Since many commenters said that the optimal time to collect the passenger manifest information is at the time of reservation, and travel agents account for most reservations on flights to and from the United States, we expect that this rule will also indirectly affect travel agencies. In order to estimate this impact, the Department requested data on the number of small travel agencies from the U.S. Small Business Administration (SBA). SBA's Office of the Chief Counsel for Advocacy, with the assistance of the SBA economic research office, kindly provided us with estimates that showed that there were 22,672 travel agencies in 1994 and that, of this total, 21,873 were considered small agencies. For this analysis, the SBA used its own data and Census data to extrapolate the estimates with small travel agencies defined as those with annual revenues of $1 million or less and with fewer than 25 employees. Annual receipts for these small agencies were estimated at $4.3 billion (or 49 percent) out of a total of $8.7 billion for all travel agencies. Thus, even though the small agencies account for 96

percent of the total agencies on the basis of number of agencies, they account for a much smaller proportion of the receipts. Since receipts is a better measure of the market share of the smaller agencies, it is not unreasonable to assume that the small travel agencies will incur a proportion of the recurring annual cost of this passenger manifest requirement that is similar to their share of receipts.

In the regulatory evaluation, the Department has calculated the total annual recurring cost of the rule for the travel agency industry at $5.8 million. This estimate was based on several factors and assumptions. In 1996, there were approximately 54.6 million (one-way) trips by U.S. citizens on covered flight segments, with 52.5 million trips on scheduled flights and 2.1 million on charter flights. We estimate that about 85 percent of the passenger itineraries on scheduled flights are roundtrip and, therefore, involve only one interaction between a travel agent or an airline. We estimate that 25 percent of trips are by frequent flyers, and for these trips, we assume that the information is already stored and requires less time for collection since it needs only to be confirmed. Based on comments, various trade publications, and surveys, we estimate that about 75 percent of all airline tickets on the types of flights covered by this rule are issued by travel agents and that 95 percent of all travel agency locations use computer reservations systems. Also, for purposes of this analysis, we assume that 1.75 reservations are made for each passenger that eventually boards, thus allowing for cancellations of reservations. As shown in more detail in the Final Regulatory Evaluation, we estimate that the average time to solicit/collect/confirm the passenger manifest information is 35 seconds for all scheduled trips.

Using these factors, we calculate that the travel agency industry will solicit/collect/confirm passenger manifest information for 39.6 million scheduled passengers annually. This represents collections of 29.3 million for roundtrip flights and 10.3 million for one-way trips. From another perspective, it includes 22.6 million collections from those who actually complete their journeys and 17.0 million trips that are canceled following a reservation. Based on 39.6 million collections and 35 seconds per average collection, we calculate the annual hourly burden for the travel agency industry at approximately 385,000 hours. Multiplying these hours by an average salary per hour of $15.07, we estimate a total annual recurring cost $5.8 million for the travel agency industry. Alternatively, the average cost to a travel agent for collecting the information per reservation would be about $0.15.

The Department estimates that the small U.S. travel agencies will incur a portion of total recurring costs similar to their proportion of receipts. Applying this factor to the total costs for travel agents, we calculate that these agencies will incur approximately 49 percent of the total cost . We have calculated that it will cost travel agents worldwide $5.8 million, but we do not know how much of this is attributable to foreign travel agents. Assuming that no cost is attributable to foreign travel agencies, the maximum impact on small U.S. travel agencies would be $2.8 million annually. Therefore, for each of the 21,873 small U.S. agencies, the maximum average burden per U.S. travel agency would be approximately $128 annually.

The rule will affect a substantial number of small entities. Based on the previous information, however, we believe that there will not be a significant economic impact on any of them. We, therefore, certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This regulation applies to both U.S. air carriers and foreign air carriers that choose to serve the United States. The rule should not affect either a U.S. air carrier's ability to compete in international markets or a foreign air carrier's efforts to compete in the United States. Neither should the overall level of travel to and from the United States be affected.

Unfunded Mandates Act

This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This final rule contains information collections that were subject to review by OMB under the Paperwork Reduction Act of 1995 (Public Law 104–13). The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Passenger Manifest Information;

Need for Information: The information is required by Pub. L. 101–604 (49 U.S.C. 44909) for use by the State Department;

Use of Information: The State Department would use the information to inform passenger-designated contacts about aviation disasters;

Frequency: The manifests would be collected and maintained for each covered flight;

Burden Estimate: 1.05 million hours and $22.1 million per annum for air carriers, foreign air carriers, travel agents, and passengers;

Respondents: Approximately 144 U.S. air carriers, 318 foreign air carriers, and 22,672 U.S. travel agencies collecting information from 53.8 million annual respondents. We are unable to quantify the number of non-U.S. travel agents that will be affected by this rule;

Form(s): No particular format or form would be required;

Average burden hours per respondent: An average of about 35 seconds per collection across travel agents and air carriers.

The information collection and recordkeeping requirements contained in this final rule are approved under OMB Control Number 2105–0534, expiration 2/2001. Requests for a copy of this information collection should be directed to John Schmidt, DOT/OST (X–10), 400 Seventh St., SW., Washington, DC 20590: (202) 366–1053. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB number.

Federalism Implications

The regulation has no direct impact on the individual states, on the balance of power in their respective governments, or on the burden of responsibilities assigned them by the national government. In accordance with Executive Order 12612, preparation of a Federalism Assessment is, therefore, not required.

List of Subjects in 14 CFR Part 243

Air carriers, Aircraft, Air taxis, Air transportation, Charter flights, Foreign air carriers, Foreign relations, Reporting and recordkeeping requirements.

Accordingly, the Department is adding a new part 243, in chapter II of title 14 of the Code of Federal Regulations that reads as follows:

PART 243—PASSENGER MANIFEST INFORMATION

Secs.

Authority: 49 U.S.C. 40101, 40101nt., 40105, 40113, 40114, 41708, 41709, 41711, 41501, 41702, 41712, 44909, 46301, 46310, 46316; section 203 of Pub. L. 101–604, 104 Stat. 3066 (22 U.S.C. 5501–5513), Title VII of Pub. L. 104–264, 110 Stat. 3213 (22 U.S.C. 5501–5513) and Pub. L. 105–148, 111 Stat. 2681 (49 U.S.C. 41313.)

§ 243.1 Purpose.

The purpose of this part is to ensure that the U.S. government has prompt and adequate information in case of an aviation disaster on covered flight segments.

§ 243.3 Definitions.

Air piracy means any seizure of or exercise of control over an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent.

Aviation disaster means:

(1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury, and in which the death or injury was caused by a crash, fire, collision, sabotage or accident;

(2) A missing aircraft; or

(3) An act of air piracy.

Contact means a person not on the covered flight or an entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.

Covered airline means:

(1) certificated air carriers, and

(2) foreign air carriers, except those that hold Department of Transportation authority to conduct operations in foreign air transportation using only small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).

Covered flight segment means a passenger-carrying flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States.

Full name means the given name, middle initial or middle name, if any, and family name or surname as provided by the passenger.

Passenger means every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and a person occupying a jump seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part.

United States means the States comprising the United States of America, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

U.S. citizen means United States nationals as defined in 8 U.S.C. 1101(a)(22).

§ 243.5 Applicability.

This part applies to covered flight segments operated by covered airlines. (See § 243.3 of this part)

§ 243.7 Information collection requirements.

(a) For covered flight segments, each covered airline shall:

(1) Collect, or cause to be collected, the full name for each passenger who is a U.S. citizen. U.S.-citizen passengers for whom this information is not obtained shall not be boarded;

(2) Solicit, or cause to be solicited, a name and telephone number of a contact from each passenger who is a U.S. citizen; and

(3) Maintain a record of the information collected pursuant to this section.

(b) The covered airline operating the flight segment shall be responsible for ensuring compliance with paragraph (a) of this section.

§ 243.9 Procedures for collecting and maintaining the information.

Covered airlines may use any method or procedure to collect, store and transmit the required information, subject to the following conditions:

(a) Information on individual passengers shall be collected before each passenger boards the aircraft on a covered flight segment.

(b) The information shall be kept until all passengers have disembarked from the covered flight segment.

(c) The contact information collected pursuant to section 243.7(a)(2) of this part shall be kept confidential and released only to the U.S. Department of State, the National Transportation Safety Board (upon NTSB's request), and the U.S. Department of Transportation pursuant to oversight of this part. This paragraph does not preempt other governments or governmental agencies that have an independent, legal right to obtain this information.

(d) The contact information collected pursuant to section 243.7(a)(2) of this part shall only be used by covered airlines for notification of family members or listed contacts following an aviation disaster. The information shall not be used for commercial or marketing purposes.

§ 243.11 Transmission of information after an aviation disaster.

(a) Each covered airline shall inform the Managing Director of Overseas Citizen Services, Bureau of Consular Affairs, U.S. Department of State immediately upon learning of an aviation disaster involving a covered flight segment operated by that carrier. The Managing Director may be reached 24 hours a day through the Department of State Operations Center at (202) 647–1512.

(b) Each covered airline shall transmit a complete and accurate compilation of the information collected pursuant to § 243.7 of this part to the U.S. Department of State as quickly as possible, but not later than 3 hours, after the carrier learns of an aviation disaster involving a covered flight segment operated by that carrier.

(c) Upon request, a covered airline shall transmit a complete and accurate compilation of the information collected pursuant to § 243.7 of this part to the Director, Family Support Services, National Transportation Safety Board.

§ 243.13 Filing requirements.

(a) Each covered airline that operates one or more covered flight segments shall file with the U.S. Department of Transportation a brief statement summarizing how it will collect the passenger manifest information required by this part and transmit the information to the Department of State following an aviation disaster. This description shall include a contact at the covered airline, available at any time the covered airline is operating a covered flight segment, who can be consulted concerning information gathered pursuant to this part.

(b) Each covered airline shall file any contact change as well as a description

of any significant change in its means of collecting or transmitting manifest information on or before the date the change is made.

(c) All filings under this section should be submitted to OST Docket 98–3305, Dockets Facility (SVC–121.30), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The statement shall be filed by July 1, 1998, or, for covered airlines beginning operations after July 1, 1998, prior to the date a covered airline operates a covered flight segment.

§ 243.15 Conflict with foreign laws.

(a) If a covered airline obtains a waiver in the manner described in this section, it will not be required to solicit, collect or transmit information under this part in countries where such solicitation or collection would violate applicable foreign law, but only to the extent it is established by the carrier that such solicitation or collection would violate applicable foreign law.

(b) Covered airlines that claim that such solicitation, collection or transmission would violate applicable foreign law in certain foreign countries shall file a petition requesting a waiver in the Docket Facility, on or before the effective date of this rule, or on or before beginning service between that country and United States. Such petition shall include copies of the pertinent foreign law, as well as a certified translation, and shall include opinions of appropriate legal experts setting forth the basis for the conclusion that collection would violate such foreign law. Statements from foreign governments on the application of their laws will also be accepted.

(c) The U.S. Department of Transportation will notify the covered airline of the extent to which it has been satisfactorily established that compliance with all or part of the data collection requirements of this part would constitute a violation of foreign law.

(d) The U.S. Department of Transportation will maintain an up-to-date listing in OST Docket 98–3305 of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law.

§ 243.17 Enforcement.

The U.S. Department of Transportation may at any time require a covered airline to produce a passenger manifest including emergency contacts and phone numbers for a specified covered flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any covered airline further information about collection, storage and transmission procedures at any time. If the Department finds a covered airline's system to be deficient, it will require appropriate modifications, which must be implemented within the period specified by the Department. In addition, a covered airline not in compliance with this part may be subject to enforcement action by the Department.

Issued in Washington, DC, on February 10, 1998.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–3769 Filed 2–12–98; 10:46 am]

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federal register

Wednesday
February 18, 1998

Part III

Environmental Protection Agency

40 CFR Part 310

Reimbursement to Local Governments for Emergency Responses to Hazardous Substances Releases; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 310

[FR–5958–1]

RIN 2050–AE36

Reimbursement to Local Governments for Emergency Responses to Hazardous Substance Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: In response to President Clinton's regulatory reform initiative to reduce the burden on small entities, and eliminate, streamline, and rewrite regulations in plain English, the Environmental Protection Agency ("we" or EPA) is issuing this interim final rule (regulation). Through this regulation, EPA will streamline procedures used to reimburse local governments for emergency response costs. Local governments may be reimbursed for certain costs they incur in taking temporary emergency measures related to releases of hazardous substances, pollutants and contaminants. Through this regulation, we are: Easing program and reporting requirements to make reimbursement more accessible; Simplifying the application process; Streamlining EPA's evaluation process to speed up reviewing applications and paying eligible applicants; and, Reorganizing the entire part 310 to make it clearer and easier to use.

Reimbursement through this program will help lighten financial burdens placed on local governments that respond to hazardous releases or threats. Reimbursement will also help strengthen effective emergency response at the local level.

DATES: The effective date for this interim final rule is February 18, 1998. The Director of the **Federal Register** has approved the incorporation by reference of certain publications listed in this regulation as of February 18, 1998. Comments must be received on or before April 20, 1998.

ADDRESSES: Mail comments on specific aspects of this rulemaking and the information collection to Local Governments Reimbursement Program, Office of Emergency and Remedial Response (5204–G), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. You may review information collection materials from 8:30 a.m. to 5:30 p.m., Monday through Friday, by visiting Public Docket No. LGR–xx, located at 1235 Jefferson Davis Highway (ground floor), Arlington, Virginia. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: For information on specific aspects of this final rule for reimbursement to local governments, contact: Lisa Boynton, (703) 603–9052, Local Governments Reimbursement Project Officer, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: We have included a summary of the changes in today's Register. If you would like to see a detailed description of the changes and the rationale for them, contact Lisa Boynton at the address provided under "For Further Information." If you would like to skip the discussion of the changes and refer directly to the requirements for reimbursement, turn to § 310.1.

I. What Is the Statutory Authority for This Program?

Section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9623, authorizes EPA to reimburse local governments for expenses incurred in carrying out temporary emergency measures. These measures must be necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance, or pollutant or contaminant. Additionally, Section 123(d) of CERCLA, 42 U.S.C. 9623(d), directs the EPA Administrator to issue regulations to implement this program.

The authority to receive, evaluate, and make determinations regarding requests for reimbursement and to issue payments to qualified applicants is delegated to the Director of the State and Site Identification Center within the Office of Emergency and Remedial Response. This rulemaking discusses changes designed to streamline the Agency's current procedures for reimbursing local governments and clarifies how the reimbursement program works.

II. What Else Do I Need to Know About CERCLA?

CERCLA provides broad federal authority to respond directly to releases or threatened releases of hazardous substances and pollutants or contaminants that may endanger human health or welfare or the environment. CERCLA responses usually are joint efforts by federal, state and local agencies. As local public safety and health organizations are normally the first government representatives at the scene of a hazardous substance release, they play a critical role in providing temporary emergency measures.

III. Did Congress Specify What Was to be Reimbursed Under This Program?

Reimbursement under this program can provide some financial relief (limited to $25,000 per single response) to local governments most seriously affected by costs above and beyond those incurred routinely and traditionally. Congress made it clear in the Conference Report for the Superfund Amendments and Reauthorization Act of 1986 that "reimbursement under this provision shall not include reimbursement for normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting." With the specific requirement in section 123 that reimbursement not supplant local funds normally provided for response, Congress intends that local governments continue to bear some share of expenses for providing temporary emergency measures. However, Congress recognized that in the past, conducting such response activities has placed a significant financial burden on some local governments.

IV. Why Is EPA Amending This Regulation?

EPA believes that the regulations must be amended to: (1) make funds that are available under this program more accessible to local governments; (2) reduce the reporting burden on local governments that apply for reimbursement; and (3) speed up the review and payment of funds to eligible applicants. Therefore, EPA is revising this regulation to ease several program and reporting requirements and to simplify the procedures that local governments follow when applying for reimbursement.

V. Did EPA Get Input From Local Governments in Making Changes to This Regulation?

Yes. Through consultation, training and outreach, EPA obtained input from local government officials who have participated in the reimbursement process. This input has given EPA a greater understanding of the difficulties that local governments encounter when seeking reimbursement which may discourage overall participation in the reimbursement program.

VI. Why Is EPA Issuing an Interim Final Rule for These Changes?

Because this rule falls under the grants, benefits, and contracts exemption of Section 553 of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), the Agency is not required to solicit public comment before this rule becomes effective. In addition, the Agency may make the rule effective immediately upon publication.

The interim final approach is designed to allow EPA to implement these changes and to make the reimbursement money available quickly, while continuing to solicit public comments. Public comments are invited and should be sent to the address listed in the **ADDRESSES** section above. Comments received by April 20, 1998 will be considered in the final rule.

VII. What Is EPA Changing in This Regulation?

Based on the Agency's experience in overseeing the reimbursement program and its ongoing consultation with local governments, EPA is making the following substantive changes to the 1993 Final Rule:

(1) Section 310.5 has been modified to clarify the purpose of the regulations and the possibility that funds may not be available in a particular year;

(2) Section 310.10 has been modified to include several abbreviations;

(3) Section 310.11 has been modified to include definitions of the terms application, Federally-recognized Indian tribes, and potentially responsible parties;

(4) Section 310.25(a) has been added to specify remedies EPA may rely on if incorrect, false or misleading information is submitted with an application for reimbursement;

(5) Section 310.20 has been modified for clarification purposes;

(6) Section 310.30 has been changed to ease the program and reporting requirements for requesting reimbursement;

(7) Section 310.40 has been changed to clarify allowable costs and to streamline the cost documentation requirements;

(8) Section 310.50 has been changed to reduce the reporting requirements and to clarify the application signature authority;

(9) Section 310.60 has been changed to:

(a) streamline and clarify the application evaluation process (including the Agency's approach when there are competing demands on available reimbursement funds);

(b) extend the time periods for applicants to provide additional information to EPA to support their applications; and

(c) give applicants an opportunity to request exceptions to the requirements when there is good cause;

(10) Section 310.70 has been changed to reduce applicant record keeping requirements from ten years to three;

(11) Section 310.80 has been incorporated into Section 310.60 for organizational purposes; and

(12) Section 310.90 has been renumbered and modified to clarify the disputes resolution process.

VIII. What Else Is Different?

EPA reorganized the entire Part 310 to make it clearer and easier to use. The conversion table below will allow you to determine where the various sections of the old regulation are now located:

Existing section	Action	New section(s)
310.5	Revise	310.1, 310.5, 310.6.
310.10	Revise	310.4.
310.11	Revise	310.3.
310.12	Revise	310.24.
310.20	No change	310.5, 310.6.
310.30	Revise	310.11, 310.13, 310.14, 310.17.
310.40	Revise	310.11, 310.12, 310.16.
310.50	Revise	310.7, 310.8, 310.9, 310.10, 310.15, 310.17.
310.60	Revise	310.18, 310.19, 310.20, 310.23, 310.24.
310.70	Revise	310.22.
310.80	Revise	310.23.
310.90	Revise	310.65.

IX. Regulatory Analyses

A. Executive Order No. 12866

Under Executive Order No. 12866, EPA must judge whether a regulation is "major" and thus would be subject to the requirement of a Regulatory Impact Analysis. The Agency believes that the notice published today does not meet the definition of a significant regulation because it does not have an annual effect on the economy of $100 million or more; nor does the rule fall within the other definitional criteria for a significant regulatory action because the rule eases program and reporting requirements. Therefore, EPA has not prepared a Regulatory Impact Analysis under the Executive Order. OMB did not review this rule because it is not significant.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

This regulation involves reimbursement to local governments for the costs of responding to a hazardous substance release. This is a benefit authorized by CERCLA and does not adversely affect the private sector economy or small entities, which may include local governments. In fact, this rule provides a benefit to local governments in the form of reimbursement to offset financial hardship incurred from responses to hazardous substances, pollutants or contaminants. The revisions to this regulation are intended to minimize the burden imposed on local governments in seeking this benefit. EPA, therefore, certifies that this regulation will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the original information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned control number 2050–0077.

The revised information collection requirements in this rule was submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.1425.04) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information

requirements are not effective until OMB approves them.

The Agency requires applicants for reimbursement to submit an application package that demonstrates consistency with program eligibility criteria and certifies compliance with the reimbursement requirements. This information collection is necessary to ensure proper use of the Superfund and appropriate distribution of reimbursement awards among applicants. EPA will receive and closely evaluate reimbursement requests in accordance with the promulgated final rule to ensure that the most deserving cases receive awards. We estimate the public reporting burden for this collection of information to average 9 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We estimate we will receive 36 responses per year for an annual burden estimate of 324 hours per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by March 20, 1998. Include the ICR number in any correspondence.

D. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptrolier General of the General Accounting Office prior to publication of the rule in today's **Federal Register** . This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Reform Act

"Today's rule is not subject to the requirements of sections 202, 203 and 205 of the UMRA. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. On the contrary, the Agency expects that today's rule will ease program and reporting requirements for local governments so that reimbursement is more accessible.

In addition, the Agency does not believe that today's rule is subject to section 203 of the UMRA to the extent that today's rule simplifies the application process for local governments and does not impose additional regulatory requirements. Indeed, today's rule is being promulgated in response to a long standing request by local governments after substantial input from such local governments into the rule's development."

List of Subjects in 40 CFR Part 310

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Intergovernmental relations, Local governments, Reporting and recordkeeping requirements, Superfund.

Dated: January 27, 1998.

Carol Browner,

Administrator.

For the reasons set out in the preamble, EPA amends title 40, chapter I of the Code of Federal Regulations by revising part 310 to read as follows:

PART 310—REIMBURSEMENT TO LOCAL GOVERNMENTS FOR EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE RELEASES

Subpart A—General Information

Sec.

Subpart B—Provisions

Who Can Be Reimbursed

What Can Be Reimbursed

How to Get Reimbursed

Other Things You Need to Know

Appendices to Part 310

Authority: 42 U.S.C. 9611(c)(11), 9623.

Subpart A—General Information

§ 310.1 What is the purpose of this part?

This part sets up procedures for EPA to reimburse local governments for certain emergency response costs. Local

governments may receive up to $25,000 to help lighten financial burdens related to emergency response to hazardous substance releases. This reimbursement does NOT replace funding that local governments normally provide for emergency response.

§ 310.2 What is the statutory authority for this part?

This part is authorized under section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510, 42 U.S.C. 9601–9675), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499, 42 U.S.C. 9601).

§ 310.3 What terms have specific definitions?

For purposes of this part except when otherwise specified:

(a) *Application* means Form 9310–1, shown in Appendix III of this part, including all documentation and additional information you submit to support a request for reimbursement.

(b) *Date of completion* means the date when you have completed all field work and you have received all deliverables (such as lab results, technical expert reports, or invoices) due under a contract or other agreement.

(c) *Emergency Planning and Community Right-to-Know Act of 1986* means Title III—Emergency Planning and Community Right-to-Know Act of the Superfund Amendments and Reauthorization Act of 1986 (EPCRA) (Pub. L. 99–499, 42 U.S.C. 11000–11050).

(d) *Federally-recognized Indian Tribe,* as defined by section 101(36) of CERCLA, means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) *General purpose unit of local government* means the governing body of a county, parish, municipality, city, town, township, Federally-recognized Indian tribe or similar governing body. This term does not include special purpose districts.

(f) *Hazardous substance.* (1) *Hazardous substance,* as defined by section 101(14) of CERCLA, means:

(i) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (Pub. L. 101–380, 33 U.S.C. 1251 *et seq.*);

(ii) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;

(iii) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (Pub. L. 89–272, 42 U.S.C. 3259 *et seq.*) (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);

(iv) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act (Pub. L. 101–380, 33 U.S.C. 1251 *et seq.*);

(v) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7401–7642); and

(vi) Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (Pub. L. 94–469, 15 U.S.C. 2601–2629).

(2) The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under paragraphs (f)(1)(i) through (f)(1)(vi) of this section, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(g) *Local emergency response plan* means the emergency plan prepared by the Local Emergency Planning Committee (LEPC) as required by section 303 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or SARA Title III).

(h) *National Contingency Plan* means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

(i) *National Response Center* means the national communications center located in Washington, DC, that receives and relays notice of oil discharge or releases of hazardous substances to appropriate Federal officials.

(j) *Pollutant or contaminant,* as defined by section 104(a)(2) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(k) *Potentially responsible party* (PRP) means any person who may be liable under section 107 of CERCLA for a release or threatened release of hazardous substances or pollutants or contaminants.

(l) *Release,* as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment, but excludes: any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, by-product or special nuclear materials from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purpose of section 104 of CERCLA or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under section 122(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604, 42 U.S.C. 2014 et seq.); and the normal application of fertilizer. For purposes of this part, release also means the threat of release.

(m) *Single response* means all of the concerted activities conducted in response to a single episode, incident, or threat causing or contributing to a release or threatened release of hazardous substances, or pollutants or contaminants.

§ 310.4 What abbreviations should I know?

The following abbreviations appear in this part:

CERCLA—The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96–510, 42 U.S.C. 9601–9675), as amended by the Superfund Amendments and Reauthorization Act of 1986, also known as Superfund.

EPA or the Agency—Environmental Protection Agency.
EPCRA—Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99–499, 42 U.S.C. 11000–11050).
LEPC—Local Emergency Planning Committee.
NCP—National Oil and Hazardous Substances Pollution Contingency Plan also known as the National Contingency Plan (40 CFR part 300).
NRC—National Response Center.
OMB—Office of Management and Budget.
PRP—Potentially Responsible Party.
SARA—The Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, 42 U.S.C. 9601).
SERC—State Emergency Response Commission.
USCG—U.S. Coast Guard.

Subpart B—Provisions

Who Can Be Reimbursed?

§ 310.5 Am I eligible for reimbursement?

If you are the governing body of a county, parish, municipality, city, town, township, federally-recognized Indian tribe or general purpose unit of local government, you are eligible for reimbursement. This does not include special purpose districts.

§ 310.6 Are states eligible?

States are NOT eligible for reimbursement under this part, and states may NOT request reimbursement on behalf of their local governments.

§ 310.7 Can more than one local agency or government be reimbursed for response to the same incident?

No. EPA will accept only one reimbursement request for a single response. A single response includes all of the temporary emergency measures that ALL local governments or agencies conduct in response to a single hazardous substance release. If more than one local government or agency responds, you must decide among yourselves who will request reimbursement on behalf of all.

What Can Be Reimbursed?

§ 310.8 Can EPA reimburse the entire cost of my response?

Possibly not. EPA can only reimburse you for temporary emergency measures you take in response to releases of hazardous substances, pollutants, or contaminants. The statute allows reimbursement for only certain costs, and by statute, the total amount of the reimbursement may not exceed $25,000 for a single response.

§ 310.9 If more than one local agency or government is involved, can each receive up to $25,000?

No. The maximum amount EPA can reimburse is $25,000 for a single response, which includes all activities by ALL local responders. If the costs incurred by multiple local governments or agencies exceed $25,000, you must decide among yourselves how the total reimbursement will be divided.

§ 310.10 What are temporary emergency measures?

(a) Temporary emergency measures are actions taken to control or eliminate immediate threats to human health and the environment.

(b) Examples of temporary emergency measures are:

(1) Site security;

(2) Controlling the source of contamination;

(3) Containing the release to prevent spreading;

(4) Neutralizing or treating pollutants released; and

(5) Controlling contaminated runoff.

§ 310.11 What costs are allowable?

(a) Reimbursement under this part does NOT supplant funds you normally provide for emergency response. Allowable costs are only those necessary for you to respond effectively to a specific incident that is beyond what you might normally respond to.

(b) Examples of allowable costs are:

(1) Disposable materials and supplies you acquired and used to respond to the specific incident;

(2) Payment of unbudgeted wages for employees responding to the specific incident (for example, overtime pay for response personnel);

(3) Rental or leasing of equipment you used to respond to the specific incident (for example, protective equipment or clothing, scientific and technical equipment) (Note: rental costs are only allowable for the duration of your response; once you complete the response to the specific incident, further rental costs are NOT allowable);

(4) Replacement costs for equipment you own that is contaminated or damaged beyond reuse or repair, if you can demonstrate that the equipment is a total loss and that the loss occurred during the response (for example, self-contained breathing apparatus irretrievably contaminated during the response);

(5) Decontamination of equipment contaminated during the response;

(6) Special technical services specifically required for the response (for example, costs associated with the time and efforts of technical experts/specialists that are not on your staff);

(7) Other special services specifically required for the response (for example, utilities);

(8) Laboratory costs of analyzing samples that you took during the response;

(9) Evacuation costs associated with the services, supplies, and equipment that you procured for a specific evacuation; and

(10) Containerization or packaging cost and transportation and disposal of hazardous wastes.

(c) To be allowable, costs must:

(1) NOT be higher than what a careful person would spend for similar products or services in your area; and

(2) Be consistent with CERCLA and the federal cost principles outlined in OMB Circular A–87, "Cost Principles for State and Local Governments." (Copies of the circular are available from the Office of Administration, Publications Office, New Executive Office Building, 725 17th Street, NW., Room 2200, Washington, DC 20503.)

(d) EPA will make final determinations on whether your costs are reasonable.

§ 310.12 What costs are NOT allowable?

(a) Costs that are NOT allowable are expenditures you incur in providing what are traditionally local services and responsibilities. Examples include:

(1) Routine firefighting;

(2) Preparing contingency plans;

(3) Training; and

(4) Response drills and exercises.

(b) Costs that are NOT allowable also include items such as supplies, equipment, and services that you routinely purchase to maintain your ability to respond effectively to hazardous releases when they occur. Examples of other costs that are NOT allowable are:

(1) Purchase or routine maintenance of durable equipment expected to last one year or more, except when contaminated or damaged as described in § 310.11(b)(4) and (b)(5);

(2) Materials and supplies you did NOT purchase specifically for the response;

(3) Rental costs for equipment that you own or that another unit of local government owns;

(4) Employee fringe benefits;

(5) Administrative costs for filing reimbursement applications;

(6) Employee out-of-pocket expenses normally provided for in your operating budget (for example, meals or fuel);

(7) Legal expenses you may incur due to response activities, including efforts to recover costs from PRPs; and

(8) Medical expenses you incur due to response activities.

How to get Reimbursed

§ 310.13 Do I need to notify anyone while the response is underway?

No. You should notify EPA, the National Response Center, or use another established response communication channel, but it is not a requirement for reimbursement. Telephone numbers for EPA regional offices and the NRC are in Appendix II to this part.

§ 310.14 Must I try to recover my costs from those potentially responsible for the emergency?

Yes. Before applying for reimbursement from EPA, you must try to recover your costs from all known potentially responsible parties (PRPs). After you ask them for payment, you should give PRPs 60 days either to pay you, express their intent to pay you, or indicate willingness to negotiate. You must also try to get reimbursed by other sources (for example, your insurance company or your state). If you are not successful, you must certify on your reimbursement application that you made a good-faith, reasonable effort to recover your costs from other sources before applying to EPA. If you recover any portion of the costs from these sources after you receive reimbursement from us, you must return the recovered amount to EPA.

§ 310.15 How do I apply for reimbursement?

(a) You must apply for reimbursement on EPA Form 9310–1, shown in Appendix III to this part.

(b) You must submit your request within one year of the date you complete the response for which you request reimbursement. If you submit your application late, you must include an explanation for the delay. We will consider late applications on a case-by-case basis.

(c) Your application must be signed by the highest ranking official of your local government (for example, mayor or county executive), or you must include a letter of delegation authorizing a delegate to act on his or her behalf.

(d) Mail your completed application and supporting data to the LGR Project Officer, (5204–G), Office of Emergency and Remedial Response, Environmental Protection Agency, 401 M Street SW, Washington DC 20460.

§ 310.16 What kind of cost documentation is necessary?

Cost documentation must be adequate for an audit. At a minimum, you must:

(a) Include a description of the temporary emergency measures for which you request reimbursement;

(b) Specify the local agency that incurred the cost, (such as, the Town Fire Department, the County Health Department, or the City Department of Public Works);

(c) Include invoices, sales receipts, rental or leasing agreements, or other proof of costs you incurred; and

(d) Certify that all costs are accurate and that you incurred them specifically for the response for which you are requesting reimbursement.

§ 310.17 Are there any other requirements?

(a) You must certify that reimbursement under this regulation does not supplant local funds that you normally provide for emergency response. This means that the reimbursement you request is for costs you would not normally incur; rather, they are for significant, unanticipated costs related to a specific incident beyond what you normally respond to.

(b) You must also certify that your response actions are not in conflict with CERCLA, the National Contingency Plan (NCP), and the local emergency response plan prepared by your Local Emergency Planning Committee, if there is one. If you need help with this requirement, contact the LGR Help line (800–431–9209) or your EPA regional office.

(c) You, as a local government, should be included in the local emergency response plan completed by your LEPC, as section 303(a) of EPCRA requires. This does not apply if your State Emergency Response Commission (SERC) has not established an LEPC responsible for the emergency planning district(s) that encompasses your geographic boundaries.

§ 310.18 How will EPA evaluate my application?

(a) When we receive your application, we will make sure it meets all requirements of this section. If your request is incomplete or has significant defects, we will contact you for additional information. You should provide any additional information within 90 days. If you don't provide requested information within a year, we may deny your application.

(b) If your application meets all requirements, we will consider whether the costs claimed are allowable and reasonable. We will then send you written notification of our decision to award or deny reimbursement in full or in part.

§ 310.19 Under what conditions would EPA deny my request?

We may deny your reimbursement request in full or in part if:

(a) Your records, documents, or other evidence are not maintained according to generally accepted accounting principles and practices consistently applied;

(b) The costs you claim are NOT reasonable or allowable, that is, they are higher than what a careful person would spend for similar products or services in your area; or

(c) You do not supply additional information within one year from when we request it; and

(d) Reimbursement would be inconsistent with CERCLA section 123, or the regulations in this part.

§ 310.20 What are my options if EPA denies my request?

If we deny your request because you failed to meet a requirement in this regulation, you may request, in writing, that EPA grant an exception. You may also file a request for an exception with your initial application. In your request for an exception, you must state the requirement you cannot comply with and the reasons why EPA should grant an exception. We will grant exceptions only if you establish good cause for the exception and if granting the exception would be consistent with section 123 of CERCLA.

§ 310.21 How does EPA resolve disputes?

(a) The EPA reimbursement official's decision is final EPA action unless you file a request for review by registered or certified mail within 60 calendar days of the date you receive our decision. Send your request for review to the address given in § 310.15(d).

(b) You must file your request for review with the disputes decision official identified in the final written decision.

(c) Your request for review must include:

(1) A statement of the amount you dispute;

(2) A description of the issues involved;

(3) A statement of your objection to the final decision; and

(4) Any additional information relevant to your objection to EPA's decision.

(d) After filing for review:

(1) You may request an informal conference with the EPA disputes decision official;

(2) You may be represented by counsel and may submit documentary evidence and briefs to be included in a written record; and

(3) You will receive a written decision by the disputes decision official within 45 days after we receive your final submission of information unless the

official extends this period for good cause.

Other Things You Need To Know

§ 310.22 What records must I keep?

(a) If you receive reimbursement under the regulations in this part, for three years you must keep all cost documentation and any other records related to your application. You must also provide EPA access to those records if we need them.

(b) After three years from the date of your reimbursement, if we have NOT begun a cost recovery action against a potentially responsible party, you may dispose of the records. You must notify EPA of your intent to dispose of the records 60 days before you do so, and allow us to take possession of these records beforehand.

§ 310.23 How will EPA rank approved requests?

(a) If necessary, EPA will rank approved reimbursement requests according to the financial burden the response costs impose on the local governments. We will estimate your financial burden by calculating the ratio of your allowable response costs to your annual per capita income adjusted for population. We will make adjustments for population so that a large city with a low per capita income will not necessarily receive a higher rank than a small town with a slightly higher per capita income. We will also consider other relevant financial information you may supply.

(b) We will use the per capita income and population statistics published by the U.S. Department of Commerce, Bureau of the Census, in Current Population Reports, Local Population Estimates, Series P–26, "1988 Population and 1987 Per Capita Income Estimates for Counties and Incorporated Places," Vols. 88–S–SC, 88–ENC–SC, 88–NE–SC, 88–W–SC, 88–WNC–SC, March 1990. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies are available from the Bureau of the Census, Office of Public Affairs, Department of Commerce, Constitution Avenue, NE., Washington, DC 20230 (1–202–763–4040). You may review a copy at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or at the Office of the Federal Register, 800 N. Capitol Street, NW., 7th Floor, Suite 700, Washington, DC.

(c) Larger ratios receive a higher rank. We will reimburse requests with the highest ranks first. Once we rank your request, we will either:

(1) Reimburse the request; or

(2) Hold the request for reconsideration once additional funding is available.

(d) The EPA reimbursement official will give you a written decision on whether the request will be reimbursed or held for future reconsideration.

§ 310.24 What happens if I provide incorrect or false information?

(a) You must not knowingly or recklessly make any statement or provide any information in your reimbursement application that is false, misleading, misrepresented, or misstated. If you do provide incorrect or false information, and EPA relies on that information in making a reimbursement decision, we may deny your application and withdraw or recover the full amount of your award. In such a case, we would give you written notice of our intentions.

(b) If you, as a reimbursement applicant or someone providing information to the applicant, knowingly give any false statement or claim as part of any application for reimbursement under section 123 of CERCLA, you may be subject to criminal, civil, or administrative liability under the False Statement Act (Pub. L. 97–398, 18 U.S.C. 1001) the False Claims Act (Pub. L. 99–562, 31 U.S.C. 3729), and the Program Fraud and Civil Remedies Act (Pub. L. 99–509, 31 U.S.C. 3801).

Appendices to Part 310

Appendix I to Part 310—Frequently Asked Questions

(1) Can I be reimbursed for hazmat team salaries?

Generally, no; only unbudgeted overtime and/or extra time can be considered for reimbursement. (§ 310.11(b)(2))

(2) Will I be reimbursed for the cost of a destroyed fire truck?

Up to $25,000 of the cost of a lost fire truck can be considered an allowable cost and therefore, reimbursable. However, if the local government has insurance covering such losses, then we would not reimburse you for a destroyed fire truck. (§§ 310.11(b)(4) and 310.14)

(3) If I have a release in an elementary school, can the school district apply for reimbursement?

No, for purposes of the regulation in this part, a school district is considered a special purpose district of local government and therefore not eligible for reimbursement. The county or city where the incident happened may apply for reimbursement on behalf of the school district. (§§ 310.03(e) and 310.05)

(4) Why are incidents that involve a release of petroleum not eligible?

Because this program is authorized under CERCLA, and petroleum is excluded under CERCLA, we can't reimburse you for response to releases involving only petroleum. If, however, some hazardous substances are also involved, your incident may be reimbursed. (§ 310.03(f))

(5) Can I be reimbursed for laying water lines to a community whose drinking water is affected by a release?

No, laying water lines doesn't fall within the definition of temporary emergency measures. Providing bottled water on a temporary emergency basis is reimbursable. (§ 310.10(a))

(6) What if EPA gets too many applications in one year?

In the beginning of the program, there was a statutory limitation on the amount of the Superfund that could be used for reimbursements. That limitation was approximately $1,000,000. The limitation has expired, and EPA has only reimbursed slightly over $1,000,000 in ten years. There has not been a year where we received too many applications.

(7) If I incur significant costs trying to recover from the PRP, can I be reimbursed by EPA for those costs?

No, legal expenses are not allowable costs. (§ 310.12(b)(7)).

(8) Can I add attachments to the Application Form?

Yes, attach any additional information that you feel is necessary. EPA will review all the information that you send.

(9) Do I have to notify EPA before I send an application in, or before I take a response action?

No, you aren't required to notify EPA in either case. We do suggest that you call the National Response Center to report the hazardous substance release, or if you use other response reporting channels, use them. If you need some help before submitting your application, we do suggest you call the LGR Help line (800–431–9209).

(10) If two incidents happen in my town, within hours of each other, do I have to submit two separate applications?

You aren't required to submit separate applications in this case, but if your total response costs are more than $25,000, it may be in your interest to submit separate applications for each single response. (§ 310.9)

Appendix—II to Part 310—EPA Regions and NRC Telephone Lines

National Response Center	(800) 424–8802
EPA Regional Phone Numbers:	
Region I (ME, NH, VT, MA, RI, CT)	(617) 223–7265
Region II (NJ, NY, PR, VI)	(908) 548–8730
Region III (PA, DE, MD, DC, VA, WV)	(215) 597–9898
Region IV (NC, SC, TN, MS, AL, GA, FL, KY)	(404) 347–4062
Region V (OH, IN, IL, WI, MN, MI)	(312) 353–2318
Region VI (AR, LA, TX, OK, NM)	(215) 655–2222
Region VII (IA, MO, KS, NE)	(913) 236–3778
Region VIII (CO, UT, WY, MT, ND, SD)	(303) 293–1788

Region IX (AZ, CA, NV, AS, HI, GU, TT)	(415) 744–2000
Region X (ID, OR, WA, AK)	(206) 553–1263

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Appendix—III to Part 310—Form: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Release Under CERCLA Sec. 123

EPA Form 9310-1, Application for Reimbursement to Local Governments

Please type or print all Information

EPA	United States Environmental Protection Agency Washington, D.C. 20460 **Application for Reimbursement to Local Government for Emergency Response to Hazardous Substance Releases Under CERELA Sec. 123**	Form Approved OMB No 2050-0077 Approved expires

1. Local government Identification

a. Name of Local government	b. Contact Name and Telephone Number
c. Officiel Address	d. Date of Applicetion

2. Release Description

a. Date and Time of Occurrence or Discovery	b. Locetion

c. Source or Ceuse of Release

d. Hazerdous Substances Released and Quantity (Petroleum, crude oil, or any unspecified frections thereof are excluded)

e. Threats to human health and Environmentel

f. Attach any additional materiel pertinent to the release

3. Response Description

a. Date and Time of HazMat Response Initiation	b. Wes anyone notified of the response? ☐ EPA ☐ NCR ☐ OTHER	
c. EPA Region	d. Date and Time Contact Made	e. Date of Response completion (Local government has received ell date, reports, end charges for response)
f. Jurisdiction in Which Response Occurred	g. Is your local government e participant in the Title III Emergency Response Plan? (Check one) ☐ Yes ☐ No	

h. Responding Agencies and Jurisdictions

EPA Form 9310-1

i. Summary of Response Actions

j. Temporary Measures for Which Reimbursement is Sought

4. Cost Information

a. Total Response Cost	b. Total Reimbursement Requested
$	$

c. Complete and Attach Table 1, "Detailed Cost Breakdown"

d. Complete and Attach Table 2, "Cost Recovery Summary"

e. Attach Other Pertinent Financial Information

5. Certification and Authorization (To be completed by highest ranking official of applying local government.)

I hereby certify that:

1) All costs are accurate and were incurred specifically for the response for which reimbursement is being requested.
2) Reimbursement for costs incurred for response activities does not supplant local funds normally provided for response
3) Cost recovery was pursued as presented in the attached Table 2: and
4) Reimbursement funds for which costs are later recovered will be returned to EPA

I further certify that I am authorized to request this reimbursement and to receive funds from the Federal Government.

Printed or Typed Name of Highest Ranking Local Government Official or Authorized Representative	Signature of Highest Ranking Local Government Official or Authorized Representative
Title	Date

Burden Statement:

The Agency requires applicants for reimbursement to submit an application package that demonstrates consistency with program eligibility criteria and certifies compliance with the reimbursement requirements. This information collection is necessary to ensure proper use of the Superfund and appropriate distribution of reimbursement awards among applicants. EPA will receive and closely evaluate reimbursement requests in accordance with 40 CFR 310 to ensure that the most deserving cases receive awards.

The public reporting and recordkeeping burden for this collection of information is estimated to average 9 hours per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., S.W., Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EPA Form 9310-1

* Form 9310-1 is not considered complete unless it is signed by the highest ranking official of the local government requesting reimbursement, or signed by the authorized representative indicated in an enclosed letter delegating signature authority for this application process.

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ATTACHMENT 1 TO FORM 9310–1 COST ELEMENT CODES AND COMMENTS

[Cost Element Codes for use in Table 1]

Code	Cost category	Cost element	Comments
PC	Personnel Compensation.	PC1: Overtime—for services excess of the local agency's standard work day or work week.	Compensation of overtime costs incurred specifically for a response will be considered only if overtime is not otherwise provided for in the applicant's operating budget.
		PC2: Experts and consultants—for services rendered on a per diem or fee basis or for services of an intermittent, advisory nature.	
TR	Transportation	TR1: Passenger vehicle rental—for transportation of persons during evacuation.	Passenger and nonpassenger vehicle rental costs will be considered for private vehicles not owned or operated by the applicant or other unit of local government.
		TR2: Nonpassenger vehicle rental—for transportation of equipment or supplies.	
RC	Utilities	RC1: Utilities—for power, water, electricity and other services exclusive of transportation and communications.	Utility costs will be considered for private utilities not owned or operated by the applicant or other unit of local government.
OS	Other Contractual Services.	OS1: Contracts for technical or scientific analysis—for tasks requiring specialized hazardous sustance response expertise.	May include such items as specialized laboratory analyses and sampling.
		OS2: Decontamination services—for specialized cleaning or decontamination procedures and supplies to restore clothing, equipment or other serviceable gear to normal functioning.	
SM	Supplies and Materials.	SM1: Commodities—for protective gear and clothing, cleanup tools and supplies and similar materials purchased specifically for, and expended during, the response.	May include such items as chemical foam to suppress a fire; food purchased specifically for an evacuation; air purifying canisters for breathing apparatus; disposable, protective suits and gloves; and sampling supplies.
EQ	Equipment	EQ1: Replacement—for durable equipment declared a total loss as a result of contamination during the response.	Equipment replacement costs will be considered if applicant can demonstrate total loss and proper disposal of contaminated equipment.
		EQ2: Rents—for use of equipment owned by others	Equipment rental costs will be considered for privately owned equipment not owned or operated by the applicant or other unit of local government.

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Table 1
Detailed Cost Breakdown

Temporary Emergency Measure	Cost Incurred By	Cost Element (See Attachment 1)	Amount

EPA Form 9310-1

Attach supporting documentation, e.g., invoices, sales receipts, rental agreements

Table 2
Cost Recovery Summary

Note: This "Cost Recovery Summary" must accompany each request for reimbursement.
You Must Fill Out Each Section Of This Form.

Name and Title of Source Contacted	Date(s) Contacted	Brief Summary of Response	Details Attached
Attempts to Recover Costs from Potentially Responsible Parties (Including PRP Insurance)			
Attempts to Recover Costs from State Funding Sources			
Attempts to Recover Costs from Local Government Insurance			

EPA Form 9310-1

[FR Doc. 98-2716 Filed 2-17-98; 8:45 am]
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federal register

Wednesday
February 18, 1998

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1 et al.

Improved Standards for Determining Rejected Takeoff and Landing Performance; Final Rule Proposed Revisions to Advisory Circular—Flight Test Guide for Certification of Transport Category Airplanes; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, 91, 121, and 135

[Docket No. 25471; Amendment Nos. 1–48, 25–92, 91–256, 121–268, 135–71]

RIN 2120–AB17

Improved Standards for Determining Rejected Takeoff and Landing Performance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the airworthiness standards for transport category airplanes to: revise the method for taking into account the time needed for the pilot to accomplish the procedures for a rejected takeoff; require that takeoff performance be determined for wet runways; and require that rejected takeoff and landing stopping distances be based on worn brakes. The FAA is taking this action to improve the airworthiness standards, reduce the impact of the standards on the competitiveness of new versus derivative airplanes without adversely affecting safety, and harmonize with revised standards of the European Joint Aviation Requirements-25 (JAR–25). These standards, which affect manufacturers and operators of transport category airplanes, are not being applied retroactively to either airplanes currently in use or airplanes of existing approved designs that will be manufactured in the future.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Donald K. Stimson, FAA, Airplane & Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1129, facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION: An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 202–512–1661) or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–FAA–ARAC).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or document number of this final rule.

Persons interested in being placed on the mailing list for future notices of proposed rulemaking and final rulemaking and final rules should request from the above office of copy of Advisory Circular No. 11–2A, Notices of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page (http://www.faa.gov.avr/arm/sbrefa.htm), by contacting a local FAA official, or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

These amendments are based on notice of proposed rulemaking (NPRM) 93–8, which was published in the **Federal Register** on July 8, 1993 (58 FR 36738). In that notice, the FAA proposed amendments to 14 CFR parts 1, 25, 91, 121, and 135 to improve the standards for determining the accelerate-stop and landing distances for transport category airplanes. The FAA received over 100 comments from 22 different commenters on the proposals contained in NPRM 93–8. As a result of these comments, the FAA has modified some of the original proposals.

As explained in NPRM 93–8, the operator of a turbine-powered category airplane must determine that the runway being used, plus any available stopway or clearway, is long enough to either safely continue or reject the takeoff from a defined go/no-go point. The go/no-go point occurs while the airplane is accelerating down the runway for takeoff when the airplane reaches a speed known as V_1.

The assure that the takeoff can be safely continued from the go/no-go point, the length of the runway plus any clearway must be long enough for the airplane to reach a height of 35 feet by the end of that distance, even if a total loss of power from the most critical engine occurs just before reaching the V_1 speed. This distance is commonly referred to as the accelerate-go distance.

In case the pilot finds it necessary to reject the takeoff, the runway plus any stopway must be long enough for the airplane to be accelerated to the V_1 speed and then brought to a complete stop. This distance is known as the accelerate-stop distance.

The choice of V_1 speed affects the accelerate-go and accelerate-stop distances. A lower V_1 speed, corresponding to an engine failure early in the takeoff roll, increases the accelerate-go distance and decreases the accelerate-stop distance. Conversely, a higher V_1 speed decreases the accelerate-go distance and increases the accelerate-stop distance. When V_1 is selected such that the accelerate-stop distance is equal to the accelerate-go distance, this distance is known as the balanced field length. In general, the balanced field length represents the minimum runway length that can be used for takeoff.

The V_1 speed selected for any takeoff depends on several variables, including the airplane's takeoff weight and configuration (flap setting), the runway length, the air temperature, and the runway surface elevation (airport altitude). The takeoff performance and limitation charts in the Airplane Flight Manual (AFM) are developed in accordance with the FAA airworthiness standards in subpart B of the Federal Aviation Regulations (FAR), part 25—"Airworthiness Standards: Transport Category Airplanes," using data gathered during comprehensive flight tests completed as a part of the FAA's approval of the airplane's type design.

Part 25, subpart B, also prescribes the FAA airworthiness standards for determining the length of runway required for safe landing under various airplane and atmospheric conditions. Landing performance charts must be published in the AFM, and are used by

the operator to determine whether a particular runway is long enough for landing.

The FAA, through the general operating rules contained in parts 91, 121, and 135, requires operators to use the appropriate performance and limitation charts published in the AFM to plan their takeoffs and landings.

In NPRM 93–8, the FAA proposed amendments to several sections of parts 25, 91, 121, and 135 concerning the methods for determining and applying the takeoff and landing performance standards for turbine-powered transport category airplanes. Also, the FAA proposed to amend part 1, which contains terms and abbreviations used in the FAR, to add a definition of the term "takeoff decision speed" and an explanation for the abbreviation "V_{EF}."

The proposed amendments retained the fundamental principle that the pilot should be able to either safety complete a takeoff or bring the airplane to a complete stop, even if power is lost from the most critical engine just before the airplane reaches a defined go/no-go point. This principle has formed the basis of the takeoff performance standards required for the type certification of turbine-powered transport category airplanes since Special Civil Air Regulation No. SR–422, effective August 27, 1957. The amendments proposed in NPRM 93–8 were intended to provide a more rational method to take into account the various operational aspects affecting the takeoff distance. By the phrase "more rational method," the FAA means a method that explicitly addresses the specific elements affecting the takeoff distance, rather than providing for critical conditions by applying more restrictive standards to all takeoffs.

If the takeoff performance standards are made more restrictive, longer distances are needed for takeoff. However, the operator cannot change the length of the runway (although a longer runway, if available, could be used). Instead, the operator must usually reduce the airplane's takeoff weight in order to shorten the distance needed for takeoff. The more restrictive the takeoff performance standards are, the more takeoff weight may have to be reduced to be able to operate from a particular runway.

To reduce the airplane's takeoff weight, the operator must either reduce the amount of fuel to be carried, or reduce the number of passengers or amount of cargo to be transported. Since the amount of fuel to be carried is dictated primarily by the route being flown, the operator's only option may be to reduce the number of passengers or amount of cargo to be transported. When the number of passengers or amount of cargo must be reduced for a given flight, the airplane operator can suffer a loss of revenue.

Amendment 25–42, which became effective on March 1, 1978, revised the takeoff performance standards to make them more restrictive. Prior to Amendment 25–42, variations in pilot reaction time were provided for in the AFM accelerate-stop distances by adding one second to the flight test demonstrated time interval between each of the pilot actions necessary to stop the airplane. Typically, there are three such actions. The pilot reduces the power, applies the brakes, and raises the spoilers. Adding one second between each of these actions results in a total of two seconds being added to the time taken by the flight test pilots to accomplish the procedures for stopping the airplane. In calculating the resulting accelerate-stop distances for the AFM, no credit was allowed for any deceleration during this two-second time period.

The revised standards of Amendment 25–42 required the accelerate-stop distance to include two seconds of continued acceleration beyond V_1 speed before the pilot takes any action to stop the airplane. This revision resulted in longer accelerate-stop distances for airplanes whose application for a type certificate was made after Amendment 25–42 became effective. Consequently, turbine-powered transport category airplanes that are currently being manufactured under a type certificate that was applied for prior to March 1, 1978, have a significant operational economic advantage over airplanes whose type certificate was applied for after that date. This competitive disparity resulting from applying different performance standards created a compelling need to amend the takeoff performance standards of part 25 without adversely affecting safety. In addition, operational experience indicated a need to specifically address the detrimental effects of worn brakes and wet runways on airplane stopping performance.

Amendment 25–42 was a broad brush approach, applying to all takeoffs, to increase the required accelerate-stop distance. This broad brush approach did not explicitly account for many of the important operational factors that may affect takeoff performance. For example, the standards did not distinguish between dry and wet runways, nor were the effects of worn brakes taken into account. Wet runways and worn brakes typically result in longer accelerate-stop distances than with new brakes on a dry runway. By requiring wet runway performance to be determined and included in the AFM, and by requiring the use of worn brakes to determine the airplane's stopping capability, the proposed amendments would provide additional accelerate-stop distance for the conditions in which it is specifically needed in operational service.

Because wet runways and worn brakes would be specifically addressed in the revised standards proposed in NPRM 93–8, the FAA also proposed to replace the two seconds of continued acceleration beyond V_1 with a distance equal to two seconds at the V_1 speed. The distance equal to two seconds at constant V_1, while shorter than that resulting from the continued acceleration beyond V_1 required by Amendment 25–42, is a distance margin that must be added to the accelerate-stop distance demonstrated during flight testing for type certification. The FAA intends for this distance margin to take into account the variability in the time it takes for pilots, in actual operations, to accomplish the procedures for stopping the airplane.

Amendment 25–42 required the two seconds of time delay to be applied prior to the pilot taking any action to stop the airplane. This more restrictive approach assumes that the airplane reaches a higher speed during the accelerate-stop maneuver and, therefore, results in a longer distance than the distance equal to two seconds at constant V_1 speed. Inserting the time delay before the pilot takes any action to stop the airplane, however, does not accurately reflect the procedures that pilots are trained to use in operational service. V_1 is intended to be the speed by which the pilot has already made the decision to rejected the takeoff and has begun taking action to stop the airplane. The time it takes for the pilot to recognize the need for a rejected takeoff, which occurs before V_1 is reached, is considered separately within the airworthiness standards. Therefore, the amendments proposed in NPRM 93–8 were intended to more accurately reflect the rejected takeoff procedures taught in training and the intended use of the V_1 speed.

In summary, the purpose of the amendments to the takeoff performance standards of parts 25, 91, 121, and 135, as proposed in NPRM 93–8, was to more rationally reflect the operational factors involved and reduce the impact of the standards on the competitiveness of new versus derivative airplanes. More restrictive standards were proposed for takeoffs from wet runways. In addition, the proposed standards would require accelerate-stop distances to be

determined with brakes that are worn to their overhaul limit. Lastly, the two seconds of continued acceleration beyond V_1 speed would be replaced by a distance equal to two seconds at V_1 speed.

In NPRM 93–8, the FAA also proposed to amend the landing distance standards of part 25 to account for worn brakes. The FAA proposed this change to be consistent with the proposal for taking worn brakes into account for the takeoff accelerate-stop distances. Because airplanes generally require more distance to take off than to land, the allowable landing weight is rarely limited by the available runway length. Therefore, the proposed landing distance rule change was not expected to have a significant effect on the number of passengers or amount of cargo that can be carried.

International Harmonization of Airworthiness Standards

For more than ten years, the FAA has been cooperating with the Joint Aviation Authorities (JAA) of Europe to promote harmonization between the FAR, particularly the airworthiness standards, and the European Joint Aviation Requirements (JAR). The aircraft certification authorities of 23 European countries are members of JAA. An annual meeting is held between FAA senior management officials and senior management officials of the JAA member authorities to identify technical subject areas where cooperation is needed to promote greater harmonization between the FAR of the United States and the European JAR. A large portion of these meetings have been open to the public. A comprehensive study of this activity was completed by Professor George A. Bermann, Columbia University School of Law, in May 1991 as a consultant to the Administrative Conference of the United States (ACUS). A copy of Professor Bermann's final report to ACUS, titled: "Regulatory Cooperation with Counterpart Agencies Abroad: The FAA's Aircraft Certification Experience," dated May 1991, is included in the docket. Based on Professor Bermann's report. ACUS has confirmed the administrative appropriateness of this effort and has indicated strong support for this activity in their Recommendation 91–1, titled "Federal Agency Cooperation with Foreign Government Regulators," adopted June 13, 1991.

At the annual FAA/JAA meeting in June 1989, the FAA and JAA discussed the competitive disparity caused by the differences between the takeoff performance standards applied to airplanes that met the later standards of Amendment 25–42, as compared with airplanes that were only required to meet the takeoff performance standards that preceded Amendment 25–42. Even though the airplane types were originally type certificated at different times, thus allowing the use of different amendments, both groups of airplanes are continuing in production and both are competing for sales and for use over some common routes. Airplanes whose designs were type certificated to the standards introduced by Amendment 25–42 could be penalized in terms of the number of passengers or amount of cargo they can carry over a common route, even though the airplane's takeoff performance might be better from a safety perspective than a competing airplane design that was not required to meet the later standards. Currently, most of the transport category airplane types that have been required to meet the later standards of Amendment 25–42 were designed and manufactured outside the U.S. (mostly in Europe). These airplanes are competing for sales against airplanes that were designed and manufactured in the U.S. that were not required to meet the standards of Amendment 25–42. This situation has led to claims by a major European manufacturer of transport category airplanes that this disparity in the airworthiness standards has created an unfair international trade situation affecting the competitiveness of their airplane types of a later design.

At the June 1990 annual meeting, the FAA and JAA agreed to jointly review the current takeoff performance standards and their applicability with respect to airplanes currently in use and airplanes produced in the future under existing approved designs. The goal was to reduce the inequities described above without adversely affecting safety. The study consisted of two parts: First, the current takeoff performance standards were reviewed to determine if they were too restrictive; and second, the merits of making the resulting standards apply retroactively were considered for both airplanes currently in use and airplanes produced in the future under existing approved designs. The FAA and JAA also agreed to initiate substantively the same rulemaking within their respective systems to harmonize the European and U.S. takeoff performance standards for transport category airplanes.

The FAA concluded that the takeoff performance standards of part 25 could be made more rational, and thus less restrictive overall, without adversely affecting safety and proposed to amend the standards accordingly. However, considering the safety benefits and available economic impact information, the FAA could not support a recommendation to make the standards proposed by NPRM 93–8 retroactive to either airplanes currently in use or future production airplanes of designs that have already been type certificated. If additional information to support making these proposed standards retroactive became available at a later date, the FAA proposed to review such information and determine if further rulemaking would be appropriate.

In March 1992, the JAA issued its Notice of Proposed Amendment (NPA) 25B, D, G–244: "Accelerate-Stop Distances and Related Performance Matters" to amend the takeoff performance standards of JAR–25. The amendments proposed in NPRM 93–8 were substantively the same as the amendments proposed by the JAA NPA for JAR–25.

Discussion of the Proposals

In NPRM 93–8, the FAA proposed the following rule changes:

1. Replace the two seconds of continued acceleration beyond V_1 (mandated by Amendment 25–42) with a distance margin equal to two seconds at V_1 speed;
2. Require that the runway surface condition (dry or wet) be taken into account when determining the runway length that must be available for takeoff; and
3. Require that the capability of the brakes to absorb energy and stop the airplane during landings and rejected takeoffs be based on brakes that are worn to their overhaul limit.

Proposal 1

The FAA proposed to amend the method of determining the accelerate-stop distance prescribed in § 25.109 by replacing the two seconds of continued acceleration after reaching V_1 with a distance equal to two seconds at V_1 speed. This proposal would reduce the accelerate-stop distance that must be available for a rejected takeoff because the airplane would be assumed to begin stopping from a lower speed (from V_1, rather than from the speed reached after two seconds of acceleration beyond V_1). The FAA's intent was to replace the most costly aspect of Amendment 25–42 with a requirement that closely represents the pre-Amendment 25–42 criteria of § 25.109, as applied to the certification of recent U.S.-manufactured airplanes.

Proposal 2

The FAA proposed to amend § 25.105 to require that airplane takeoff performance data be based on wet, in

addition to dry, runways. Section 25.1587(b) would be amended to require that performance information for wet runways be included in the Airplane Flight Manual (AFM). Sections 91.605, 121.189, and 135.379 of the operating rules would be amended to require that wet runways be taken into account when determining the runway length that must be available for takeoff, if wet runway performance information exists in the AFM. Thus, this rule would apply only to airplane designs for which the application for type certification occurs after the amendment becomes effective, and to those previously certificated airplane designs for which the manufacturer chooses to re-certify to the amended standards.

Section 25.109 would be revised to provide the details of how the accelerate-stop distance would be calculated for a wet runway. The FAA proposed the following approach to determining the wet runway takeoff performance: (1) Take into account the reduced braking force due to the wet surface; (2) permit performance credit for using available reverse thrust as an additional stopping force; and (3) permit the minimum airplane height over the end of the runway after takeoff to be reduced from 35 feet to 15 feet. This approach would reduce the risk of overruns during rejected takeoffs on wet runways while retaining safety margins for continued takeoffs similar to those required for dry runways.

The reduced braking force available is the most significant variable affecting the stopping performance on a wet runway. The FAA proposed to revise § 25.109 to specify that the wet runway braking force would be one-half the dry runway braking force, unless the applicant demonstrated a higher wet runway braking force. Under this proposal, the one-half of the dry braking force level would apply regardless of whether the dry runway braking force is limited by the torque capability of the brake (which is the friction force generated within the brake) or the friction capability of the runway surface. Although it can be argued that the torque capability of a brake is independent of the runway surface condition, the proposed use of this simple relationship between wet and dry runway braking capability would depend on using the one-half dry relationship throughout the braking phase.

Data published in Engineering Science Data Unit (ESDU) 71026, entitled "Frictional and Retarding Forces on Aircraft Types—Part II: Estimation of Braking Force," shows that the relationship between wet and dry braking coefficient varies significantly with speed. At high speeds, the wet runway braking coefficient is typically less than one-half the dry runway braking coefficient. At low speeds, the wet runway braking coefficient is typically more than one-half the dry runway braking coefficient. Used over the entire speed range for the stopping portion of a rejected takeoff, however, the wet runway braking coefficient can justifiably be approximated as one-half the dry braking coefficient. The ESDU report is included in the docket.

Under this proposal, § 25.109 would also be revised to permit the use of available reverse thrust when determining the accelerate-stop distance for a wet runway. "Available" reverse thrust was interpreted as meaning the thrust from engines with thrust reversers that are operating during the stopping portion of the rejected takeoff. Credit for reverse thrust was included in the proposal because the most significant variable that affects the stopping performance on a wet runway, reduced braking friction, was also included as part of the rational approach to wet runway rejected takeoff.

On dry runways, the FAA proposed to explicitly deny credit for reverse thrust when calculating the accelerate-stop distance. This proposal would codify current FAA policy. Although reverse thrust should and probably would be used during most rejected takeoffs, the FAA believes that the additional safety provided by not accounting for reverse thrust in calculating the accelerate-stop distance on a dry runway is necessary to offset other variables that can significantly affect the dry runway accelerate-stop performance determined under the current standards. For wet runways, credit for reverse thrust would be permitted because taking into account the reduced braking force available on the wet surface, as proposed in this notice, greatly outweighs the effects of these other variables. Examples of variables that can significantly affect the dry runway accelerate-stop performance include: runway surfaces that provide poorer friction characteristics than the runway used during flight tests to determine stopping performance, dragging brakes, brakes whose stopping capability is reduced because of heat retained from previous braking efforts, etc.

The FAA proposed to revise § 25.113 to allow the distance required for a continued takeoff from a wet runway to include taking off and climbing to a height of 15 feet, rather than the height of 35 feet required on a dry runway. This lower screen height (which is the height of an imaginary screen that the airplane would just clear with the wings in a level attitude when taking off or landing) would reduce the balanced field length V_1 speed, thereby reducing the number of high-speed rejected takeoffs on wet runways. The FAA considers lowering the screen height to 15 feet to be an acceptable method of reducing the risk of overruns on wet runways because of the similarity to current rules when operating from dry runways that have a clearway. The minimum height permitted over the end of the runway for current dry runway takeoffs may be 13 to 17 feet, depending on the airplane, when a clearway is present. In addition, a 15-foot minimum screen height and vertical obstacle clearance distance has been allowed for many years by the United Kingdom Civil Aviation Authority for wet runway operations without any problems being reported.

The combination of a clearway with the proposed 15-foot screen height for wet runways could result in a minimum height over the end of the runway of near zero (i.e., liftoff very near the end of the runway), if clearway credit were to be permitted for wet runways in the same manner that it is currently permitted for dry runways. The FAA considers this situation to be unacceptable. The possible presence of standing water or other types of precipitation (e.g., slush or snow) and numerous operational factors (e.g., late or slow rotation to liftoff attitude) emphasize the need to provide more of a safety margin than would be present if liftoff were permitted so near the end of the runway. Therefore, the proposed § 25.113 would not permit the combination of clearway credit and a 15-foot screen height. The FAA proposed to modify § 25.113, however, to ensure that the presence of a clearway does not result in requiring longer runway lengths than if there were no clearway.

In addition to the reduced screen height for wet runways, the minimum vertical distance required between the takeoff flight path defined in § 25.115 and obstacles (e.g., trees, hills, buildings, etc.) would be reduced by a corresponding amount. To accomplish this, the FAA proposed to revise § 25.115 to state that the takeoff flight path shall be considered to begin at a height of 35 feet at the end of the takeoff distance.

This revised definition of the takeoff flight path would apply equally to dry and wet runways, even though the height of the airplane at the end of the takeoff distance (i.e., the screen height)

for wet runways is proposed to be only 15 feet. The effect of this proposal would be to make it possible to use the flight path information currently contained in the AFM even if the runway is wet. Because the screen height would be reduced from 35 feet to 15 feet for a wet runway, the height of an airplane at any point in the flight path will therefore be approximately 20 feet lower from a wet runway than from a dry runway. Under this proposal. the airplane's actual height over obstacles would be reduced by approximately 20 feet when taking off from a wet runway.

Under the current regulations, the airplane's flight path must be higher than any obstacles by a combination of an increment of height and an increment of gradient (i.e., the slope of the flight path). Although this proposal would reduce the height increment by approximately 20 feet, the gradient increment would be unchanged. As the distance from the end of the takeoff distance increases, the gradient increment provides an increasingly greater portion of the total height difference between the airplane and the obstacle. Therefore, the effect of reducing the height increment over obstacles by 20 feet diminishes as the distance from the end of the takeoff distance increases.

Proposal 3

The FAA proposed to amend § 25.101(i) to require that accelerate-stop and landing distances must be determined with all the airplane brakes at the fully worn limit of their allowable wear range. Section 25.735 would be revised to require that the maximum brake energy capacity rating must be determined with each brake at the fully worn limit of the allowable wear range. In addition § 25.735 would be amended to add a requirement for a flight test demonstration of the maximum kinetic energy rejected takeoff with not more than 10 percent of the allowable brake wear range remaining.

Miscellaneous

Additionally, the FAA proposed to add one new definition and one new abbreviation to part 1, Definitions and Abbreviations.

As a result of their special investigation of rejected takeoff accidents, the National Transportation Safety Board (NTSB) recommended that the FAA clearly define the term "takeoff decision speed" (V_1) in part 1. This recommendation is contained in the NTSB's Special Investigative Report, "Runway Overruns Following High Speed Rejected Takeoffs," published on February 27, 1990.

Concurring with the NTSB recommendation, the FAA proposed to add a definition of takeoff decision speed to § 1.1 in order to remove apparent confusion over the meaning of this term. The FAA's proposed definition was intended to make it clear that the decision to reject the takeoff, indicated by the pilot activating the first deceleration device, must be made no later than V_1 for the airplane to be stopped within the accelerate-stop distance.

The abbreviation V_{EF} is used in several places within part 25. The FAA proposed to amend § 1.2 to add the definition of V_{EF}, which currently appears in § 25.107(a)(1). V_{EF} is the speed at which the critical engine is assumed to fail during takeoff.

As stated previously, the FAA did not intend to apply these proposed amendments retroactively to either airplanes currently in use or future production airplanes of designs that have already been approved. However, manufacturers or operators of these airplanes may elect to comply with these proposed amendments by a change to the type design. The benefits of the revision to the time delay criteria of § 25.109 would then be available to relieve the economic burden imposed by Amendment 25–42. The proposed amendments to take into account the effects of wet runways and worn brakes must also be included in such a recertification. The FAA expects that, for airplanes whose certification basis includes Amendment 25–42, most applicants will elect to comply with this proposal because it will be economically beneficial for them to do so.

Discussion of the Comments

The FAA received over 100 comments from 22 different commenters regarding the proposals presented in NPRM 93–8. The commenters include airplane pilots, manufacturers, operators, and the associations representing them, foreign airworthiness authorities, and another agency of the U.S. government. Because of the increasing emphasis placed on international harmonization of the airworthiness standards, and because the JAA issued substantively the same proposals to amend JAR–25, the FAA also received many comments from foreign and international sources.

In general, the pilots, and the airworthiness authorities of Canada and the Netherlands oppose the proposed amendments unless the FAA imposes the new standards retroactively. Conversely, the airplane manufacturers and operators generally support the proposals as long as they are not imposed retroactively. The JAA strongly supports the proposals, but also believes that these requirements should be imposed retroactively. The association representing European manufacturers supports applying the proposed standards to new derivatives of existing approved designs as well as to completely new airplane designs.

Another issue that generated strong contrasting views concerns the distance needed to align an airplane on the runway for takeoff. Typically, airplanes enter the takeoff runway from an intersecting taxiway. The airplane must then be turned so that it is pointed down the runway in the direction for takeoff. FAA regulations do not explicitly require airplane operators to take into account the runway distance used to align the airplane on the runway for takeoff. The commenters who support retroactivity also support amending the regulations to require operators to take this runway alignment distance into account. Those who oppose retroactivity also oppose proposals to require taking into account the runway alignment distance.

In NPRM 93–8, the FAA stated that "with the safety benefits and economic impact information available at this time, the FAA cannot support a recommendation to make the standards proposed by this notice retroactive to either airplanes currently in use or future production airplanes of designs that have already been type certificated." This conclusion was reached after a review of the estimated costs and the potential benefits that would result from applying the proposed standards retroactively and mandating that operators take into account the runway alignment distance.

It should be noted, however, that one part of the proposed standards has effectively already been imposed retroactively. The FAA has issued airworthiness directives (AD's) concerning brake wear limits for every FAA-certificated transport category airplane with a maximum takeoff weight of over 75,000 pounds. These AD's ensure that the brakes on these airplanes, even when fully worn, can absorb the energy from a maximum energy rejected takeoff.

In addition to the economic impact of retroactively applying the proposed standards, the FAA was influenced by the increasing emphasis on international harmonization of the airworthiness standards. Retroactivity of the proposed standards and the requirement to take runway alignment distance into account, had the FAA decided to proceed with these provisions, would have been

accomplished through revisions to the operating rules of the FAR. At the time NPRM 93–8 was being developed, the JAA lacked operating rules with which to impose these requirements. Although the introduction and justification sections of JAA NPA 25B, D, G–244 discussed an intent to apply the standards retroactively, and to require that runway alignment distance be taken into account, the JAA lacked a regulatory mechanism for doing so. Therefore, the proposed standards would not have been harmonized had the FAA proposed such amendments to the part 91, 121, and 135 operating rules.

Shortly thereafter, the JAA published NPA OPS–2, containing proposed JAR operating rules for commercial air transportation (JAR–OPS 1). In this NPA, the JAA proposed to retroactively require operators to take into account the performance effects of wet runways and runways contaminated by slush, snow, ice or standing water, and to require operators to apply adjustments for runway alignment distance. NPA OPS–2 did not address retroactive application of the proposed requirements related to worn brakes. The JAR–OPS 1 final rule, which retained the proposals noted above, was issued by the JAA on May 22, 1995. It becomes effective on April 1, 1998, for operators of airplanes with a maximum takeoff weight of over 10,000 pounds or a maximum approved seating capacity of 20 or more passengers.

Due to the controversial nature of the issues of retroactivity and runway alignment distance, the FAA has decided to: (1) Proceed with the proposed rules without requiring retroactive application of these standards or adding a new requirement concerning runway alignment distance, and (2) recommend that the issues of retroactive application of these standards and runway alignment distance be added to the FAA/JAA harmonization work program. Except in the treatment of these two issues, the final rule adopted by this amendment is completely harmonized with the applicable JAA standards. These two issues reflect differences between the FAA and JAA operating rules; the applicable airworthiness standards of part 25 and JAR–25 are completely harmonized by this amendment and a corresponding amendment to JAR–25.

The harmonization work program is the formal method developed by the FAA and the JAA to harmonize relations and policies. Tasks on the harmonization work program are assigned to FAR/JAR harmonization working groups in accordance with the respective rulemaking procedures of the FAA and the JAA. For the FAA, these tasks are assigned to the Aviation Rulemaking Advisory Committee (ARAC).

The ARAC was established to provide advice and recommendations to the FAA on all rulemaking activity. There are over 60 member organizations on the committee, representing a wide range of interest within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. For issues on the harmonization work program, the ARAC assigns members, who work on behalf of the FAA, to the FAR/JAR harmonization working group. Although working group meetings are generally not open to the public, working group task assignments are published in the **Federal Register**, and all interested parties are invited to participate as working group members. Working groups report directly to the ARAC, and the ARAC must concur with a working group proposal before that proposal can be presented to the FAA as an advisory committee recommendation. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures.

Most of the commenters who oppose the proposed rulemaking also claim that the proposals would degrade the level of safety provided by the current standards. Specifically, these commenters oppose the proposal to replace the two seconds of continued acceleration beyond V_1 with a distance margin equal to two seconds at V_1 speed (Proposal 1), because it would allow an increase in the maximum allowable takeoff weight when that weight is limited by the length of the runway. Although the FAA agrees with the commenters on the effect of this particular proposal on takeoff weight limits, and discussed this effect in NPRM 93–8, the FAA disagree that safety is degraded when this proposal is considered in combination with the other proposals presented in NPRM 93–8.

In addition to Proposal 1, the FAA proposed other amendments that would make the current standards more stringent. As explained in NPRM 93–8, the purpose of the FAA proposals was to present a more rational approach of explicitly providing for the specific elements affecting takeoff performance, rather than the broad brush approach represented by the two seconds of acceleration beyond V_1. The FAA considers the proposed standards for worn brakes and wet runways, which the current standards do not explicitly address, to significantly improve takeoff safety. Combined with Proposal 1, the proposed amendments provide an equivalent or higher level of safety than the current standards.

Depending on whether the runway is wet or dry and on the particular airplane's stopping capability with worn brakes, the maximum allowable takeoff weight for a given runway length could end up being either increased or decreased under the proposed standards. Although its effects are variable, the FAA estimates that Proposal 1 would reduce, on average, the runway length needed for takeoff by 150 feet. For airplanes equipped with typical steel brakes, the proposed worn brake requirements would add an average of 150 feet to the runway length needed for takeoff. The FAA estimates that the proposed wet runway requirements would result in an average increase of 220 feet in the runway length required for takeoff when the runway is wet. It should be emphasized that these estimates are average effects that can vary considerably depending on the airplane type and the specific takeoff conditions. For example, airplanes equipped with carbon brakes or certain heavy-duty steel brakes, usually will be uaffected by the worn brake requirements because these brakes provide the same stopping capability in the worn condition as the new condition. (The proposed worn brake requirement represent an important safety improvement, however, regardless of whether this improvement comes from taking into account a loss in brake capability, or because the requirements act as an incentive to provide brakes that do not suffer this loss in capability.)

Along with this rulemaking effort, the FAA also participated in a joint FAA/industry team to produce the Takeoff Safety Training Aid. This training aid, first made available in August 1992, represents the findings of the team relative to training and procedural actions that could be taken to increase takeoff safety. The goal of the training aid is to minimize the probability of rejected takeoff accidents and incidents by: (1) Improving the ability of pilots to take advantage of opportunities to maximize takeoff performance margins; (2) improving the ability of pilots to make appropriate go/no-go decisions; and (3) improving the ability of crews to effectively accomplish the rejected takeoff procedures. Simulation trials and in-depth analyses of takeoff accidents and incidents were used to develop the training aid material. The FAA urges operators to use the Takeoff

Safety Training Aid in their qualification and recurrent aircrew training programs. The FAA is convinced that adoption of this material will further improve safety during the critical takeoff phase of flight.

The FAA received a large number of comments on the proposed definition of takeoff decision speed (V_1), including its relationship to the broader subject of the process by which the pilot recognizes a failure, decides to reject the takeoff, and acts on that decision. One commenter submitted several documents as additional supporting material, including a detailed study of pilot reaction times during rejected takeoff accidents. This commenter, accompanied by several others, believes that the proposed standards inadequately provide for the time it takes the average pilot to complete the recognition, decision, and reaction process. Other commenters support the FAA proposal, and some of these commenters also offered suggestions to further clarify the purpose of the V_1 speed.

The diversity displayed in the comments illustrates a great deal of misunderstanding and disagreement regarding the definition and use of the V_1 speed. In general, inconsistent terminology used over the years in reference to V_1 has probably contributed to this confusion. As noted by the commenters, V_1 has been referred to at various times as the critical engine failure speed, the engine failure recognition speed, and the takeoff decision speed.

Special Civil Air Regulation No. SR–422, effective August 27, 1957, originally referred to V_1 as "the critical engine failure speed." These same standards, which were later recodified into part 25, defined the accelerate-stop distance as the distance to accelerate to V_1, and then to stop from that speed. Although an allowance was required for any time delays that may reasonably be expected in service, SR–422 did not explicitly state where or how the time delays should be introduced relative to V_1. For certification purposes, the FAA considered V_1 to be the speed at which the pilot took the first action to stop the airplane. Time delays for recognition and reaction to that failure were applied prior to V_1, and delays in accomplishing each subsequent action for stopping the airplane were applied after V_1. Allowing for the time delays, the actual engine failure was therefore assumed to occur prior to V_1.

With Amendment 25–42, effective March 1, 1978, the FAA amended the airworthiness standards to clarify and standardize the method of applying these time delays. V_1 was referred to as the "takeoff decision speed," which turned out to be ambiguous in that it could be interpreted to mean either the beginning or the end of the pilot's decision process. The preamble to Amendment 25–42, however, states that "V_1 is determined by adding to V_{EF} [the speed at which the critical engine is assumed to fail] the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine is failed and the instant at which the test pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during accelerate-stop tests." This same definition was codified as § 25.107(a)(2). Not only is V_1 intended to occur at the end of the decision process, but it also includes the time it takes for the pilot to perform the first action to stop the airplane.

The FAA requires applicants to demonstrate, by flight test, the time intervals between V_{EF} and V_1, and between each subsequent action taken by the pilot to stop the airplane. FAA pilots and engineers witness and participate in these tests, which must include at least six rejected takeoffs. Because the test pilots know that they are going to reject the takeoff, human factors literature refers to this process as a simple task. In actual operations, the rejected takeoff maneuver is unexpected, and is referred to as a complex task. In consideration of this complex task, the time intervals measured during certification flight tests are increased when the accelerate-stop distances published in the AFM are calculated. These additional time increments are not intended to allow extra time for making a decision to stop after passing through V_1. Their purpose is to allow sufficient time (and distance) for a pilot, in actual operations, to accomplish the procedures for stopping the airplane.

The first adjustment is made to the time interval between V_{EF} and V_1. During the certification flight tests, the pilot expects to reject the takeoff and reacts very quickly. To take this into account, the time interval used to calculate the AFM accelerate-stop distances must be the longer of either the demonstrated time or one second. This standard has been applied to the certification of every turbine-powered transport category airplane since the late 1960's, and the FAA has not proposed to change it.

The second adjustment concerns the time increment applied after V_1. The method of determining this adjustment has varied, but the objective has always been the same—to provide enough time and distance for a pilot to accomplish the procedures for stopping the airplane. Prior to Amendment 25–42, a one-second increment was added to the time interval between each pilot action occurring after V_1. For most transport category airplanes, the rejected takeoff involves three separate pilot actions. The pilot applies the brakes, reduces the thrust or power, and raises the spoilers. The applicant defines the order in which the actions occur, but must demonstrate that the resulting procedures do not require exceptional skill to perform. Since the test pilot's first action determines V_1, there are typically two pilot actions occurring after V_1. Therefore, two seconds of additional time (and the resulting distance) were added to the time intervals determined by the certification flight tests.

Amendment 25–42 changed the method of applying these time increments. The provisions added by Amendment 25–42 require the AFM accelerate-stop distance to be calculated by inserting a two-second time increment after V_1, but before the pilot takes the first action to stop the airplane. During this two-second time increment, the airplane continues to accelerate. No further time increments are added to the time intervals between the actions taken by the pilot to stop the airplane.

It is important to note that Amendment 25–42 did not change the certification flight test procedures. The two-second time increment is applied analytically during the calculation of the AFM accelerate-stop distances, not by directing the pilot to delay action for two seconds after V_1 during the rejected takeoff flight tests.

The proposal presented in NPRM 93–8 would change the method of applying this two second time increment to a method similar to that existing prior to Amendment 25–42. However, the proposed method uses a distance increment rather than a time increment, to ensure that no credit is taken during this time period for system transient effects (e.g., engine spindown, brake pressure ramp-up, etc.). The distance increment is equal to the distance traversed in two seconds at the V_1 speed. Unlike the pre-Amendment 25–42 method, this distance increment cannot be reduced when fewer than three pilot actions are used in the rejected takeoff procedures (e.g., for airplanes using automated systems that take the place of one or more of the usual pilot actions). The FAA considers the distance traveled in two seconds at V_1 speed to be the minimum acceptable

distance allowance needed to provide for the element of surprise and other operational factors missing from the certification flight test demonstrations.

As long as there are no more than three pilot actions needed to accomplish a rejected takeoff, the accelerate-stop distance is determined using the demonstrated time intervals between pilot actions with no additional time or distance increments applied. For each additional pilot action beyond the first three actions, however, a one-second time (and distance) increment must be added to the demonstrated time interval for that action.

The FAA disagrees with those commenters who believe that the proposed standards inadequately provide for the time it takes the average pilot to complete the recognition, decision, and reaction process. Not only does the FAA require applicants to determine by flight test the length of time needed for the pilot to complete this process, but this demonstrated time interval is also increased to take into account the element of surprise and other operational factors missing from the certification flight test demonstrations.

Operationally, V_1 represents the minimum speed from which the takeoff can be safely continued within the takeoff distance shown in the AFM, and the maximum speed from which the airplane can be stopped within the accelerate-stop distance shown in the AFM. Typically, the pilot not flying the airplane will call out V_1 as the airplane accelerates through this speed. If the pilot flying the airplane has not taken action to stop the airplane before this callout is made, the takeoff should be continued unless the airplane is unsafe to fly.

One commenter states that airplane manufacturers produce performance data for use by the U.S. military that provides the engine failure speed, rather than the speed at which the pilot must respond to the failure. This commenter believes that the military airworthiness rejected takeoff standards, which provide the crew with the engine failure speed, are safer than the civil airworthiness standards, which provide the crew with the V_1 speed. The commenter further notes that many commercial pilots with a military background operate under the belief that the civil airworthiness standards provide equivalent safety to the military standards. In the commenter's opinion, the civil standards provide a lower level of safety, and these pilots have been given a false sense of security.

The FAA is aware of many differences between the civil and military takeoff requirements. These differences are indicative of the different operating needs and environments between civil and military flight operations. For example, the military standards allow liftoff to occur at the very end of the runway and obstacles to be cleared with no safety margin in the event of the failure of the critical engine at the designated "go" speed. In contrast, part 25 requires the airplane to be at a height of 35 feet at the end of the takeoff distance (on a dry runway), and obstacles must be cleared by 35 feet plus an additional safety margin related to the flight path gradient. In summary, the civil and military airworthiness standards provide for safe operations within their respective operating environments. It would be inappropriate, however, to apply unique procedures and techniques from one operating environment to the other.

One commenter noted that the proposed definition for takeoff decision speed tends to perpetuate the confusion over the meaning and use of the V_1 speed. The commenter points out that V_1 is really a "pilot action speed" that occurs immediately after the pilot makes the decision to reject the takeoff. Another commenter suggests that the proposed definition is technically inaccurate because reducing thrust during a rejected takeoff would not normally be construed as activating a deceleration device. Hence, the commenter suggested alternative wording for the words "the pilot activates the first deceleration device."

The FAA agrees with these commenters and has revised the proposal accordingly. The term "takeoff decision speed" has been deleted both from the proposed definition and from § 25.107(a)(2). The proposal to define takeoff decision speed in § 1.1 is also withdrawn. The adopted definition represents a change to the definition of V_1 in § 1.2, rather than an addition to § 1.1. This revised definition clarifies that V_1 represents the minimum speed from which the takeoff can be safely continued within the takeoff distance shown in the AFM and the maximum speed from which the airplane can be stopped within the accelerate-stop distance shown in the AFM. In addition, the preamble discussion of the proposals has been edited for additional clarity to present a consistent description of the V_1 concept.

The proposed addition of the definition for V_{EF} to § 1.2 is adopted as proposed. One commenter misunderstood this proposal as representing the first time the FAA has sought to define V_{EF}. For clarification, the term V_{EF} and its definition were originally added to § 25.107(a)(1) by Amendment 25–42. The amendment adopted in this rule adds the existing definition for V_{EF} to the list of abbreviations and symbols in § 1.2.

In addition to the definitions proposed in NPRM 93–8, one commenter suggests revising the definition of rated takeoff thrust to allow its use for up to ten minutes of operation. The current definition in § 1.1 limits the use of takeoff thrust to five minutes or less. The FAA is currently considering the change proposed by this commenter as part of a harmonization effort with the European JAA. In the interim, the FAA has developed a procedure to review and approve specific requests for the use of takeoff thrust for up to ten minutes duration on transport category airplanes in the event of an engine failure or shutdown.

One commenter recommended adding "wet and dry runway conditions" to the variables listed in § 25.101(e) for which the airplane configuration may vary. The rationale the commenter provides for this recommendation is to encourage optimization of the airplane configuration. The FAA does not believe that the suggested change will accomplish the commenter's goal. Section 25.101(e) does not require applicants to establish an optimum configuration to meet the applicable requirements. Instead, § 25.101(e) allows applicants to establish different configurations (e.g., flap settings) to obtain better performance at different weight, altitude, and temperature conditions.

The same commenter recommends revising § 25.105(a)(2) to require the takeoff data to be determined in the optimum configuration for the takeoff conditions specified in § 25.105(c). The commenter believes that this change would require operators to use the optimum flap setting for takeoff, rather than allow the use of any flap setting that meets the applicable regulations. The FAA does not concur with this recommendations for the following reasons. First, the commenter's recommendation should be directed at the airplane operating requirements, rather than the part 25 airworthiness standards. The effect of the recommended revision to part 25 would be to prohibit takeoff data from being provided for configurations that were not deemed to be the optimum configuration. Second, the commenter does not define how to determine the optimum configuration. The commenter appears to support using the configuration that would provide the shortest takeoff and accelerate-stop

distances. However, this configuration also typically results in the poorest climb capability after takeoff, and may not be the optimum configuration from the standpoint of obstacle clearance, noise, standardization of crew procedures, or fuel use.

The FAA received several comments regarding the proposed change to § 25.101(i). One commenter recommends deletion of the proposed requirement to determine the landing distances with worn brakes. This commenter claims that the effects of worn brakes on landing is insignificant, and notes that the FAA does not expect this requirement to reduce the amount of payload that can be carried. The commenter also notes that there has never been a landing incident or accident in which a deficiency in brake energy due to wear was a factor, nor is there any reasonable likelihood that there would ever be one. The commenter goes on to say that the proposed requirement would result in additional certification test and flight manual development costs with no resultant safety benefit to the public.

Although the FAA agrees that the proposed requirement is not likely to reduce the amount of payload that can be carried for most landings, the FAA disagrees that the effects of worn brakes on landing will always be insignificant. The effect of brake wear at the braking energy levels associated with a landing stop depends on the particular brake design. To provide for those cases in which the landing distance is critical, the AFM landing distance data must be based on fully worn brakes. The proposed requirement only specifies the wear condition of the brakes for determining the landing distances. No additional AFM information, and, therefore, no additional flight manual development costs would be required. The proposed requirement also would not necessarily result in additional certification testing. The only flight test that must be performed with worn brakes is the maximum energy rejected takeoff condition, in which the brakes must be worn to within 10 percent of the fully worn condition. All other data must only meet the condition that sufficient data be available from airplane flight tests or wheel-brake dynamometer tests to enable adjustment of all of the takeoff and landing flight test results to the fully worn level. For example, the testing performed to determine the effect of worn brakes on accelerate-stop distances may also be used to determine the effect of worn brakes on landing distances, if it can be shown to be applicable.

Another commenter suggests adding the stipulation that the determination of the accelerate-stop and landing distances must be based on the demonstrated results obtained by flight test in accordance with the proposed § 25.735(g). The FAA concurs with the intent of this suggestion. Instead of modifying the proposed § 25.101(i), however, the FAA is revising the proposed § 25.735(g) and relocating it as a new § 25.109(i). The adopted wording clarifies that the applicant must conduct a flight test demonstration of the maximum brake kinetic energy accelerate-stop distance with no more than 10 percent of the allowable wear range remaining on each of the airplane wheel brakes. This change to the original proposal is also discussed later relative to the comments received on the proposed § 25.735(g).

A commenter proposes a wording change to § 25.101(i) to anticipate possible future brake materials that might show an improving brake performance as the brake wears. This commenter suggests that the proposed requirement should reference the wear condition that dynamometer testing indicates as producing the least effective braking performance. The FAA agrees that the most critical wear condition should be used to determine the stopping distances and energy capacity of the brakes. In practice, however, the FAA believes this condition will always be the fully worn brake. The FAA does not believe that an extensive dynamometer survey of different wear states is warranted.

One commenter suggests that stopping distances be based on brakes that are worn to 90 percent of the allowable wear level instead of the proposed level of fully worn. This commenter states that, in actual operations, it would be virtually impossible for all the airplane's brake assemblies to simultaneously be at the fully worn limit of their allowable wear range. In addition, this commenter believes that such conservatism in determining the stopping distances to be unwarranted when combined with the worn brake requirements relating to brake energy absorption capability. As an alternative, this commenter, joined by a second commenter, proposes that § 25.101(i) optionally allow stopping performance to be based on the actual amount of brake wear existing at the time of each flight. The two commenters state that it is unnecessary and inappropriate for the regulations to assume the worst case capability when satisfactory means to determine the actual capability can be provided. They believe that the proposed regulation would inhibit the development of technical and procedural advances that would take into account the actual wear condition of the brakes.

The FAA does not concur with the recommendation to base the stopping distances on brakes worn to 90 percent of the allowable wear level. Although operators may typically overhaul brakes before they are fully worn, and the brakes on different wheels are usually at different levels of wear, airplanes may legally be operated with all of the brake assemblies in their fully worn condition. The FAA agrees that it would be inappropriate for the regulations to assume the worst case capability when satisfactory means exist to determine the true capability; however, the operational aspects must also be satisfactorily addressed.

Regarding the commenters' proposal to allow stopping distances to be based on the actual brake wear level, the FAA has significant concerns over the operational aspects. Although it may be possible to determine the accelerate-stop and landing distances as a function of brake wear, the FAA considers it unacceptable to use, on a flight-by-flight basis, the brake wear level as an additional takeoff performance variable. The added complexity caused by this additional variable would increase the chances of error in determining the allowable takeoff weight and the takeoff speeds. Also, the FAA questions whether an acceptable means can be developed to accurately and reliably determine the actual wear state of the brake under all operational and environmental conditions. Finally, extensive certification testing would be required to determine the stopping distances as a function of the brake wear level. A linear relationship between these variables cannot be assumed. Therefore, § 25.101(i) is adopted as proposed, except for a minor editorial revision for clarification purposes.

Since the certified accelerate-stop and landing distances will correspond to brakes that are at the fully worn limit of their allowable wear range, the allowable brake wear range must be specified as part of the approved type design for the airplane. This information should be provided on the type certificate data sheet. The allowable wear range should be defined in terms of a linear dimension in the axial direction, which is typically determined by measuring the extension of a pin used to indicate the amount of wear. At the fully worn limit of the allowable brake wear range, the brake must be removed from the airplane for overhaul.

Both favorable and adverse comments were received on the FAA's proposal to

amend § 25.109 to replace two seconds of acceleration beyond V_1 speed with the distance traversed in two seconds at V_1 speed. The commenters who objected to the proposed amendments believe the proposal would reduce safety. One commenter who disagrees with the proposed amendment also states that the comparison between the one-engine-inoperative and all-engines-operating accelerate-stop distances, as required by the proposed § 25.109(a), would become almost meaningless. This commenter claims that "test pilot response in the order of milliseconds preempts any significant difference in acceleration distance between engine out and all engine acceleration before V_1." Also, the proposed distance traversed during two seconds at V_1 speed is the same for both cases, as is the deceleration distance from V_1 until the airplane is stopped.

As discussed previously, the FAA considers the proposed additions of worn brake and wet runway requirements to significantly improve takeoff safety. These additional requirements, along with the proposal to replace the two seconds of acceleration with a distance equal to two seconds at V_1 speed, would provide more rational takeoff airworthiness standards and an equivalent or higher level of safety than the current standards. Regarding the comparison of one-engine-inoperative and all-engines-operating distances, the minimum time between the critical engine failure speed (V_{EF}) and V_1, as discussed earlier, is one second. During the period after V_1, unless reducing thrust is the first pilot action following the engine failure, there will be another time interval before thrust is reduced on the remaining operating engine(s). Since thrust reversers may not be used in determining the dry runway accelerate-stop distances, the operating engines (on a turbojet powered airplane) will continue to produce forward thrust. Therefore (for turbojet airplanes), the distance to stop from V_1 will usually be longer for all-engines-operating case than for the one-engine-inoperative case. Whether the sum of the accelerate and stop distances is greater for the all-engines-operating case as opposed to the one-engine-inoperative case depends on the time intervals between V_{EF} and V_1, V_1 and the pilot action to reduce thrust, and on the engine transient response (spindown) characteristics. For wet runways, in which the effect of reverse thrust would be included, the stopping distance with one-engine-inoperative will usually be longer than that with all-engines-operating. In general, the FAA expects the dry runway accelerate-stop distances to be based on the all-engines-operating case, and the wet runway accelerate-stop distances to be based on the one-engine-inoperative case.

One commenter suggests that the FAA should provide a statement proclaiming that the standards proposed in NPRM 93–8 "reflect the full intent of the accelerate-stop transition segment AFM distance construction" and that "additional time delays are not envisioned." This commenter states that FAA advisory material imposed an additional two-second time delay beyond that prescribed by Amendment 25–42, and the commenter desires a clarification that such a situation will not recur. The FAA intends to revise Advisory Circular (AC) 25–7, "Flight Test Guide for Certification of Transport Category Airplanes," to be consistent with this adopted rule and the description of the time delays provided in this preamble discussion regarding the definition of V_1.

In reviewing the comments, the FAA discovered that the proposed wording for § 25.109(a) could be interpreted such that speeds greater than V_1 need not be considered in determining the accelerate-stop distances. However, the airplane will typically exceed V_1 speed during the stop, particularly with all-engines-operating, even when the pilot applies the brakes at V_1. The proposed amendments to § 25.109(a) have been modified to clarify that the accelerate-stop distances must include the highest speed reached during the rejected takeoff maneuver. As modified, these proposed amendments to § 25.109(a) are adopted.

The FAA received a large number of comments regarding the proposed method for determining takeoff performance on wet runways. One of the provisions of the proposed method would allow applicants to use a simplified approach to determine the braking capability on a wet runway without the need for specific wet runway flight testing. Based on the extensive wet runway testing conducted over the past 30 years by the National Aeronautics and Space Administration (NASA), the FAA, the aerospace industry, and other organizations around the world (a compilation of which appears in the docket in ESDU item number 71026), the FAA proposed using a braking coefficient of one-half the demonstrated dry braking coefficient. The FAA intended for this one-half factor to be applied even if the dry runway braking coefficient is limited by the maximum torque capability of the brake, rather than the maximum friction capability available from the runway surface.

Several commenters disagree with using a simple one-half factor to determine the wet runway braking coefficient. One commenter feels the factor is arbitrary and that using a simple factor is inappropriate. Another commenter claims that other easily applied methods exist and should be used to provide a wet runway braking coefficient. This commenter believes that the proposed method effectively makes the low speed accelerate-stop data more conservative than the high speed data, which would be the opposite of what the commenter feels should be done to increase safety. These commenters did not propose any alternative methods for determining the wet runway braking coefficient.

Several commenters object to the specific aspect of applying the one-half factor when the dry runway braking coefficient corresponds to the maximum torque capability of the brake. In spite of the explanation provided in the preamble discussion in NPRM 93–8, these commenters oppose this provision on the basis that the maximum torque capability of the brake is independent of the runway surface condition. One commenter conducted laboratory tests of a simulated wet runway to show that the stopping ability of an airplane on a wet runway is not a function of the size or torque limit of the brakes. Another commenter claims that this provision appears to prohibit the effective and safe use of braking capacity up to the limit of the wet runway braking coefficient. This commenter points out that an airplane with brakes that have a low maximum torque capability would be unfairly penalized relative to an airplane equipped with brakes of a higher maximum torque capability. Another commenter questions whether the proposed requirement is a conservative approach resulting from a lack of appropriate test data.

The FAA agrees that the torque capability of the brake is usually not a limiting factor on a smooth wet runway. The FAA proposed applying a factor to the torque limited braking coefficient to represent the varying relationship between the wet and dry runway braking coefficients as a function of ground speed. At higher ground speeds, the wet runway braking coefficient is typically less than one-half the dry runway braking coefficient. At these higher speeds, the dry runway braking coefficient is usually limited by the brake's maximum torque capability. For the typical airplane/brake combination, factoring the torque limited braking coefficient obtained on a dry runway by one-half provides a reasonable approximation to the significantly

reduced braking coefficients observed at high speeds on wet runways. Because the total stopping distance for a high speed stop is affected more by the stopping capability at high speeds than at low speeds, applying the one-half factor only to the non-torque limited braking coefficient would be inadequate for determining the total distance needed to stop on a wet runway.

The FAA does not concur with the comment that this proposal would prohibit the safe and effective use of braking capability on a wet runway. This proposal only addressed the method for determining the wet runway accelerate-stop distances presented in the AFM. It would not affect the manner in which the pilot uses the brakes. The FAA recognizes, however, that not all airplanes share the same relationship between V_1 speeds and maximum brake torque capability, and that some airplane types could be affected more than others by this provision. In recognition of this potential disparity, the proposed § 25.109(b)(2) would have allowed applicants the option of demonstrating a higher wet runway braking coefficient.

One commenter suggested that an advisory circular may be necessary to provide guidance regarding an acceptable method for demonstrating a wet runway braking coefficient higher than one-half the dry runway value. Another commenter noted that one flight test, for example, performed on a damp grooved runway with excellent friction capability would be an insufficient basis for developing the AFM information applicable to all wet runways. Another commenter recommended a change to the FAA proposal to allow the use of methods other than flight testing to demonstrate a higher wet runway braking coefficient. This commenter believes that in the near future it may become feasible to use data obtained from either an analysis, a simulation of the airplane's braking system, or other sources.

One of the commenters who opposed portions of the FAA proposal submitted an alternative proposal based on the same ESDU 71026 data source used to develop the FAA proposal. The commenter proposes an alternative method to replace the option for demonstrating a braking coefficient higher than one-half the dry runway braking coefficient. The following summary represents a brief synopsis of the commenter's detailed proposal:

a. Derive a standard wet runway braking coefficient versus speed curve from the ESDU 71026 data. This curve, representing the maximum braking coefficient available from the runway surface, would be used for all transport category airplanes as the basis for developing airplane type specific curves.

b. Apply adjustments to this curve to reflect the capability of an individual airplane type's anti-skid system on a wet runway. The anti-skid system capability would be determined either directly from wet runway testing, or a conservative capability (i.e., somewhat worse than would be expected if testing were performed) would be assumed, based on the capability of existing comparable anti-skid systems.

c. Allow higher braking coefficients for suitably maintained grooved or porous friction course runways.

d. Use the brake torque limitations (i.e., the amount of torque the brake is capable of producing) that are determined on a dry runway for both wet and dry runways.

The FAA considers the commenter's proposal to have considerable merit, not just as a replacement for the demonstration option as the commenter proposes, but also as a replacement for the one-half the dry braking coefficient methodology. The commenter's proposal addresses the shortcomings inherent in the NPRM 93–8 methodology of determining the wet runway braking coefficient by applying a single adjustment factor to the dry runway braking coefficient. Under the commenter's proposal, the wet runway braking capability would more accurately reflect the significant variation in braking capability with speed that occurs on a wet runway. Properly reflecting this variation with speed would remove the need to apply a factor to the dry runway brake torque capability.

As adopted, § 25.109(b) has been revised and new §§ 25.109 (c) and (d) have been added to prescribe wet runway accelerate-stop distance standards in a manner consistent with the commenter's proposal. This final rule is based on the same information as the original FAA proposal; however, the methodology for determining wet runway accelerate-stop distances has been changed to more rationally reflect the various factors affecting wet runway braking. The methodology adopted by this amendment provides a more accurate portrayal of wet runway stopping performance than had been proposed in NPRM 93–8.

Significant issues related to the commenter's proposal, which had to be addressed prior to preparing this final rule, included:

a. Defining the standard wet runway braking coefficient versus speed curve, considering the various parameters that affect wet runway stopping performance.

b. Defining a method for determining the capability of an airplane's anti-skid system on a wet runway.

c. Establishing conservative levels of anti-skid capability that could be used in lieu of determining this capability directly from test data.

d. Determining whether a higher braking capability is appropriate for use with grooved or porous friction course runways. (This issue is discussed later along with other comments received on this topic).

ESDU 71026 contains curves of wet runway braking coefficients versus speed for smooth and treaded tires at varying inflation pressures. These data are presented for runways of various surface roughness, including grooved and porous friction course runways. Included in the data presentation are bands about each of the curves, which represent variations in: water depths from damp to flooded, runway surface texture within the defined texture levels, tire characteristics, and experimental methods. From these data, it is readily apparent that wet runway stopping performance is significantly affected by many more variables than dry runway stopping performance. In order to determine the wet runway stopping distance, a value must be specified (or assumed) for each of these variables. Since it would be impractical to try to measure or evaluate each of these variables for every takeoff, the takeoff data must take into account the conditions likely to occur in operational service.

It was the FAA's intent with the proposals of NPRM 93–8 to define a wet runway performance level that would ensure safe operation for the vast majority of wet runway rejected takeoffs likely to occur. This same principle was used in specifying values for each of the variables considered by the adopted wet runway methodology. The resulting accelerate-stop distances, coupled with information provided to operators and pilots concerning the use of these data, should greatly reduce the risk of runway overruns during wet runway operations.

In defining the standard curves of wet runway braking coefficient versus speed that are prescribed by the equations in § 25.109(c)(1), the effects of the following variables were considered: Tire pressure, tire tread depth, runway surface texture, and the depth of the water on the runway.

Tire Pressure

The effect of tire pressure is taken into account by providing separate curves (i.e., equations) in § 25.109(c)(1) for

several tire pressures. As stated in the adopted rule, linear interpolation may be used for tire pressures other than those listed. To provide additional safety, § 25.109(c)(1) requires applicants to base the accelerate-stop distances on the maximum tire pressure approved for operation. Operating at a tire pressure that is lower than the maximum tire pressure approved for that airplane will tend to improve the airplane's stopping capability on a wet runway. Typically, manufacturer recommended tire pressures are a function of airplane weight; for operations at less than the maximum approved weight, the recommended tire pressure would be less than the maximum approved tire pressure.

Tire Tread Depth

The degree to which water can be channeled out from under the tires significantly affects wet runway stopping capability. Airplane tires have ribbed grooves around the circumference of the tire for this purpose. The texture of the runway surface plays an equally important role. ESDU 71026 provides braking data for both ribbed and smooth tires on runways of different surface textures. A method is also provided in ESDU 71026 for assessing the effects of tire wear. As ribbed tires wear, the depth of the ribbed grooves decreases, impairing their ability to channel water out from under the tire.

Surveys conducted by U.S. airplane and tire manufacturers, and information from major tire retreaders, indicate that the typical groove depth remaining at the time of tire removal can vary from about 1.5 to 5 mm. Airplane manufacturers' maintenance manuals usually recommend removal when the tread depth is less than 1/32 inch (1.2 mm), although operation with zero tread depth is not prohibited. Loss of tread depth is not the sole criterion for tire removal, however. Tires with significant tread depth remaining may be removed for other reasons. Also, it is unlikely that all the tires on a particular airplane would be worn to the same extent.

The standard curves (i.e., equations) of braking coefficient versus speed prescribed in § 25.109(c)(1) are based on a tire tread depth of 2 mm. Since the tread depth of new tires is usually 10–12 mm, 2 mm represents no more than 20 percent of the original tread depth. FAA Advisory Circular 121.195(d)–1A, which provides guidance for determining operational landing distances on wet runways, specifies that the tires used in flight tests to determine wet runway landing distances should be worn to a point where no more than 20 percent of the original tread depth remains. Therefore, the adopted rule, which reflects industry practice, is also consistent with existing FAA guidance in this area.

Runway Surface Texture

ESDU 71026 groups runways into five categories. These categories are labeled "A" through "E," with "A" being the smoothest and "C" the most heavily textured ungrooved runways. Categories "D" and "E" represent grooved and other open textured surfaces. Category A represents a very smooth texture (an average texture depth of less than 0.004 inches), and is not very prevalent in runways used by transport category airplanes. The majority of ungrooved runways fall into the category C grouping. The curves represented in § 25.109(c)(1), as adopted, represent a texture midway between categories B and C.

Depth of Water on the Runway

Obviously, the greater the water depth, the greater the degradation in braking capability. The curves prescribed in § 25.109(c)(1) represent a well-soaked runway, but with no significant areas of standing water.

In summary, the curves prescribed in § 25.109(c)(1) represent the maximum tire-to-ground braking coefficient likely to be available from a wet runway during a rejected takeoff. They were derived by interpolating between the curves presented in ESDU 71026 for runway surface categories B and C, adjusted to represent tires with 2 mm tread depth remaining, and extrapolated to cover the range of V_1 speeds to be expected. The resulting curves were then smoothed and reduced to a mathematical form for inclusion in the rule. The capability for a particular airplane type to achieve this braking coefficient depends on: (1) The amount of torque its brakes are capable of producing, and (2) the performance of its anti-skid system. How the revised regulation addresses these two components is discussed in the ensuring paragraphs.

The torque capability of the brakes is evaluated during the flight testing that applicants conduct to determine the dry runway accelerate-stop distance. Since the torque capability is independent of the runway surface condition, the torque capability demonstrated by the dry runway flight tests also represents the maximum torque available during a wet runway stop. As adopted, § 25.109(b)(2)(i) limits the stopping force from the wheel brakes used to determine the wet runway accelerate-stop distance to the stopping force determined in meeting the requirements of § 25.101(i) (worn brakes) and § 25.109(a) (the dry runway accelerate-stop distance). This provision prohibits applicants from using a brake torque that exceeds the dry runway torque limits when determining the wet runway accelerate-stop distance.

An airplane's anti-skid system varies the braking action to prevent locked wheel skids and to maximize stopping performance to the extent possible. How close the anti-skid system comes to obtaining the maximum braking friction available between the tires and the runway is referred to as the anti-skid system efficiency.

As adopted, § 25.109(c)(2) requires applicants to adjust the maximum tire-to-ground wet runway braking coefficient determined in § 25.109(c)(1) for the efficiency of the anti-skid system. Applicants will have the option of either determining the anti-skid system efficiency directly from flight tests on a wet runway, or using one of the anti-skid efficiency values specified in § 25.109(c)(2). Regardless of which method is used, an appropriate level of flight testing must be performed to verify that the anti-skid system operates in a manner consistent with the efficiency value used, and that the system has been properly tuned for operation on wet runways.

For applicants using the anti-skid efficiency values specified in § 25.109(c)(2), a minimum of one complete wet runway stop, or equivalent segmented stops, should be conducted at an appropriate speed and energy to cover the critical operating mode of the anti-skid system. This testing can be performed as part of the anti-skid compatibility testing on a wet runway that is already required for brake and anti-skid system approval under § 25.735. Therefore, for applicants using the anti-skid efficiency values specified in § 25.109(c)(2), no additional flight tests need actually be performed. Existing flight test may need to be modified somewhat to ensure that appropriate data are obtained to verify that the anti-skid system operates in a manner consistent with the efficiency value used, and that the system has been properly tuned for operation on wet runways.

As revised, § 25.109(c)(2) identifies three different classes of anti-skid systems, and specifies a unique efficiency value associated with each one. This classification of anti-skid system types and the assigned efficiency values are based on information contained in Society of Automotive Engineers (SAE) Aerospace Information Report (AIR) 1739, title "Information on

Anti-Skid Systems." The efficiency values prescribed in § 25.109(c)(2) represent the worst system performance expected for each type of system after being properly tuned for operation on wet runways. The SAE document is available in the public docket for this rulemaking.

The three classes of anti-skid systems represent evolving levels of technology and differing performance capabilities on dry and wet runways. On/off systems are the simplest of the three types of anti-skid systems. For these systems, full metered brake pressure (as commanded by the pilot) is applied until wheel locking is sensed. Brake pressure is then released to allow the wheel to spin back up. When the system senses that the wheel is accelerating back to synchronous speed (i.e., ground speed), full metered pressure is again applied. The cycle of full pressure application/complete pressure release is repeated throughout the stop (or until the wheel ceases to skid with pressure applied).

Quasi-modulating systems, the second type of anti-skid system, attempt to continuously regulate brake pressure as a function of wheel speed. Typically, brake pressure is released when the wheel deceleration rate exceeds a preselected value. Brake pressure is re-applied at a lower level after a length of time appropriate to the depth of the skid. Brake pressure is then gradually increased until another incipient skid condition is sensed. In general, the corrective actions taken by these systems to exit the skid condition are based on a pre-programmed sequence rather than the wheel speed time history.

Fully modulating systems, the third type of anti-skid system, are a further refinement of the quasi-modulating systems. The major difference between these two types of anti-skid systems is in the implementation of the skid control logic. During a skid, corrective action is based on the sensed wheel speed signal, rather than a pre-programmed response. Specifically, the amount of pressure reduction or reapplication is based on the rate at which the wheel is going into or recovering from a skid. Also, higher fidelity transducers and upgraded control systems are used, which respond more quickly.

For applicants who elect to determine the anti-skid efficiency directly from flight tests, sufficient flight testing, with adequate instrumentation, must be conducted to ensure confidence in the efficiency obtained. Although additional flight testing will be necessary, the FAA does not expect applicants to use this method for determining the anti-skid efficiency unless proportionate benefits (i.e., an increase in takeoff weight) are obtained. A minimum of three complete stops, or equivalent segmented stops, should be conducted on a wet runway at appropriate speeds and energies to cover the critical operating modes of the anti-skid system.

As adopted, § 25.109(b)(2)(ii) also requires applicants to adjust the wheel brakes stopping force to take into account the effect of the distribution of the normal load between braked and unbraked wheels at the most adverse center-of-gravity position approved for takeoff. The stopping force due to braking is equal to the braking coefficient multiplied by the normal load (i.e., the effective weight) on the braked wheels. The location of the airplane's center-of-gravity, which is a function of the airplane's configuration and how it is loaded (i.e., the position of passengers, baggage, cargo, etc.), affects how the load is distributed between braked and unbraked wheels. Typically, the nose wheels of transport category airplanes are unbraked, although some airplanes also have some of the main gear wheels unbraked). This effect must be taken into account for the most adverse center-of-gravity position approved for takeoff. The most adverse center-of-gravity position is that which results in the least load on the braked wheels.

For the following reasons, the FAA regards the wet runway methodology issued in this final rule to be a logical outgrowth of the proposal published in NPRM 93–8. First, the final rule methodology relies on the same technical basis as the original proposal. Second, it responds to a comment raised during the NPRM 93–8 public comment process. And third, it is consistent with the overall intent of this rulemaking, which is to more rationally address relevant operational factors rather than applying more restrictive standards to all operating conditions. This methodology also provides applicants with the ability to better control any increased costs resulting from the addition of wet runway accelerate-stop requirements to part 25, while ensuring safer wet runway operations. Depending on the desired balance between manufacturing costs (including design and flight testing) and operational capabilities, an applicant can make informed choices regarding design characteristics (e.g., type of anti-skid system, takeoff speeds) and the level of wet runway testing to perform (i.e., use of the anti-skid efficiency values provided in the rule versus determining the efficiency directly from flight tests).

The FAA recognizes that extensive guidance material will be necessary to assist applicants in complying with the wet runway accelerate-stop distance requirements incorporated in this amendment. Published elsewhere in this issue of the **Federal Register** is a notice of availability for a proposed revision to AC 25–7, "Flight Test Guide for Certification of Transport Category Airplanes." A request for comments is included in that notice of availability. The proposed revision includes detailed guidance for:

a. Using reverse thrust in determining wet runway accelerate-stop distances;

b. classifying the types of anti-skid systems;

c. Verifying the type of anti-skid system installed on the airplane and that it is properly tuned for operation on wet and slippery runways;

d. Determining the anti-skid efficiency value; and

e. Developing an analytical model of wet runway braking performance in accordance with § 25.109(c).

One commenter points out that many operators already use a form of wet runway takeoff performance data, which is provided to them by the airplane manufacturers as unapproved guidance information. These data, used on a voluntary basis to provide additional safety on wet runways, are typically developed using criteria similar to those proposed in NPRM 93–8. Another commenter believes that the proposed wording for §§ 91.605(b)(3), 121.189(e), and 135.379(e) would result in retroactive changes to those airplanes for which the AFMs contain wet runway information carried over from previous foreign certifications. (Some foreign certification authorities, notably the United Kingdom Civil Aviation Authority, have required wet runway performance information to be included in the AFM.) This commenter notes that use of such data has not been required in the past in U.S. operations and does not necessarily reflect the standards proposed in NPRM 93–8. Although the commenter supports the proposal in general, it is suggested that the wording be changed to specify that the wet runway requirements apply only to airplanes certificated after the proposed amendment becomes effective.

The FAA acknowledges that airplane manufacturers have for many years produced guidance information, including takeoff performance data, for wet runway operations. In general, the FAA supports the voluntary use of these available data to provide additional safety on wet runways for existing transport category airplanes, as long as compliance with the applicable

airworthiness and operating rules is maintained.

The FAA did not intend, by the proposed wording §§ 91.605(b)(3), 121.189(e), and 135.379(e), to effectively apply the proposed wet runway standards retroactively. Operators should be aware that the approved portion of the AFM (containing the operating limitations) for a U.S. operator should only reflect the FAR and should not contain extraneous information carried over from a foreign certification. Such information may, however, appear in an unapproved portion of the AFM as supplementary guidance information. Operators may use this information (as long as it does not conflict with the FAR), but are not required to abide by it.

The FAA does not agree with the comment to limit application of the proposed operating rules only to those airplanes certificated after this amendment becomes effective. Some manufacturers have elected to comply with the standards proposed in NPRM 93–8 prior to the adoption of this final rule. The AFMs for the affected airplane types contain takeoff and accelerate-stop distance limitations for takeoffs on wet runways, and operators must comply with these limitations, regardless of the date the airplane was certificated. Therefore, these amendments to §§ 91.605(b)(3), 121.189(e), and 135.379(e) are adopted essentially as proposed, but with a clarification that this provision applies to operating limitations, if they exist, associated with the minimum distances required for takeoff from wet runways. As discussed earlier, further consideration of retroactive application of the requirements adopted by this final rule will be added to the FAA/JAA harmonization work program.

Several commenters recommend that the proposed standards be revised to allow a higher wet runway braking coefficient to be used for grooved runways or runways treated with a porous friction course (PFC) overlay, without the need for additional flight testing. These commenters point out that runway friction measurement tests show that a wet runway with grooves or a PFC surface overlay has much better friction characteristics than a smooth surface. According to these commenters, providing credit for the improved stopping capability on these surfaces will result in significant public safety benefits by helping to expedite future runway improvements and by providing a strong incentive to properly maintain these surfaces. The commenters believe it is neither necessary nor in the public interest to avoid or defer this issue, considering the significant effort that has already been made by airport operators, both domestic and foreign, to improve runway surfaces.

To facilitate timely action on this issue, these commenters propose that the FAA initially adopt a value that the commenters consider to be very conservative (i.e., a much lower wet runway braking coefficient than would be expected). Most of these commenters propose using a wet runway braking coefficient for grooved and PFC runways equal to 70 percent of the dry runway braking coefficient, although one commenter proposed a factor of 80 percent. For comparison purposes, one commenter reports that tests conducted using a Boeing 737–300 airplane showed wet grooved runway braking capability that was equal to, or in some cases greater than, 95 percent of that obtained on a dry runway. The commenters note that a longer term rulemaking activity could be undertaken in the future to establish a higher factor, if warranted.

One of these commenters provided information relative to grooved and PFC runway credit in Japan. This commenter states that the Japanese Civil Aviation Bureau allows a wet runway braking coefficient of 70 to 80 percent of the dry runway value to be used for grooved or PFC runways. In Japan, Most of the runways at civil airports are grooved, and periodic friction surveys are conducted to assure that the surfaces are properly maintained. These surveys are done by using a combination of visual inspections and friction measuring devices.

The FAA agrees that grooved and PFC runways can offer substantial safety benefits in wet conditions. The FAA has taken an active role since the late 1960's in evaluating the benefits of these runway surface treatments and supports their use throughout the U.S. Tests conducted by the FAA, NASA, and others confirm that applying a factor of 70 percent to the dry runway braking coefficient, as proposed by the commenters, would conservatively represent the stopping performance on properly designed, constructed, and maintained grooved and PFC runways. A summary of these test data has been placed in the docket. The actual friction capability of grooved and PFC runways varies, however, depending on variables such as groove shape, depth, and spacing, method used to construct the grooves, type of pavement surface, volume and type of airplane traffic, frequency of pavement evaluations, and maintenance. The FAR currently do not contain mandatory standards regarding the design, construction, and maintenance of grooved or PFC runways, but AC 150/5320–12B, "Measurement, Construction, and Maintenance of Skid-Resistant Airport Pavement Surfaces," provides relevant guidelines and procedures.

The FAA concurs with the commenters' proposal and agrees that it presents an opportunity to provide an additional incentive for airport operators to install and maintain grooved and PFC runways. The FAA agrees that 70 percent of the dry runway braking coefficient conservatively represents the stopping performance on properly designed, constructed, and maintained grooved or PFC runways. Using a simple factor applied to the dry runway braking coefficient is appropriate for grooved and PFC runways because the braking coefficient's variation with speed is much lower on these types of runways.

As noted in the earlier discussion of the parameters affecting wet runway stopping performance, ESDU 71026 contains data corresponding to grooved and PFC surfaces. An evaluation of the ESDU data reveals that using a surface texture mid-way between surfaces D and E in combination with typical anti-skid efficiencies provides approximately the same airplane stopping performance as using 70 percent of the dry runway braking capability.

In response to the comments regarding grooved and PFC runways, a new § 25.109(d) is adopted to establish an optional wet runway braking coefficient for grooved or PFC runways. The braking coefficient for determining the accelerate-stop distance on grooved and PFC runways is defined in § 25.109(d) as either 70 percent of the value used to determine the dry runway accelerate-stop distances, or a value based on the ESDU data and derived in a manner consistent with that used for ungrooved runways. Section 25.105(c)(1) is revised to allow applicants, at their option, to provide data for grooved and PFC runways, in addition to the smooth surface runway data that is currently required. In addition, the existing § 25.109(d) is revised to remove the words "smooth" and "hard-surfaced" and redesignated as § 25.109(h).

Section 25.1533(a)(3) is amended to allow wet runway takeoff distances on grooved and PFC runways to be established as additional operating limitations, but approval to use these distances is limited to runways that have been designed, constructed, and maintained in a manner acceptable to the FAA Administrator. In conjunction, §§ 91.605(b)(3), 121.189(e), and 135.379(e) of the operating rules are

amended to limit the use of the grooved and PFC wet runway accelerate-stop distances to runways that the operator has determined have been designed, constructed, and maintained in a manner acceptable to the FAA Administrator. The page(s) in the AFM containing the wet runway accelerate-stop distances for grooved and PFC runways should contain a note equivalent to the following: "These accelerate-stop distances apply only to runways that are grooved or treated with a porous friction course (PFC) overlay that the operator has determined have been designed, constructed, and maintained in a manner acceptable to the FAA Administrator."

Airplane operators who wish to use the grooved or PFC runway accelerate-stop distances must determine that the design, construction, and maintenance aspects are acceptable for each runway for which such credit is sought. In making these determinations, operators may rely on certifications from airport operators or independent evaluations of runways. In either case, it is expected that operators will be able to demonstrate that their determinations are well founded. Acceptable runways should be listed in Part C of the operator's approved operations specifications (for those operators required to have operations specifications).

FAA AC 150/5320–12B provides guidance regarding grooved and PFC runway construction and maintenance techniques that are considered acceptable to the Administrator. These criteria for obtaining operational approval to use the grooved and PFC wet runway accelerate-stop distances are consistent with the guidance provided in AC 121.195(d)–1A for approval to use operational landing distance for wet runways. After adoption of this final rule, the FAA also intends to include this information in an update to AC 91–6A, "Water, Slush, and Snow on the Runway."

Under the proposals for §§ 25.109 (c) and (d) in NPRM 93–8, wet runway accelerate-stop distances may include the additional stopping force provided by reverse thrust; however, including this stopping force would be prohibited when determining the dry runway accelerate-stop distances. Most of the commenters supported the proposal for wet runways, although several commenters noted that several important aspects were not addressed. These aspects include issues such as reliability of the trust reversers, piloting procedures, controllability in crosswinds, flight test methods, etc.

The FAA agrees that detailed guidance material is needed, relative to thrust reversers, to define an acceptable means to comply with the proposed requirements of § 25.109(c). As mentioned earlier, the FAA intends to propose specific guidance material soon as part of a revision to AC 25–7. In general, the FAA intends to propose that: (1) Acceptable procedures should be developed and demonstrated, including the time needed to accomplish these procedures; (2) the responses and interactions of airplane systems should be taken into account; (3) the recommended level of reverse thrust should be easily obtainable under in-service conditions (e.g., by providing a detent or other tactile method of thrust selection); (4) directional control should be demonstrated with maximum braking on a wet runway with a ten-knot crosswind from the most adverse direction; (5) the probability of failure should be no more than 1 per 1000 selections; (6) inoperative thrust reversers at dispatch should be taken into account; (7) satisfactory engine operating characteristics should be demonstrated; and (8) appropriate flight tests should be conducted to determine the effective stopping force provided by reverse thrust, and to validate the total stopping force provided by all of the decelerating means.

One commenter proposed an amendment to the existing § 25.109(c) to clarify that a finding of "safe and reliable" for any deceleration means other than wheel brakes must take into account the interactions and interdependencies of the various systems involved, and that consistent results must be expected under all conditions covered by the AFM. This comment is directed primarily at a landing situation in which slippery runways and higher than normal approach speeds could thwart or delay sensing logic for determining whether the airplane is on the ground. Consequently, the operation of any deceleration means that can only be activated on the ground (e.g., ground spoilers and thrust reversers) would also be delayed.

Under the existing §§ 25.109(c) and 25.1309, the FAA already reviews the system operation and inter-compatibility issues that would be addressed by the commenter's proposed changes to § 25.109(c). Therefore, the FAA considers these proposed changes to be unnecessary.

One commenter noted that the same reasons in the FAA's proposal for denying accelerate-stop distance credit for the use of reverse thrust on dry runways also apply to wet runways. Therefore, if dry runway accelerate-stop distances need the safety margin provided by not including the effects of reverse thrust, then so do the wet runway accelerate-stop distances. The FAA does not concur. As stated in the discussion of the proposal, the FAA believes that the additional safety provided by not accounting for reverse thrust in calculating the accelerate-stop distance on a dry runway is necessary to offset other variables that can significantly affect the dry runway accelerate-stop performance. Examples of variables that can significantly affect the dry runway accelerate-stop performance include: runway surfaces that provide poorer friction characteristics than the runway used during flight tests to determine stopping performance, dragging brakes, brakes whose stopping capability is reduced because of heat retained from previous braking efforts, etc. Although these variables may also be present for wet runways, their effects are adequately covered by the adopted method of determining the stopping capability on a wet runway. This method provides a margin of safety by using conservative assumptions regarding runway surface texture, tire tread depth, tire inflation pressure, anti-skid efficiency, etc.

Despite the reasons the FAA presented in NPRM 93–8 for denying accelerate-stop distance credit for the use of reverse thrust on dry runways, several commenters propose that reverse thrust credit be permitted, at least to the extent that it offsets any performance degradation due to worn brakes. These commenters claim that the majority of the factors degrading accelerate-stop performance have been taken into account; therefore, it would be appropriate to include the positive effect of reverse thrust. These commenters also note that reverse thrust capability is provided on nearly all commercial jet transport airplanes, current thrust reversers are reliable, flightcrews are trained to use reverse thrust, and its use is a normal part of operational stopping procedures. Also, the probability of a thrust reverser failing to operate, combined with the probability of all brakes being at the fully worn limit, is very low, and there would be an even lower probability of these factors occurring in combination with a takeoff rejected from a critically high speed. Under the proposal offered by most of these commenters, the dry runway accelerate-stop distance would be required to be the greater of either: (1) The distance determined using new brakes without reverse thrust, or (2) the distance determined using worn brakes

with reverse thrust. Since item (1) corresponds to the current standards, this proposal would not reduce the accelerate-stop distance to less than what is currently required. The effect of the commenters' proposal would be to offset any loss in stopping capability associated with worn brakes.

As stated previously, the FAA considers that the additional safety provided by not including the effect of reverse thrust for the accelerate-stop distance on a dry runway is necessary to offset other variables that can significantly affect the dry runway accelerate-stop performance. The effect of these other variables on the dry runway accelerate-stop distance are unchanged by this rulemaking. Although the part 25 airworthiness standards are being made more stringent by adding requirements related to worn brakes and wet runways, the overall effect of these additions are partially offset by the change in the method used to account for the time it takes the pilot to perform the procedures for rejecting the takeoff. Further alleviating provisions are inappropriate because they would unacceptably reduce the level of safety. Therefore, §§ 25.109(c) and (d) are amended as proposed in NPRM 93–8, except that they have been re-designated as paragraphs (e) and (f), respectively.

As part of the proposed wet runway standards, §§ 25.13 (a) and (b) would allow the airplane's height over the end of the runway (known as the screen height) to be reduced from 35 feet on dry runways to 15 feet on wet runways. Some commenters object to reducing the screen height for wet runways, stating that safety margins would be reduced for takeoffs that are continued following an engine failure. One commenter would accept a reduced screen height only if operators are first required to use the configuration that provides the best short field performance. The FAA response to the latter comment was provided in the discussion of the commenter's proposed change to §25.105(a)(2).

The FAA proposed reducing the required screen height for wet runways to re-balance the available safety margins, in a manner that does not impose significant costs on airplane operators, when taking off from a wet runway. On a wet runway, the distance needed to stop the airplane increases significantly due to the reduced braking effectiveness. On the other hand, the distance needed to complete a continued takeoff is generally unchanged from that needed for a dry runway. By reducing the required screen height on a wet runway, a lower V_1 speed can be used. The effect of lower V_1 speeds will be to reduce the number of rejected takeoffs that occur on wet runways, and to reduce the speed from which these takeoffs are rejected. The latter effect is considered especially important because the braking capability on a wet runway is significantly poorer at higher speeds.

As noted by one of the commenters, any reduction in the number of takeoffs that are rejected will produce an equal number of additional continued takeoffs. Because of the lower V_1 speed, the airplane's height over the end of the runway for these takeoffs, as well as the ensuring flight path, will be lower than would normally be achieved on a dry runway. If a clearway area is available, however, the minimum height of the airplane over the end of a dry runway may, under the current standards, be as low as 13 to 17 feet. On this basis, the FAA considers a minimum screen height of 15 feet to be acceptable when the runway is wet.

Allowing the screen height to be reduced on wet runways also reduces the cost burden imposed on airplane operators by the wet runway standards. By taking into account the degraded braking capability on wet runways, these standards may reduce the maximum weight at which the airplane would be allowed to take off from a given runway. If a screen height of 35 feet were retained for wet runways, an even greater reduction in takeoff weight capability could be necessary.

In the proposed §25.113(c), the FAA intended to require that the minimum screen height on a wet runway with a clearway would not be lower than either: (1) 15 feet, or (2) the screen height that could be achieved if the runway were dry. A clearway is an area at least 500 feet wide beyond the departure end of the runway that has not obstacles protruding above a 1.25 percent upward sloping gradient. On a dry runway, up to one-half of the distance traversed between liftoff and a height of 35 feet may be over the clearway. As noted earlier, the screen height (i.e., the height at the end of the runway) achieved on a dry runway with clearway may end up being as low as 13 feet. Accordingly, a higher takeoff weight is possible when a clearway is present. The words "but not beyond the end of the runway" included in the proposal for § 25.113(b)(2) would effectively require the wet runway screen height to be not less than 15 feet. Under the proposed wording, therefore, the presence of clearway could not be used to increase the takeoff weight on a wet runway. Also, in some instances, the minimum screen height on a wet runway would be higher than that for a dry runway.

Several commenters expressed confusion over the discrepancy between the FAA's intent, as expressed in the preamble to NPRM 93–8, and the proposed wording for §§ 25.113(b) (2) and (c). One commenter noted that the words "but not beyond the end of the runway" appear to inappropriately introduce an operating rule into the type design standards. This commenter also notes that the quoted phrase does not appear in the JAA's equivalent NPA. This commenter further suggests that removing the quoted phrase would accomplish the FAA's stated intent of allowing a very limited takeoff weight increase on wet runways when clearway is present.

Another commenter recommends that maximum clearway credit be permitted in combination with the 15-foot screen height on a wet runway. The commenter notes that V_1 speed could then be reduced even further, thus providing additional safety in the event of a rejected takeoff on a wet runway. The FAA infers that this commenter is proposing that half of the distance traversed between liftoff and a height of 15 feet be permitted to occur over the clearway. Because of the parabolic shape of the flight path, the airplane may end up being only five to eight feet high at the end of the runway. The point at which the airplane lifts off would thus be very near the end of the runway. As discussed in NPRM 93–8, the FAA considers such a situation to be unacceptable. The possibility of standing water on the wet runway, or operational considerations such as a late or slow rotation to the liftoff attitude, emphasize the need to require liftoff to occur well before the end of the runway.

Other commenters, including an international association representing airplane operators, suggest that the potential benefit provided by the FAA's intended proposal regarding clearway on a wet runway is so small that it is insignificant. These commenters are willing to accept the slight conservatism associated with prohibiting credit for clearway in conjunction with the 15-foot screen height on wet runways in favor of simplifying and clarifying the rule language. The FAA concurs with this comment and is amending § 25.113 accordingly. The phrase "but not beyond the end of the runway," contained in the proposed § 25.113(b)(2), is removed. The proposed § 25.113(c) is clarified to prohibit a screen height of less than 15 feet on a wet runway. If the limiting takeoff distance is determined by the all-engines-operating condition, where

the minimum height at the end of the takeoff distance remains 35 feet, clearway credit is allowed on a wet runway in the same manner as it is allowed on a dry runway. Also, § 25.113 is amended to add the provision that in the absence of clearway, the takeoff run is equal to the takeoff distance. This provision is added only to ensure completeness of the definition of takeoff run within the airworthiness standards and is in accordance with standard industry practice. The current requirement does not define the takeoff run when clearway is not present.

Some commenters apparently misunderstand some aspects of the wet runway standards, especially the effect of §§ 25.109(b)(1) and 25.113(b)(1). These sections require the accelerate-stop and takeoff distances on a wet runway (at the wet runway V_1 speed) to be at least as long as the corresponding distances on a dry runway (at the dry runway V_1 speed). These requirements therefore ensure that the maximum takeoff weight for a wet runway can never be higher than that allowed when the runway is dry. In practice, applicants should use the following procedure to determine takeoff performance when the runway is wet. First, conduct the takeoff performance analysis assuming the runway is dry. Then, repeat the analysis using wet runway data, including the wet runway V_1 speed. The lowest takeoff weight from these analyses is the maximum takeoff weight that can be used when the runway is wet. For this takeoff weight, determine and compare the accelerate-stop and takeoff distances applicable to both dry and wet conditions. The longer of each of these accelerate-stop and takeoff distances apply when the runway is wet.

The FAA received only one comment related to the proposed change to § 25.115(a). This proposed change would allow the airplane's height over any obstacles to be reduced by an amount corresponding to the reduced screen height allowed when taking off from a wet runway. The commenter suggested that the current obstacle clearance criteria should be updated to represent more realistic operational conditions. The commenter is referring to the criteria used to evaluate whether the obstacle must be cleared vertically, or whether an operator can consider the obstacle to be laterally outside of the airplane's path. The FAA is currently developing an advisory circular that will address this issue in detail. Therefore, § 25.115(a) is amended as proposed.

The FAA received several comments on the proposed changes to § 25.735. One commenter proposed that § 25.735(f) refer to the wear condition that provides the least effective braking performance. This comment is related to a similar comment regarding § 25.101(i). As discussed in response to the earlier comment, the FAA believes that the fully worn condition will always provide the least effective braking performance.

This commenter also suggests that the flight test proposed under § 25.735(g) is unnecessary. The commenter proposes that a flight test should be required only if poor correlation exists between dynamometer test results and flight test results. The commenter also believes that a rejected takeoff may not represent the most severe stopping condition. For example, landing at the maximum landing weight with the flaps retracted may involve higher stopping energies. For this reason, the commenter suggests that § 25.735(g) refer to the most severe stop rather than a rejected takeoff.

The flight test proposed in § 25.735(g) is the only flight test that would be required to be conducted at a specific brake wear level. The FAA considers this test to be a necessary demonstration of the airplane's ability to safely stop under the most critical rejected takeoff condition. For the remainder of the flight testing to determine the rejected takeoff and landing stopping distances, the brakes may be at any wear level desired by the applicant (including new brakes). Dynamometer testing could be used to determine the difference in stopping capability between fully worn brakes and the brake wear level used in the flight tests. This difference would be applied to the flight test results to determine the stopping distances for fully worn brakes.

For the purposes of this demonstration, the FAA considers the maximum kinetic energy rejected takeoff to be the most critical stopping condition. Therefore, the FAA does not concur with the commenter's suggestion to replace the reference to rejected takeoff in the flight test demonstration with a reference to the most severe stop. However, from a brake approval standpoint, the FAA agrees that the brakes, in the fully worn condition, should be capable of absorbing the energy produced during the most severe stopping condition. The FAA has tasked a harmonization working group with recommending new or revised requirements for approval of brakes installed on transport category airplanes, and this working group is expected to recommend proposed standards addressing this issue.

Another commenter suggests that the flight test demonstration referenced by the proposed § 25.735(g) should include a two-second overshoot of V_1, before applying the brakes, to allow for the average pilot response time. The FAA does not concur with this comment because V_1 represents the highest speed at which the pilot should take the first action to reject the takeoff. Also, the procedures used during the flight test demonstration, including the time at which the pilot applies the brakes, should be consistent with the rejected takeoff procedures provided by the applicant in the AFM.

One commenter proposed that § 25.735(f) be clarified to allow for other devices inherent in a particular airplane design that may be used to dissipate energy. Failure to allow such credit, claims the commenter, will diminish the value of technological improvements in energy dissipation devices that are likely to be introduced to improve airplane stopping performance under wet runway conditions.

The current § 25.735(f) allows for the use of the same decelerating means to determine the brake kinetic energy capacity rating as are used to determine the dry runway accelerate-stop distances. The energy absorption capability of the brake is generally more of a concern on a dry runway than on a wet runway because of the difference in deceleration capability. To receive credit for energy dissipation devices that are likely to be introduced to improve airplane stopping performance under wet runway conditions, these devices must also provide proportionate benefits when the runway is dry, as well as meet the safety and reliability criteria of the amended § 25.109(e). Within these constraints, the FAA will consider any technological improvements in energy deceleration devices at the time such devices are proposed for evaluation.

Two commenters suggest that the proposed amendment to associate the brake energy rating of § 25.735(f) with brakes in the fully worn condition is inappropriate and could lead to confusion during the brake approval process. These commenters concur with the intent that each wheel-brake assembly, when fully worn, be capable of absorbing the maximum kinetic energy for which it is approved. However, these commenters note that the kinetic energy level defined in § 25.735(f) is the same energy level used in Technical Standard Order (TSO)–C26c for demonstrating the capability of the brake to successfully complete 100 landing stops with no refurbishment or other changes made to brake system components (except for one change in

brake lining material). (TSO–C26c contains minimum performance standards for aircraft landing wheels and wheel-brake assemblies and specifies the brake dynamometer tests to demonstrate compliance with these standard.) Because of the relationship between § 25.735(f) and the TSO, any change to the definition of the energy level in § 25.735(f) would presumably also apply to the TSO. Since the TSO 100-stop test is intended to verify that the brake has acceptable structural durability, rather than to demonstrate the capability to successfully complete a high energy stop in the fully worn condition, the combination of the worn condition with the TSO energy level would be inappropriate. A brake that is fully worn at the beginning of the 100-stop test would be unable to successfully complete the test.

One of the commenters notes that the TSO also requires a test involving one stop at the maximum rejected takeoff kinetic energy. According to the commenter, it is this test that should be conducted with a fully worn brake. The energy rating demonstrated by this test is not explicitly referenced in part 25, but is contained in JAR–25 as JAR 25.735(h). The commenter proposes adding JAR 25.735(h) to part 25 to harmonize the two standards and to help clarify the application of the worn brake requirements. This commenter also suggests adding references to the applicable TSO and clarifying that the formula provided in § 25.735(f)(2) need only be modified in cases of designed unequal braking distributions. Uneven braking distributions can unintentionally occur during flight tests, but this characteristic cannot be predicted during the design or qualification stages for which § 25.735(f)(2) is relevant.

The FAA concurs with these proposals. As amended, § 25.735(f) defines the landing kinetic energy rating to be used during qualification testing per the applicable TSO or other qualification testing used to show an equivalent level of safety, as necessary to obtain the approval required by § 25.735(a). The proposed reference to a fully worn brake is inappropriate in this section and has been removed. In the proposed revision to AC 25–7, for which the notice of availability is published elsewhere in this issue of the **Federal Register**, the FAA proposes to clarify that the relevant TSO 100-stop test may begin with a brake in any condition representative of service use, including new. In addition, a new § 25.735(h), based on JAR 25.735(h), has been added. This section is similar to § 25.735(f), but defines the rejected takeoff, rather than the landing kinetic energy rating used in the applicable TSO. Unlike the landing brake kinetic energy rating, the rejected takeoff brake kinetic energy rating must be demonstrated with a fully worn brake. Finally, both the revised § 25.735(f)(2) and the new § 25.735(h)(2) require the referenced formulae for determining the brake energy capacity rating to be modified only in the case of designed unequal braking distributions. The format of the existing § 25.735(f)(2), with respect to this provision, has been adjusted to conform to **Federal Register** formatting guidelines, and the new § 25.735(h)(2) has been formatted similarly. With these changes, the final rule better matches the intent of the NPRM 93–8 proposals, and also harmonizes these sections with JAR–25.

The FAA intends to revise TSO–C26c to be consistent with these amendments to § 25.735. The Aviation Rulemaking Advisory Committee (ARAC) has been chartered with recommending appropriate changes to the TSO. Currently, the FAA envisions issuing the revised TSO, applicable to transport category airplanes, under a new designation, TSO–C135.

One commenter suggests that the proposed § 25.735(g) should be deleted. This commenter believes that this proposed flight test requirement is misplaced in the brake design and construction section of part 25. The commenter suggests that this issue should be addressed in the flight test guidance provided in AC 25–7.

The FAA concurs that the proposed flight test requirement would be better placed elsewhere, but does not concur with completely removing it from part 25. As stated previously, the FAA considers this test to be a necessary demonstration of the airplane's ability to safely stop under the most critical rejected takeoff condition. In addition, the FAA intends for this test to determine or validate the AFM accelerate-stop distance for this condition. Therefore, the proposed § 25.735(g) has been reworded to clarify that the airplane must stop within the accelerate-stop distance and is adopted as § 25.109(i). Existing § 25.735(g), which would have been redesignated as § 25.735(h), remains as § 25.735(g) in the adopted rule.

The FAA received one comment regarding the proposed amendment to § 25.1587(b). The objective of this proposal is to require that takeoff performance information for wet runways be included in the AFM. The commenter agrees with this objective, but notes that § 25.1587(b) addresses performance information other than that which would be affected by the surface condition of the takeoff runway. The commenter suggests that the proposed amendment instead be placed in § 25.1533(a)(3), which addresses operating limitations based on the minimum takeoff distances. The FAA concurs with this comment. Therefore, the proposed change to § 25.1587(b) has been removed, and § 25.1533(a)(3) is revised accordingly. The adopted amendment also corrects a typographical error in existing § 25.1533(a), identified by this commenter, by replacing the reference to § 25.103 with a reference to § 25.109.

One commenter strongly endorses a requirement to add a takeoff performance monitor to the flight deck of all airplanes to help pilots determine whether a takeoff should be rejected or continued. The commenter notes that modern transport category airplanes already contain most of the necessary instrumentation. According to the commenter, all that would be needed would be a display and a dedicated processor to compute the data to be displayed.

The FAA has participated in past evaluations of systems designed to monitor the performance of the airplane during the takeoff. Such systems typically compare the airplane's actual performance, as determined by airplane instrumentation, with the performance predicted by the AFM. If the airplane's performance is less than predicted, the performance shortfall would be indicated by the monitor. In addition, the takeoff speeds, V_1 and V_R, could be correlated with the point on the runway at which they should be reached. This information could assist pilots in determining whether it is safer to reject or to continue the takeoff.

The FAA supports efforts at improving the go/no-go decision process. Advisory Circular 25–15, "Approval of Flight Management Systems in Transport Category Airplanes," provides a means to obtain FAA approval of a takeoff performance monitor function as part of a flight management system. However, takeoff performance monitors are not yet sufficiently reliable nor are they sophisticated enough to warrant requiring their addition to the flight deck of transport category airplanes. Varying winds during the takeoff or a runway with a variable slope may cause the monitor to provide a false indication. The FAA is also concerned that the number of high speed rejected takeoffs could increase as pilots delay action to determine, for example, if an initially sub-par acceleration is corrected. Also, unnecessary rejected takeoffs could occur as a result of small

differences between the predicted airplane acceleration and the actual airplane's acceleration as determined by the onboard instrumentation. A takeoff performance monitor would need to consider all of the variables reflected in the takeoff performance data, such as atmospheric conditions, airplane flap setting, thrust level (including reduced and derated takeoff thrust), runway length, slope, and surface condition, etc. It is possible to design such a system, but current systems have not demonstrated a safety benefit over the information currently available to the pilot.

The same commenter recommends that the FAA undertake a study using research simulators to validate airplane/pilot performance in obstacle limited takeoffs with engine failures. The objective of this study would be to determine if there is a high degree of reliability that the combined airplane/pilot performance is acceptable. The commenter feels that such a study is essential to considerations of lower screen heights, tailwind takeoffs, and pilot decision making when the takeoff weight is limited by obstacle clearance considerations. In the interim, the commenter suggests that the FAA adopt more stringent obstacle clearance criteria, such as those contained in the International Civil Aviation Organization's (ICAO) Annex 6, Attachment C, Paragraph 3—Takeoff Obstacle Clearance Limitations.

Section 25.111 currently requires applicants to determine the airplane's takeoff path, which begins with the start of the takeoff roll and ends approximately 1,500 feet above the takeoff surface. Under § 25.111(d), applicants must conduct flight tests to ensure that the airplane can achieve the takeoff path presented in the AFM. The takeoff path data, and the flight test demonstrations, must be based on the procedures established by the applicant for operation in service, and assume that one engine fails at V_{EF}. Except for automatic propeller feathering and retraction of the landing gear, the airplane configuration must remain constant, and changes in power or thrust that require action by a pilot may not be made until the airplane reaches a height of 400 feet above the takeoff surface.

In addition to the takeoff path determined under § 25.111, § 25.115 requires applicants to determine the net takeoff flight path. The net takeoff flight path begins at the end of the takeoff distance and is equal to the takeoff flight path with the gradient of climb reduced by: 0.8 percent for two-engine airplanes; 0.9 percent for three-engine airplanes; and 1.0 percent for four-engine airplanes. These adjustments to the airplane's demonstrated climb gradient capability represent a safety margin for use in complying with the obstacle clearance requirements prescribed by the applicable operating rules. For airplanes operated under parts 121 or 135, the net takeoff flight path not only must clear all applicable obstacles, but must clear them by a height of at least 35 feet.

The current airworthiness standards already address the issues the commenter proposes for further study. For each part 25 airplane type design, applicants must conduct flight tests to validate the capability of the airplane, using normal piloting actions, to achieve the published flight path. Safety margins are then added to ensure that this flight path adequately clears all applicable obstacles.

The obstacle clearance criteria recommended by ICAO would require airplane operators to consider a larger ground area to be under the takeoff flight path when determining which obstacles must be cleared vertically. An obstacle that can be considered to be cleared laterally under current FAA practices may have to be cleared vertically under the ICAO recommendations. This change could result in restricting the amount of cargo or passengers to be carried because the airplane's vertical flight path capability is directly related to its takeoff weight. The FAA is currently drafting an advisory circular to provide standardized guidelines regarding the extent of the ground area that must be considered when determining which obstacles must be cleared vertically.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its costs as defined in the Executive Order; (2) will not have a significant impact on a substantial number of small entities; and (3) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

In order to analyze the potential net costs of the rule, this evaluation considers a hypothetical production program for a representative new type certification. This example assumes that: (1) Incremental certification costs are incurred in year "0", (2) production starts in year "4", (3) the first airplane enters service in year "5", (4) 50 airplanes are produced per year for ten years so that total production equals 500, (5) each airplane is retired at the end of its 25 year design service goal, and (6) the discount rate is 7 percent.

The analysis of incremental costs is divided into two cases: one which assumes a brake design that exhibits little decline in brake performance with wear, and another which assumes a brake design that exhibits a decline in brake performance with wear.

In the former case, the average reduction in dry runway accelerate-stop distance associated with the revised 2-second-at-V_1 requirement is greater than the average increase in accelerate-stop distance associated with the worn brake requirement. This will result in a reduction in operating costs of approximately $5,105 per airplane per year, or $128,000 per airplane over its service life (in nominal terms). However, approximately one third of takeoffs would be conducted using the wet runway accelerate-stop distance. Under the production run and cost assumptions enumerated above, the wet runway amendments will add approximately $2,700 to operating costs per airplane per year, or $68,000 per airplane over its service life. Therefore, net operating costs under this design assumption will decline by approximately $2,400 per airplane per year, or $59,400 per airplane over its service life. Total costs (including consideration of incremental certification and development costs), then, will be reduced by approximately $28.9 million for the 500 airplane fleet over its 34 year service life. On a discounted basis, total fleet costs will be reduced by approximately $7.5 million.

In the case where brake performance is assumed to decline with wear, the average reduction in dry runway accelerate-stop distance associated with the revised 2-second-at-V_1 requirement is offset by the average increase in dry runway accelerate-stop distance associated with the worn brake requirement. Again, however, the wet runway requirements will add approximately $2,700 (in nominal terms) per year per airplane to operating costs. Therefore, lifetime incremental costs (again including consideration of

incremental certification and development costs) for the 500 airplane fleet are approximately $34.9 million, or $9.6 million on a discounted basis. It should be emphasized, however, that FAA anticipates that future airplane models will incorporate brake designs that exhibit little reduction in braking force with wear.

The rule will have significant safety implications owing to the fact that it creates economic incentives for manufacturers, operators, and airports to adopt procedures which reduce takeoff hazards. While these ancillary safety benefits are not directly valued in this economic analysis, they are discussed in a qualitative way below.

The rule's worn-brake provisions will have important safety impacts. For airplanes that continue to make use of brake designs in which braking capacity declines with wear, the rule provides an incentive to reduce the specified level of allowable wear in return for some reduction in accelerate-stop distances. In this way, accelerate-stop distances are more closely related to actual brake performance.

Existing regulations do not distinguish between dry and wet runway surface conditions. The accident history, however, shows that wet runway rejected takeoff overrun accidents account for a disproportionate share of the total. In fact, the wet runway rejected takeoff accident rate (involving substantial damage or hull loss) is seven times greater than the dry runway accident rate. The rule enhances safety by taking into account this hazardous takeoff condition. First, it directly increases accelerate-stop margins for wet runway conditions. Second, it creates an economic incentive to develop more stringent maintenance programs for skid-resistant runway surfaces.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, specifies small entity size and cost thresholds by Standard Industrial Classification (SIC). Entities potentially affected by the rule include manufacturers of transport category airplanes (SIC 3721) and operators of aircraft for hire (SIC 4511).

There are no manufacturers of transport category airplanes that meet the SIC 3721 size threshold for small entities (75 employees). However, small air carriers operating transport category airplanes could be affected by the rule. Order 2100.14A defines a small carrier as one owning 9 or fewer aircraft. The definition of "significant economic impact" varies by air carrier type: for operators whose fleets consist entirely of aircraft having a seating capacity of more than 60 passengers the threshold is $123,445, for other operators the threshold is $69,005.

Under the most conservative (that is, most costly) compliance assumptions, the rule will increase operating costs by approximately $2,700 per airplane per year; or $24,300 per year for a nine-airplane fleet. Assuming that all incremental certification costs are passed on to the operator, the rule would increase the price of an airplane by $1,570. When this is amortized over the 25-year life of the airplane (assuming a 7% discount rate), the incremental cost per airplane is approximately $126 per year or $1,134 per year for a nine-airplane fleet. An upper-bound estimate of the annual impact of the proposed rule to small operators, then, is approximately $24,300+$1,134=$25,434. FAA holds, therefore, that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Trade Impact Assessment

Recognizing that nominally domestic regulations often affect international trade, the Office of Management and Budget directs Federal agencies to assess whether or not a rule or regulation will have the effect of lessening the restraints of any trade-sensitive actively. The FAA determines that the subject rule will reduce barriers to international trade.

The rule collectively places U.S. and foreign transport airplanes on a more equitable basis regarding their marketability. The standardization of certification criteria between the FAA and the Joint Aviation Authorities (JAA) of Europe, and the equalization of safety levels for pre- and post-Amendment 25–42 airplanes eliminates the slight comparative disadvantage experienced by certain foreign airplanes. The requirement regarding the two-second margin allows European-produced airplanes certified under Amendment 25–42 to become slightly more competitive against current production U.S. airplanes that were not certified under Amendment 25–42 by marginally expanding their takeoff envelope.

Federalism Implications

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

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rule does not

conflict with any international agreement of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*). there are not reporting or recordkeeping requirements associated with this rule.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this final rule applies to the certification of future designs of transport category airplane and their subsequent operation, it could affect interstate aviation in Alaska. The Administrator has considered the extent to which Alaska is not served by transportation modes other than a aviation, and how the final rule could have been applied differently to intrastate operations in Alaska. However, the Administrator has determined that airplanes operated solely in Alaska would present the same safety concerns as all other affected airplanes; therefore, it would be inappropriate to establish a regulatory distinction for the intrastate operation of affected airplanes in Alaska.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Aircraft, Airplane, Airworthiness, Air transportation.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 1, 25, 91, 121, and 135 of the Federal Aviation Regulations (FAR) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Section 1.2 is amended by adding a new abbreviation "V_{EF}" and revising the description for the abbreviation "V_1" to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

V_{EF} means the speed at which the critical engine is assumed to fail during takeoff.

* * * * *

V_1 means the maximum speed in the takeoff at which the pilot must take the first action (e.g., apply brakes, reduce thrust, deploy speed brakes) to stop the airplane within the accelerate-stop distance. V_1 also means the minimum speed in the takeoff, following a failure of the critical engine at V_{EF}, at which the pilot can continue the takeoff and achieve the required height above the takeoff surface within the takeoff distance.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

4. Section 25.101 is amended by adding a new paragraph (i) to read as follows:

§ 25.101 General.

* * * * *

(i) The accelerate-stop and landing distances prescribed in §§ 25.109 and 25.125, respectively, must be determined with all the airplane wheel brake assemblies at the fully worn limit of their allowable wear range.

5. Section § 25.105 is amended by revising paragraph (c)(1) to read as follows:

§ 25.105 Takeoff.

* * * * *

(c) * * *

(1) In the case of land planes and amphibians:

(i) Smooth, dry and wet, hard-surfaced runways; and

(ii) At the option of the applicant, grooved or porous friction course wet, hard-surfaced runways.

* * * * *

6. Section § 25.107 is amended by revising paragraph (a)(2) to read as follows:

§ 25.107 Takeoff speeds.

(a) * * *

(2) V_1, in terms of calibrated airspeed, is selected by the applicant; however, V_1 may not be less than V_{EF} plus the speed gained with critical engine inoperative during the time interval between the instant at which the critical engine is failed, and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's initiation of the first action (e.g., applying brakes, reducing thrust, deploying speed brakes) to stop the airplane during accelerate-stop tests.

* * * * *

7. Section 25.109 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (e) and revising the introductory text, redesignating paragraph (c) as paragraph (g) redesignating paragraph (d) as paragraph (h) and revising the first sentence, and adding new paragraphs (b), (c), (d), (f), and (i) to read as follows:

§ 25.109 Accelerate-stop distance.

(a) The accelerate-stop distance on a dry runway is the greater of the following distances:

(1) The sum of the distances necessary to—

(i) Accelerate the airplane from a standing start with all engines operating to V_{EF} for takeoff from a dry runway;

(ii) Allow the airplane to accelerate from V_{EF} to the highest speed reached during the rejected takeoff, assuming the critical engine fails at V_{EF} and the pilot takes the first action to reject the takeoff at the V_1 for takeoff from a dry runway; and

(iii) Come to a full stop on a dry runway from the speed reached as prescribed in paragraph (a)(1)(ii) of this section; plus

(iv) A distance equivalent to 2 seconds at the V_1 for takeoff from a dry runway.

(2) The sum of the distances necessary to—

(i) Accelerate the airplane from a standing start with all engines operating to the highest speed reached during the rejected takeoff, assuming the pilot takes the first action to reject the takeoff at the V_1 for takeoff from a dry runway; and

(ii) With all engines still operating, come to a full stop on dry runway from the speed reached as prescribed in paragraph (a)(2)(i) of this section; plus

(iii) A distance equivalent to 2 seconds at the V_1 for takeoff from a dry runway.

(b) The accelerate-stop distance on a wet runway is the greater of the following distances:

(1) The accelerate-stop distance on a dry runway determined in accordance with paragraph (a) of this section; or

(2) The accelerate-stop distance determined in accordance with paragraph (a) of this section, except that the runway is wet and the corresponding wet runway values of V_{EF} and V_1 are used. In determining the wet runway accelerate-stop distance, the stopping force from the wheel brakes may never exceed:

(i) The wheel brakes stopping force determined in meeting the requirements of § 25.101(i) and paragraph (a) of this section; and

(ii) The force resulting from the wet runway braking coefficient of friction determined in accordance with paragraphs (c) or (d) of this section, as applicable, taking into account the distribution of the normal load between braked and unbraked wheels at the most adverse center-of-gravity position approved for takeoff.

(c) The wet runway braking coefficient of friction for a smooth wet runway is defined as a curve of friction coefficient versus ground speed and must be computed as follows:

(1) The maximum tire-to-ground wet runway braking coefficient of friction is defined as:

BILLING CODE 4910–13–M

Tire Pressure (psi)	Maximum Braking Coefficient (tire-to-ground)
50	$\mu_{t/g_{MAX}} = -0.0350\left(\frac{V}{100}\right)^3 + 0.306\left(\frac{V}{100}\right)^2 - 0.851\left(\frac{V}{100}\right) + 0.883$
100	$\mu_{t/g_{MAX}} = -0.0437\left(\frac{V}{100}\right)^3 + 0.320\left(\frac{V}{100}\right)^2 - 0.805\left(\frac{V}{100}\right) + 0.804$
200	$\mu_{t/g_{MAX}} = -0.0331\left(\frac{V}{100}\right)^3 + 0.252\left(\frac{V}{100}\right)^2 - 0.658\left(\frac{V}{100}\right) + 0.692$
300	$\mu_{t/g_{MAX}} = -0.0401\left(\frac{V}{100}\right)^3 + 0.263\left(\frac{V}{100}\right)^2 - 0.611\left(\frac{V}{100}\right) + 0.614$

BILLING CODE 4910–13–C

Where—

Tire Pressure=maximum airplane operating tire pressure (psi);

$\mu_{t/gMAX}$=maximum tire-to-ground braking coefficient;

V=airplane true ground speed (knots); and

Linear interpolation may be used for tire pressures other than those listed.

(2) The maximum tire-to-ground wet runway braking coefficient of friction must be adjusted to take into account the efficiency of the anti-skid system on a wet runway. Anti-skid system operation must be demonstrated by flight testing on a smooth wet runway, and its efficiency must be determined. Unless a specific anti-skid system efficiency is determined from a quantitative analysis of the flight testing on a smooth wet runway, the maximum tire-to-ground wet runway braking coefficient of friction determined in paragraph (c)(1) of this section must be multiplied by the efficiency value associated with the type of anti-skid system installed on the airplane:

Type of anti-skid system	Efficiency value
On-Off	0.30
Quasi-Modulating	0.50
Fully Modulating	0.80

(d) At the option of the applicant, a higher wet runway braking coefficient of friction may be used for runway surfaces that have been grooved or treated with a porous friction course material. For grooved and porous friction course runways, the wet runway braking coefficent of friction is defined as either:

(1) 70 percent of the dry runway braking coefficient of friction used to determine the dry runway accelerate-stop distance; or

(2) The wet runway braking coefficient defined in paragraph (c) of this section, except that a specific anti-skid system efficiency, if determined, is appropriate for a grooved or porous friction course wet runway, and the maximum tire-to-ground wet runway braking coefficient of friction is defined as:

BILLING CODE 4910–13–M

Tire Pressure (psi)	Maximum Braking Coefficient (tire-to-ground)
50	$\mu_{t/g_{MAX}} = 0.1470\left(\frac{V}{100}\right)^5 - 1.050\left(\frac{V}{100}\right)^4 + 2.673\left(\frac{V}{100}\right)^3 - 2.683\left(\frac{V}{100}\right)^2 + 0.403\left(\frac{V}{100}\right) + 0.859$
100	$\mu_{t/g_{MAX}} = 0.1106\left(\frac{V}{100}\right)^5 - 0.813\left(\frac{V}{100}\right)^4 + 2.130\left(\frac{V}{100}\right)^3 - 2.200\left(\frac{V}{100}\right)^2 + 0.317\left(\frac{V}{100}\right) + 0.807$
200	$\mu_{t/g_{MAX}} = 0.0498\left(\frac{V}{100}\right)^5 - 0.398\left(\frac{V}{100}\right)^4 + 1.140\left(\frac{V}{100}\right)^3 - 1.285\left(\frac{V}{100}\right)^2 + 0.140\left(\frac{V}{100}\right) + 0.701$
300	$\mu_{t/g_{MAX}} = 0.0314\left(\frac{V}{100}\right)^5 - 0.247\left(\frac{V}{100}\right)^4 + 0.703\left(\frac{V}{100}\right)^3 - 0.779\left(\frac{V}{100}\right)^2 - 0.00954\left(\frac{V}{100}\right) + 0.614$

BILLING CODE 4910–13–C

Where—

Tire Pressure=maximum airplane operating tire pressure (psi);

$\mu_{t/g_{MAX}}$=maximum tire-to-ground braking coefficient;

V=airplane true ground speed (knots); and

Linear interpolation may be used for tire pressures other than those listed.

(e) Except as provided in paragraph (f)(1) of this section, means other than wheel brakes may be used to determine the accelerate-stop distance if that means—

* * * * *

(f) The effects of available reverse thrust—

(1) Shall not be included as an additional means of deceleration when determining the accelerate-stop distance on a dry runway; and

(2) May be included as an additional means of deceleration using recommended reverse thrust procedures when determining the accelerate-stop distance on a wet runway, provided the requirements of paragraph (e) of this section are met.

* * * * *

(h) If the accelerate-stop distance includes a stopway with surface characteristics substantially different from those of the runway, the takeoff data must include operational correction factors for the accelerate-stop distance. * * *

(i) A flight test demonstration of the maximum brake kinetic energy accelerate-stop distance must be conducted with not more than 10 percent of the allowable brake wear range remaining on each of the airplane wheel brakes.

8. Section 25.113 is amended by revising the introductory text of paragraph (a) and revising paragraph (a)(1), redesignating paragraph (b) as paragraph (c) and revising it, and adding a new paragraph (b) to read as follows:

§ 25.113 Takeoff distance and takeoff run.

(a) Takeoff distance on a dry runway is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under § 25.111 for a dry runway; or

* * * * *

(b) Takeoff distance on a wet runway is the greater of—

(1) The takeoff distance on a dry runway determined in accordance with paragraph (a) of this section; or

(2) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 15 feet above the takeoff surface, achieved in a manner consistent with the achievement of V_2 before reaching 35 feet above the takeoff surface, determined under § 25.111 for a wet runway.

(c) If the takeoff distance does not include a clearway, the takeoff run is equal to the takeoff distance. If the takeoff distance includes a clearway—

(1) The takeoff run on a dry runway is the greater of—

(i) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under § 25.111 for a dry runway; or

(ii) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with § 25.111.

(2) The takeoff run on a wet runway is the greater of—

(i) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 15 feet above the takeoff surface, achieved in a manner consistent with the achievement of V_2 before reaching 35 feet above the takeoff surface, as determined under § 25.111 for a wet runway; or

(ii) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with § 25.111.

9. Section 25.115 is amended by revising paragraph (a) to read as follows:

§ 25.115 Takeoff flight path.

(a) The takeoff flight path shall be considered to begin 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with § 25.113(a) or (b), as appropriate for the runway surface condition.

* * * * *

10. Section 25.735 is amended by revising paragraphs (f) introductory text and (f)(2) and adding a new paragraph (h) to read as follows:

§ 25.735 Brakes

* * * * *

(f) The design landing brake kinetic energy capacity rating of each main wheel-brake assembly shall be used during qualification testing of the brake to the applicable Technical Standard Order (TSO) or an acceptable equivalent. This kinetic energy rating may not be less than the kinetic energy absorption requirements determined under either of the following methods:

(1) * * *

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel-brake assembly may be derived from the following formula, which must be modified in cases of designed unequal braking distributions.

$$KE = \frac{0.0443WV^2}{N}$$

Where—
KE=Kinetic energy per wheel (ft.-lb.);
W=Design landing weight (lb.);
V=Airplane speed in knots. V must not be less than V_{SO}, the power off stalling speed of the airplane at sea level, at the design landing weight, and in the landing configuration; and
N=Number of main wheels with brakes.

* * * * *

(h) The rejected takeoff brake kinetic energy capacity rating of each main wheel-brake assembly that is at the fully worn limit of its allowable wear range shall be used during qualification testing of the brake to the applicable Technical Standard Order (TSO) or an acceptable equivalent. This kinetic energy rating may not be less than the kinetic energy absorption requirements determined under either of the following methods:

(1) The brake kinetic energy absorption requirements must be based on a rational analysis of the sequence of events expected during an accelerate-stop maneuver. This analysis must include conservative values of airplane speed at which the brakes are applied, braking coefficient of friction between tires and runway, aerodynamic drag, propeller drag or powerplant forward thrust, and (if more critical) the most adverse single engine or propeller malfunction.

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel brake assembly may be derived from the following formula, which must be modified in cases of designed unequal braking distributions:

$$KE = \frac{0.0443WV^2}{N}$$

Where—
KE=Kinetic energy per wheel (ft.-lb.);
W=Airplane weight (lb.);
V=Airplane speed (knots);
N=Number of main wheels with brakes; and
W and V are the most critical combination of takeoff weight and ground speed obtained in a rejected takeoff.

11. Section 25.1533 is amended by revising paragraph (a)(3) to read as follows:

§ 25.1533 Additional operating limitations.

(a) * * *

(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of this part (including the provisions of §§ 25.109 and 25.113, for weights, altitudes, temperatures, wind components, runway surface conditions (dry and wet), and runway gradients) for smooth, hard-surfaced runways. Additionally, at the option of the applicant, wet runway takeoff distances may be established for runway surfaces that have been grooved or treated with a porous friction course, and may be approved for use on runways where such surfaces have been designed constructed, and maintained in a manner acceptable to the Administrator.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

12. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531; Articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), 902.

13. Section 91.605 is amended by revising paragraph (b)(3) to read as follows:

§ 91.605 Transport category civil airplane weight limitations.

* * * * *

(b) * * *

(3) The takeoff weight does not exceed the weight shown in the Airplane Flight Manual to correspond with the minimum distances required for takeoff, considering the elevation of the airport, the runway to be used, the effective runway gradient, the ambient temperature and wind component at the time of takeoff, and, if operating limitations exist for the minimum distances required for takeoff from wet runways, the runway surface condition (dry or wet). Wet runway distances associated with grooved or porous friction course runways, if provided in the Airplane Flight Manual, may be used only for runways that are grooved or treated with a porous friction course (PFC) overlay, and that the operator determines are designed, constructed, and maintained in a manner acceptable to the Administrator.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

14. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

15. Section 121.189 is amended by revising paragraph (e) to read as follows:

§ 121.189 Airplanes: Turbine engine powered: Takeoff limitations.

* * * * *

(e) In determining maximum weights, minimum distances, and flight paths under paragraphs (a) through (d) of this section, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, the ambient temperature and wind component at the time of takeoff, and, if operating limitations exist for the minimum distances required for takeoff from wet runways, the runway surface condition (dry or wet). Wet runway distances associated with grooved or porous friction course runways, if provided in the Airplane Flight Manual, may be used only for runways that are grooved or treated with a porous friction course (PFC) overlay, and that the operator determines are designed, constructed, and maintained in a manner acceptable to the Administrator.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

16. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

17. Section 135.379 is amended by revising paragraph (e) to read as follows:

§ 135.379 Large transport category airplanes: Turbine engine powered: Takeoff limitations.

* * * * *

(e) In determining maximum weights, minimum distances, and flight paths under paragraphs (a) through (d) of this section, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, the ambient temperature and wind component at the time of takeoff, and, if operating limitations exist for the minimum distances required for takeoff from wet runways, the runway surface condition (dry or wet). Wet runway distances associated with grooved or porous friction course runways, if provided in the Airplane Flight Manual, may be used only for runways that are grooved or treated with a porous friction course (PFC) overlay, and that the operator determines are designed, constructed, and maintained in a manner acceptable to the Administrator.

* * * * *

Issued in Washington, DC on February 10, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–3898 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revisions to Advisory Circular—Flight Test Guide for Certification of Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed advisory circular revisions and request for comments.

SUMMARY: This notice announces the availability of and request comments regarding proposed revisions to Advisory Circular (AC) 25–7, "Flight Test Guide for Certification of Transport Category Airplanes." Advisory Circular 25–7 provides guidance on acceptable means, but not the only means, of demonstrating compliance with the airworthiness standards for transport category airplanes. The proposed revisions to AC 25–7 complement the revisions to the airworthiness standards adopted by the final rule, "Improved Standards for Determining Rejected Takeoff and Landing Performance," located elsewhere in this issue of the **Federal Register.** This notice provides interested persons an opportunity to comment on the proposed revisions to the AC.

DATES: Comments must be received on or before May 19, 1998.

ADDRESSES: Send all comments on the proposed AC revisions to the Federal Aviation Administration, Attention: Don Stimson, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Burks, Regulations Branch, ANM–114, at the above address, telephone (425) 227–2114, facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comment Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed revisions to the AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the title of the AC and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final revised AC.

Discussion

The final rule, "Improved Standards for Determining Rejected Takeoff and Landing Performance," is published elsewhere in this issue of the **Federal Register.** In that final rule, the Federal Aviation Administration (FAA) amended the airworthiness standards for transport category airplanes to: (1) Revise the method for taking into account the time needed for the pilot to accomplish the procedures for rejected takeoff; (2) require that takeoff performance be determined for wet runways; and (3) require that rejected takeoff and landing stopping distances be based on worn brakes. The FAA took this action to improve the airworthiness standards, reduce the impact of the standards on the competitiveness of new versus derivative airplanes without adversely affecting safety, and harmonize with revised standards of the European Joint Aviation Requirements–25 (JAR–25).

The FAA recognizes that extensive guidance material will be necessary to assist applicants in complying with the revised standards promulgated by the final rule. Therefore, the FAA proposes revising AC 25–7 to be consistent with the revised standards and to add new material regarding an acceptable means of complying with the wet runway and worn brake requirements. The added material includes detailed guidance for:

a. Using reverse thrust in determining wet runway accelerate-stop distances;

b. Classifying the types of anti-skid systems;

c. Verifying the type of anti-skid system installed on the airplane and that it is properly tuned for operation on wet and slippery runways;

d. Determining the anti-skid efficiency on a wet runway;

e. Developing an analytical model of wet runway braking performance; and

f. Acceptable means for demonstrating braking performance and energy capacity in the fully worn condition.

This proposed revision to AC 25–7 should not be confused with the more extensive AC 25–7 revision proposed by the FAA and made available through notice in the **Federal Register** on April 3, 1996 (61 FR 14847). Commenters should consider the revisions accompanying this notice independently, with the exception of paragraph 55, which does not appear in the original AC 25–7 and is revised from the notice published on April 3. Depending on the comments received and the time needed to review them and incorporate any changes to the proposed material, the FAA may either combine the two proposals into one revision of AC 25–7, or issue two separate revisions. Issued in Renton, Washington, on January 15, 1998.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–3899 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
February 18, 1998

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 et al.
Child Restraint Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91, 121, 125, and 135

[Docket No. 29145; Notice No. 98–2]

RIN 2120–AG43

Child Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FAA seeks public comment on issues relating to the use of child restraint systems (CRS's) in aircraft during all phases of flight (i.e., taxi, takeoff, landing, or any other time the seat belt sign is illuminated). Specifically, the agency seeks crash performance and ease-of-use information about existing and new automotive CRS's, when used in aircraft, as well as the development of any other new or improved CRS's designed exclusively for aircraft use.

This advance notice of proposed rulemaking (ANPRM) responds to a recommendation made by the White House Commission on Aviation Safety and Security and is intended to gather information about the technical practicality and cost feasibility of requiring small children and infants to be restrained in CRS in aircraft. This information is needed so that the FAA can determine the best way to address the safety of children while on board aircraft. After reviewing the comments, the FAA may issue a Notice of Proposed Rulemaking with specific regulatory proposals that respond to the Commission's recommendations regarding the use of CRS's.

DATES: Comments must be received on or before June 18, 1998.

ADDRESSES: Comments on this notice may be delivered or mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC–200), Docket No. 29145, room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: "Docket No. 29145." Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Air Transportation Division, AFS–203, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3735.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the ANPRM by submitting such written data, views, or arguments as they may desire. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator in determining whether to go forward with a proposed rulemaking. Late-filed comments will be considered to the extent practicable. Commenters wishing the FAA to acknowledge receipt of the comments submitted in response to this ANPRM must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. [29145]." The postcard will be date stamped and mailed to the commenter.

Availability of ANPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661), or the FAA Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800–FAA–ARAC).

Internet users may reach the FAA's Web page at http://www.faa.gov or the **Federal Register**'s Web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this ANPRM.

Persons interested in being placed on the mailing list for future ANPRM's and Notices of Proposed Rulemaking (NPRM's) should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On February 12, 1997, the White House Commission on Aviation Safety and Security (the Commission) issued a final report to President Clinton which included a recommendation on CRS use during flight. The following is an excerpt from the final report as it relates to CRS's:

"The FAA should revise its regulations to require that all occupants be restrained during takeoff, landing, and turbulent conditions, and that all infants and small children below the weight of 40 pounds and under the height of 40 inches be restrained in an appropriate child restraint system, such as child safety seats, appropriate to their height and weight."

The Federal Aviation Administration (FAA) is issuing this ANPRM to gather information to enable the agency to act upon the Commission's recommendations. This ANPRM does not propose specific regulatory changes. Rather, it requests comments, data and analyses to determine the best approach to maintaining and enhancing safety of children who are passengers in aircraft. After reviewing the comments received, the FAA may issue an NPRM proposing specific regulations. Interested persons will have the opportunity to comment on those proposed changes before a final rule is adopted.

Terminology

For the purpose of this ANPRM, the various child restraint devices are described as follows:

Booster seats: Designed for children who weigh between 30 and 60 pounds. These seats have a raised platform base on which the child sits. Some booster seats have a front shield, over which the lap belts are routed, which covers the child's abdominal area. Shield-type booster seats typically do not have a back or side shell. Depending on the model, some booster seats can be used without the front shield if a shoulder strap is available.

Forward-facing child restraint devices: Designed for children who weigh between 20 and 40 pounds. These seats have a side and back shell and shoulder straps. The seats are installed by routing the vehicle lap belt through a path provided in the back.

Aft-facing child restraint devices: Designed for children who weigh less than 20 pounds. These seats have adjustable shoulder straps but do not have a shield over the chest or abdomen of the child. The seats typically are

installed by tightening the vehicle lap belt through slots on the top side.

Vest- and harness-type child restraint devices: Designed for children who weigh between 20 and 40 pounds. These seats consist of forward-facing restraints fabricated with webbing. There is no rigid shell or platform. This type of seat attaches to the vehicle's lap belts by passing through a loop sewn on the back side of the harness.

Lap-held child restraint devices: Designed to restrain children less than two years old on the lap of an adult. These devices are commonly referred to as belly belts.

Child restraint system: The term "child restraint system" is used when referring to the child restraint device as installed in a passenger seat and secured with lap belts.

Current Regulations for Child Restraint Systems on Board Aircraft

Section 91.107 of the Code of Federal Regulations (14 CFR) stipulates that CRS's must meet certain operational requirements, while § § 121.311, 125.211, and 135.128 set forth how these systems may be used on board aircraft. Under current regulations, children two years old and under may be held in an adult's lap throughout the flight. Alternately, parents may opt to use an approved CRS—specifically, one certified to meet the requirements of Federal Motor Vehicle Safety Standards (FMVSS) 213, to restrain children of this age group when they travel in commercial aircraft. If parents want to ensure that their child has a seat in which to use a CRS, they typically pay a separate fare for that child. Children who are lap held are typically not charged fares by airlines.

Whether or not an air carrier charges a fee for the small child, a separate passenger seat is required for CRS use and installation. Airlines are required to accommodate the use of approved CRS's by ticket-holding small children.

The provisions for the labeling and use of CRS's in aircraft were set forth in the September 15, 1992, Miscellaneous Operations Final Rule Amendments [57 FR 42662]. These amendments were based on years of work by both the FAA and the National Highway Traffic Safety Administration (NHTSA). NHTSA'S FMVSS 213, as revised under 49 CFR 571.213, contains the performance and labeling requirements for CRS's sold for use in the United States for both aircraft and automotive applications. Hundreds of models of CRS's have been manufactured and certified to this standard. Certain CRS's that meet the performance and labeling requirements of FMVSS 213 for automobile use, such as booster seats, and vest- and harness-type child restraint devices, are nonetheless prohibited for use in aircraft. Under current FAA regulations, children two years old or older are required to have a separate passenger seat on board aircraft.

General Discussion of Issues Regarding Child Restraint Systems

The 1994 "CAMI" Study

In September 1994, the FAA issued a report entitled, "The Performance of Child Restraint Devices in Transport Airplane Passenger Seats" (commonly referred to as the CAMI study [1]). The research for the CAMI study involved dynamic impact tests with a variety of CRS's installed in transport airline passenger seats and subjected to the force of 16g peak longitudinal declaration loads required under 14 CFR 25.562(b)(2).

Some of the tests were configured to represent a typical multi-row seat installation and included testing the effects of an adult occupant impact against the back of a seat in which a CRS was installed. The tests also investigated other aspects of child restraint device use in aircraft, including dimensional compatibility of CRS's with transport category aircraft passenger seats and ease of installation.

Some findings of the CAMI study are as follows:

1. As a class of child restraint devices, shield-type booster seats, in combination with factors associated with airplane passenger seats, contributed to an abdominal pressure measurement higher than in other child restraint devices and did not prevent a head impact.

2. Fundamental design characteristics of shield-type booster seats made their belt paths incompatible with aircraft seat belts.

3. Vest- and harness-type devices allowed excessive forward body excursion, resulting in the test dummy sliding off the front of the seat. Therefore, a high likelihood exists that a child's entire body could impact a seat back directly in front of it.

4. Lap-held child restraint devices (belly belts) allowed the test dummy to make severe contact with the seat back directly in front of it, resulting in a severe head impact. There were also high abdominal loads from a combination of the forward bending motion of the adult upper torso to whom the child is attached and the aft row occupant's impact on the breakover seat back.

Based on the results of the CAMI study, the FAA and NHTSA issued a final rule on June 4, 1996, that withdrew approval for the use of booster seats and vest- and harness-type child restraint devices in aircraft during takeoff, landing, movement on the surface [61 FR 28416]. In addition, the rule emphasized the existing prohibition against the use, in all aircraft, of lap-held child restraint devices (including belly belts). The FAA supplemented this rule with a major public education campaign that promotes the use of CRS's on board aircraft at all times. The campaign also reinforces the FAA's recommendation that small children weighing under 40 pounds are safest when in an approved CRS. The campaign includes a series of video, radio, and print public service announcements.

The 1995 Report to Congress

In addition to the CAMI study, in May 1995, the FAA submitted a final Report to Congress on CRS performance and cost effectiveness. The primary issues analyzed in this report included CRS crash performance effectiveness in otherwise survivable air carrier crashes and the possible economic impacts of requiring CRS use. As to the CRS crash performance effectiveness, further findings from the CAMI study were reported. These findings include the following:

1. Aft-facing CRS's performed well, protected the child, and could be adequately restrained with existing aircraft seat belts.

2. Booster seats performed poorly, did not prevent head impact, and could not be properly attached to the aircraft seat.

3. Six of eight forward-facing CRS's tested, when restrained with aircraft seat belts and subjected to the 16g longitudinal aircraft deceleration, failed to prevent head impact criteria (HIC) values of more than 1,000. (HIC of 1,000 is considered the threshold for serious head impact injury in adults.) Routing the aircraft seat belt through a forward-facing CRS and buckling and unbuckling it was difficult, leading to the conclusion that some CRS's might not be easily and adequately secured to aircraft seats.

4. Changing the aircraft seat belt anchor points, i.e., moving them rearward, resulted in satisfactory performance of many forward-facing CRS's. However, changing the anchor points might be problematic with some aircraft seating configurations.

[1] CAMI is the FAA's Civil Aeromedical Institute. The CAMI study is assigned report number DOT/FAA/AAM–94–19 and is available through the National Technical Information Service, Springfield, VA 22161.

When forward-facing CRS's are subjected to a longitudinal deceleration, FAA tests have shown that they move forward before the aircraft seat belt can properly react to restrain them. There are some airplane passenger seat models that have lap-belt anchor locations that satisfactorily inhibit the forward excursion of forward-facing CRS's. However, a survey of major airlines, compiled by the FAA as part of a cooperative project with the Society of Automotive Engineers, indicates that fewer than 20 percent of passenger seats currently in service have seat belt anchor geometry that would adequately restrain forward-facing CRS's.

Additionally, under 16g dynamic impact test conditions, the typical economy airplane passenger seating configuration affords approximately 26 inches of free space forward of the seat back before head contact will occur. This distance includes the forward elastic deflection of a nonbreakover forward row seat back. If the longitudinal excursion of a child seated in a forward-facing child restraint device exceeds this distance, it is likely the child's head would strike the forward row seat back. Comparable FMVSS 213 test requirements specify 32 inches of free space ahead.

Under FMVSS 213, the aircraft test is essentially an inversion test. The performance requirement is that the child test dummy not slip out of the restraining harness in the child seat when the seat is inverted. This test is adequate for gauging automotive CRS performance in air turbulence situations, but may not be adequate for gauging whether the CRS will move relative to the aircraft seat in a forward deceleration crash mode. This finding leads to the question of whether further tests, similar to those FAA has performed, are necessary to assess the longitudinal excursion of child test dummies on forward-facing CRS's.

Although the 1995 Report contains an economic analysis, the focus of this ANPRM is on the technical aspects of CRS design and usage.

Federal Motor Vehicle Safety Standard No. 213

Prior to 1984, when the FAA Technical Standard Order (TSO) C–100 requirements were combined into FMVSS 213, there was a disparity between the number of child restraint models available for motor vehicle use and the number available for aircraft use. The lack of child restraints for aircraft use aroused several safety concerns. One was that some families traveling by air were discouraged from taking unapproved child restraints with them, and thus did not have them available for use at their destination to protect their children while the family was driving. The other concern was that those families who nevertheless took their unapproved child restraint devices on trips had to stow the restraints in the aircraft cargo compartment, and thus were not able to use them to protect their children during the flight.

In 1984, FAA and NHTSA amended the FMVSS and TSO requirements to permit manufacturers to "self-certify" their restraints for aircraft use, provided that they meet the FMVSS 213 requirements and an additional requirement, an inversion test. (49 FR 34357; August 30, 1984). The effect of the 1984 rulemaking was to speed certification of child restraints for aircraft use, and thereby increase the availability of aircraft-certified child restraints.

However, the CAMI test results indicate that it may be prudent to assess whether the current FMVSS 213 test requirements adequately address aircraft crash conditions. Under FMVSS 213, the aircraft test is essentially an inversion test for turbulence. The performance requirement is that the child test dummy not slip out of the restraining harness in the child seat. This is not a test to ensure that the child restraint system does not move relative to the aircraft seat.

In addition, the seat belt anchor locations and seat cushions specified in the FMVSS 213 test fixture are not representative of airplane seats. Tests of CRS's in airplane passenger seats conducted by both the FAA and NHTSA have confirmed that the longitudinal excursion of forward-facing CRS's is much greater in airplane passenger seats than when tested in the FMVSS 213 fixture. Thus, an adequate assessment of forward-facing CRS's may necessitate the use of aircraft-specific tests in addition to those required by FMVSS 213.

FAA Efforts To Develop Child Restraint Systems for Use On Board Aircraft

The FAA is investigating potential solutions to performance problems with CRS's. First, CAMI has developed and fully tested a prototype aircraft seat insert platform. The platform is inserted under the child restraint device and secured to the aircraft seat using the aircraft passenger seat belt. A different set of belts, which is part of the platform, is used to secure the child restraint device to the platform. The platform makes the child restraint device easier to install in the airplane seat and reduces the likelihood of improper installation. The platform's design goal is to provide a better interface between a child restraint device and an aircraft passenger seat.

A second alternative is to develop an aircraft-only child restraint device that could be used in either a forward- or aft-facing configuration. Prototype models have been successfully designed, developed, and tested independently in the United States and Canada as part of a cooperative project with Transport Canada.

A third alternative is to modify a certain number of passenger seats on each airplane and install seat belts with relocated anchorage points. This could serve to improve the performance of existing child restraint devices. However, relocating anchorage points may prove impractical because: (1) Structural locations at which to attach new anchorage points may not exist; and (2) passenger seat recertification may be necessary.

NHTSA NPRM: "Federal Motor Vehicle Safety Standards; Child Restraint Systems; Tether Anchorages for Child Restraint Systems; Child Restraint Anchorage System"

NHTSA has proposed revisions to FMVSS 213 to upgrade CRS performance in automotive applications (62 FR 7857; February 29, 1997). The NHTSA proposal considered two new methods of securing child restraints in vehicles, in addition to the current method of securing the restraints by using seat belts. Both methods require the motor vehicle to have a dedicated anchorage system for child restraints. The first method consists of two latchplates positioned at the seat bight (the intersection of the seat cushion and the seat back), which would connect to two buckle mechanisms affixed to the child seat. The second method consists of rigid or semi-rigid D-rings installed at the vehicle seat bight, and matching hardware on the child seat to attach to those D-rings. Such hardware could include latches similar to those used for vehicle door and truck latches, which are attached to rigid prongs on the child seat. The FAA has expressed a concern that the rigid prongs on this type of child seat may not be compatible with aircraft seat cushions or suited for narrow aircraft seat usage.

Both methods under consideration by NHTSA would include a top tether anchorage strap. The tether is designed to be attached to a ring installed on either the car's backlight deck under the rear window or on the rear-seat's underside to keep the back support of the child restraint device from rotating forward on impact. The tether strap

installation is not currently compatible with aircraft passenger seats.

Request for Information

The FAA is issuing this ANPRM to gather operational and technical data from air carriers, the public, manufacturers, and other interested parties to determine the best way to ensure the safety of small children in CRS's during takeoff, landing, and in turbulent conditions while on board the aircraft. The FAA requests comments and suggestions on all issues related to the use of CRS's. The FAA will consider all comments and suggestions. The following are issues of particular concern:

(1) General

The FAA requests comments regarding problems with fit, function, and performance that have been encountered with existing child restraint devices, especially installation problems in general aviation and commuter aircraft. For example, some child restraint device designs are simply too big to fit on some narrow aircraft seats, with or without an interfacing platform. FAA's finding that these dimensional mismatches can occur is based on a limited survey of larger commercial aircraft seats. Smaller, commuter aircraft seats are not included in this survey. Mismatches with the commuter and general aviation fleet of aircraft could be more prevalent.

Accordiingly, FAA seeks detailed information about the dimensions of existing or possible future CRS designs regarding their ability to fit into the range of airline passenger seat sizes that are installed in commercial aircraft. The FAA also seeks information from airlines about how frequently passengers attempt to use CRS's that are too large for the aircraft seat. Airlines are asked to comment on how they handle such situations now, and how they would envision addressing such situations if CRS use was mandatory. Finally, the FAA queries whether it would be appropriate or practical, under FMVSS 213, to establish dimensional limits for CRS's that are dual-use certified for both automotive and aircraft use.

(2) Forward-Facing CRS's

The FAA requests comments regarding the safety of forward-facing CRS's especially in air carrier aircraft, including any current research data regarding forward-facing child restraint devices.

In particular, should airplane-specific tests be required, in addition to those conducted under FMVSS 213, to adequately assess the longitudinal excursion of child test dummies in forward-facing CRS's? Should child seats certified for aircraft use undergo testing in conditions representative of those found in a commercial transport airplane accident? For example, should there be a requirement for dynamic testing of a child restraint device to 16 g's when attached to an airplane seat using lap- and seat-belt anchorages representative of the belt assemblies and anchorages found in commercial transport airplanes?

(3) Aft-Facing CRS's

The FAA request comments regarding problems that may be associated with aft-facing child restraint devices, including any current research data regarding aft-facing child restrain devices. Should the current dual-use certification policy continue for both aft-facing and forward-facing CRS's, or should the policy be limited to only aft-facing seats?

(4) Approval of CRS's

The FAA requests comments about the advisability of having child restraint devices certified under FMVSS 213 for aircraft use. Should a separate aviation standard be developed for aircraft use ? In particular, CRS manufacturers are invited to comment on whether, under a mandatory CRS-use regulation, they would choose to dual-certify their products, if (1) additional aircraft-specific tests were required, and (2) it was optional for CRS manufacturers to dual-certify their product.

(5) Research on Child Restraint Systems

The FAA requests comments about new CRS's that are being developed, relative to their appropriateness for use in both automobiles and aircraft. In addition, the FAA requests comments on devices that are being developed or that are already available that are similar to the prototype seat insert platform previously described in this notice. Specifically, the FAA would like to know if there are any problems that will preclude manufacturers from developing such devices.

Similarly, comments are sought on the potential availability, performance capabilities, and ease-of use of aircraft-only CRS designs. Further, the FAA also queries whether any design limitations and/or labeling requirements should be placed on aircraft-only CRS's

(6) Changing Anchor Point Locations for Aircraft Passenger Seat Belts

CAMI data indicate that changes to the location of the anchor points for passenger seat belts would greatly enhance the performance of existing child restraint devices. The FAA requests information on the technical and operational feasibility of changing these anchor points on a few passenger seats on existing aircraft as well as on aircraft seats manufactured in the future. Information is also requested on the feasibility of equipping some aircraft seats with a top tether anchorage, such as on the underside of the seat.

(7) Evacuation of Aircraft With Children in Child Restraint Systems

The FAA requests data on the effect of child restraint systems on passenger egress times.

(8) Mandatory Use of Child Restraint Systems for Children Under 40 Inches and Under 40 Pounds

The FAA requests comments regarding the safety consequences of requiring all children under 40 inches and under 40 pounds to be in an appropriate CRS. What effect would such a requirement likely have relative to injuries sustained in both aircraft crashes and air turbulence conditions? Also, the FAA requests data on the effect of height and weight on the efficacy of both current and future automotive CRS's, as well as aircraft-only CRS's. In particular, the FAA would like to know whether CRS's should be mandatory where the passenger is: (1) Both under 40 inches *and* under 40 pounds; or (2) either under 40 inches *or* under 40 pounds. Current FAA regulations do not require the use of restraint systems designed specifically for children; for example, a two-year-old, regardless of size and weight may be restrained in either a CRS or a passenger seat belt, and a child under two years of age may be lap held. In addition, the FAA is seeking data regarding how many children travel by aircraft that are under: (1) Two years of age; or (2) 40 inches and 40 pounds. The FAA is seeking comment regarding an air carrier's ability to enforce the weight and height requirements for CRS usage.

(9) Providing Child Restraint Systems on Aircraft

The FAA requests comments regarding the effects of requiring air carriers to supply appropriate CRS's. For example, how would air carriers ensure that appropriate CRS's were available for flights?

(10) Impacts on Small Businesses

The FAA requests comments regarding the effects of mandatory CRS use, including supplying CRS's, on small air carriers.

(11) Using a Dedicated Method for Aircraft Applications

The FAA requests comments about the appropriateness of incorporating a dedicated child restraint anchorage system, such as those being considered by NHTSA (62 FR 7857), into current aircraft fleets.

(12) Current Practices

The FAA requests data and comments on the current practice of allowing an adult to hold a child two years of age or younger on his or her lap while seated in a forward or rear-facing seat. Estimates of the number of small children and infants that travel in this manner are especially sought.

(13) Additional Rear Facing Seats

The FAA is requesting data and comments regarding the impact of requiring air carriers to supply rear-facing seats on aircraft. Some have suggested that requiring a limited number of rear-facing seats would enhance the safety of child passengers.

(14) Children Per Flight Requiring Child Restraint Seats

The FAA requests comment on the number of children that require CRS's, both on an average and on a peak basis.

(15) Other Solutions

The FAA requests comments about other possible solutions to ensure that small children are properly restrained while on board aircraft.

Regulatory Process Matters

Economic Impact

The Regulatory Flexibility Act of 1980 requires Federal agencies to consider the extent that proposed rules may have "a significant economic impact on a substantial number of small entities." Although the FAA is unable, at this time, to determine the likely costs of imposing regulations requiring small children to be restrained in CRS's in aircraft, following a review of the comments submitted to this ANPRM, the FAA will determine what the potential costs and benefits of the various rulemaking options are.

Likewise, at this preliminary stage, it is not yet possible to determine whether there will be a significant economic impact to a substantial number of small entities or what the paperwork burden, if any, might be. These regulatory matters will be addressed at the time of publication of any NPRM on the subject.

Significance

This preliminary rulemaking is considered a "significant regulatory action" under Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. This preliminary rulemaking is also considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 2, 1979) because of considerable public interest. In addition, any NPRM subsequently developed based on comments to this ANPRM may be considered significant.

Issued in Washington, DC, on February 11, 1998.

Ava L. Mims,

Acting Deputy Director, Flight Standards Service.

[FR Doc. 98–3954 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
February 18, 1998

Part VI

Department of Transportation

Federal Highway Administration

49 CFR Part 393

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

Manufactured Home Tires, Parts and Accessories Necessary for Safe Operation, and Manufactured Home Construction and Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–95–1; FHWA–97–2341]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. FR–3943–F–02]

FHWA RIN 2125–AD41; HUD RIN 2502–AG54

Manufactured Home Tires, Parts and Accessories Necessary for Safe Operation; and Manufactured Home Construction and Safety Standards

AGENCIES: Federal Highway Administration (FHWA), DOT; Office of the Assistant Secretary for Housing, Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Final rule and HUD interpretative bulletin.

SUMMARY: The FHWA and HUD are amending the Federal Motor Carrier Safety Regulations and an interpretation of the Manufactured Home Construction and Safety Standards concerning the transportation of manufactured homes. The FHWA and HUD are reducing the amount of tire overloading allowed (currently up to 50 percent above the tire manufacturer's load rating) on tires used to transport manufactured homes. As a result of this rulemaking the amount of the load on a manufactured home tire will be reduced so that it cannot exceed the tire manufacturer's load rating by more than 18 percent. Manufactured homes transported on tires overloaded by 9 percent or more may not be operated at speeds exceeding 80 km/hr (50 mph). Eighteen-percent tire overloading will be allowed for a two-year period. The two-year period will begin on November 16, 1998, effective date of this final rule. Because the agencies have sufficient data indicating that overloading is potentially unsafe, unless both agencies are persuaded that 18 percent overloading does not pose a risk to the traveling public, or have an adverse impact on safety or the ability of motor carriers to transport manufactured homes, any overloading of tires beyond their design capacity will be prohibited at the end of this two-year period.

EFFECTIVE DATE: The effective date for this rule is November 16, 1998.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., (eastern time), Monday through Friday, except Federal holidays.

For HUD: Mr. David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9158, Washington, DC 20410–8000. Telephones: (voice) (202) 708–6401; (TTY) (202) 708–4594. Alternately, Mr. Richard A. Mendlen, Office of Consumer and Regulatory Affairs, Manufactured Housing and Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9152, Washington, DC 20410–8000. Telephones: (voice) (202) 708–6423; (TTY) (202) 708–4594.

The phone numbers provided for further information are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, the President directed all agencies to remove obsolete and unnecessary regulations, and to revise and improve the remaining regulations. As part of HUD's and FHWA's review of their respective regulations, each agency identified its regulations applicable to the transportation of manufactured homes as inconsistent with one another. In accordance with the President's directive to improve regulations and the principles of Executive Order 12866 (which directs agencies to avoid regulations that are inconsistent with regulations of other agencies), HUD and the FHWA published a notice of proposed rulemaking (NPRM) to eliminate inconsistencies between their regulations concerning the transportation of manufactured homes (61 FR 18014; April 23, 1996).

A. HUD Manufactured Home Construction and Safety Standards

The National Manufactured Housing Construction and Safety Standards Act of 1974 (Act), 42 U.S.C. 5401 *et seq.*, authorizes the Secretary of Housing and Urban Development (HUD) to establish and amend the Federal Manufactured Home Construction and Safety Standards (the FMHCSS or the Standards), 24 CFR Part 3280. Subpart J of the Standards covers the general requirements for designing the manufactured home to fully withstand the adverse effects of transportation shock and vibration without damaging the integrated structure or its components.

One of its components is the running gear assembly which is defined in 24 CFR 3280.902 to include the subsystem consisting of suspension springs, axles, bearings, wheels, hubs, tires, and brakes, with their related hardware. On December 7, 1976 (41 FR 53626), the Department of Housing and Urban Development issued Interpretative Bulletin J–1–76 which permits the overloading of manufactured home tires by up to 50 percent.

B. FHWA Federal Motor Carrier Safety Regulations

The FHWA's Federal Motor Carrier Safety Regulations (FMCSRs) are based on a series of statutes starting with the Motor Carrier Act of 1935 and are codified at Subchapter B of Chapter III, Title 49 of the Code of Federal Regulations. The FMCSRs provide requirements for the operation of commercial motor vehicles in interstate commerce. The FMCSRs define a commercial motor vehicle, in part, as any self-propelled or towed vehicle used on public highways in interstate commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating of 4,536 or more kilograms (10,001 or more pounds) (49 CFR 390.5). Under this definition, a manufactured home transported in interstate commerce is considered a commercial motor vehicle and is subject to the FMCSRs.

Section 393.75(f) of the FMCSRs prohibits the operation of commercial motor vehicles on tires that carry a weight greater than that specified in publications of certain standard-setting organizations listed by the National Highway Traffic Safety Administration in 49 CFR 571.119 (S5.1(b)) unless:

(1) The vehicle is being operated under the terms of a special permit issued by the State, and

(2) The vehicle is being operated at a reduced speed that is appropriate to compensate for tire loading in excess of the manufacturer's normal rated capacity.

Under the Motor Carrier Safety Assistance Program (MCSAP), the FHWA provides financial assistance to States to enforce the FMCSRs or compatible State regulations pertaining to commercial motor vehicle safety (see 49 CFR part 350). State enforcement

officials have expressed concerns about the safety of certain practices of carriers transporting manufactured homes. Their principal concern is the movement of manufactured homes on overloaded tires. In certain cases, vehicles with tires loaded 50 percent above their load ratings are operated at highway speeds. These practices are inconsistent with the FMCSRs.

II. Publication of the Proposed Rule

On April 23, 1996, the FHWA and HUD jointly published a notice of proposed rulemaking to amend § 393.75(f) and HUD's interpretative bulletin concerning tire overloading (61 FR 18014). Because the agencies have sufficient data indicating that overloading is potentially unsafe, the agencies proposed limiting the overloading of manufactured home tires to 18 percent now and phasing out the overloading of manufactured home tires up to 18 percent within two years. It was proposed that during the two-year period, both agencies would review test and other technical data concerning the relative performance of tires which are overloaded by 18 percent versus no tire overloading. Any overloading of tires beyond their design capacity would be prohibited after two years from the effective date of the final rule unless both agencies are persuaded that 18 percent overloading at a reduced speed of 80 kilometers per hour (km/hour) (50 miles per hour (mph)) does not pose a risk to the traveling public or have an adverse impact on the safety or the ability of motor carriers to transport manufactured homes.

III. Analysis of Comments Received

The FHWA and HUD received 14 comments from a variety of organizations and individuals. The commenters were: Advocates for Highway and Auto Safety (Advocates); the Alabama Public Service Commission (Alabama PSC); Association for Regulatory Reform (ARR); Dilo, Inc.; Mr. Kevin Edens, a port-of-entry officer with the Colorado Department of Revenue; Mr. Robert S. Evans, a truck driver; The Goodyear Tire & Rubber Company (Goodyear); Home Builders Company, Titan Homes Division (Titan Homes); Jim Tim, Inc.; the Manufactured Housing Institute (MHI); the New York Department of Transportation (New York DOT); the North Carolina Manufactured Housing Institute (the North Carolina MHI); Utah Department of Transportation (Utah DOT); and, the Wisconsin Department of Transportation (Wisconsin DOT).

Eight commenters either supported the proposal as published, supported the proposal with certain suggested changes, or offered general comments about common industry practices for transporting manufactured housing units. The remaining commenters opposed the rulemaking. The issues raised by the commenters have been organized into two general categories: comments in support of the proposed changes; and, comments in opposition to the proposed changes.

A. Comments in Support of the Proposed Changes

The Alabama PSC, Dilo, Inc., Goodyear, Jim Tim, Inc., the MHI, New York DOT, North Carolina MHI, and Utah DOT supported the proposal to reduce the amount of tire overloading. Some of these commenters also suggested certain changes to the proposal. The suggested changes to the language to be used in the interpretative bulletin and 49 CFR 393.75 are discussed in a separate section in this notice.

The Alabama PSC stated that "the safety of mobile home transportation is poor and is getting worse." The Alabama PSC believes regulations on mobile home transportation are necessary, and are in need of revisions and improvements. The Alabama PSC supports the reduction in the amount of overloading and "the expansion of this proceeding to include improvements in brake performance and enforcement of standards on used tire conditions." The Alabama PSC stated:

Mobile home transportation is now a common experience, but the safety of these movements is worsening. Improvements in the regulations to stop excessive overloading of tires, to improve braking performance, and to improve enforcement are even more critical with the recent increase of the speed of the vehicles sharing the road with mobile homes.

The Utah DOT stated:

We have long felt that the allowance for overloading of mobile/manufactured home tires by 50% and up to 3,000 pounds was unsafe and unwise. Our agents, at eight fixed facilities throughout the state have diligently enforced the requirement, but have for years expressed safety and operability concerns about the too liberal tire, axle and braking system requirements for these behemoth loads. We do see a large number of roadside tire changing which impede traffic flow and create safety hazards and we wonder why more accidents and incidents have not resulted.

The Utah DOT believes that allowing 18 percent overloading for a two-year period is a good compromise and that the plan to study the issue is reasonable.

The MHI, North Carolina MHI, and Jim Tim, Inc. were among industry supporters of the proposed standards. The MHI stated that "[i]t is the consensus of MHI members that the proposed regulatory revisions should be implemented, with key revisions recommended * * *." The MHI also discussed its willingness to work with the FHWA and HUD during the two-year period during which 18 percent overloading would be allowed. The MHI stated:

Regarding the number of reported tire failures, discussed on page 18018 [61 FR 18018], industry believes that less than 25 percent of reported tire failures can be attributed to tire overloading. Therefore, during the two-year trial period for the 18-percent overload rule, industry intends to gather data on the causes of tire failures, to be shared with HUD and FHWA. Industry intends to provide test and other technical data, in response to the request for information on page 18021 [61 FR 18021], regarding the absence of information on this subject. In this regard, MHI will explore with HUD officials the possibility of conducting joint transportation studies under the current partnership agreement for Action Item No. 25 of the National Homeownership Strategy. Part of such studies should be the establishment of a protocol to measure the level of safety on the highways.

The MHI expressed concerns about the automatic expiration of the two-year period for 18 percent tire overloading. The MHI stated:

It is generally conceded that current data pertinent to the performance of manufactured home tires under varying conditions is limited, outdated, and subject to a broad range of variables insufficiently documented in a controlled environment. For this reason, the industry supports the proposed two-year trial period, but the industry further asserts that upon the submission of any tests and other technical data by the industry and tire manufacturers during this term, the term should be automatically extended beyond the two-year expiration date now proposed while the agencies are reviewing them. In other words, the industry submits that the proposed rule allowing for the overloading of tires should not automatically expire at the end of two years, provided tests and other technical data has been submitted during such term for review by both agencies.

The North Carolina MHI stated:

We believe that these new regulations will mean that homes will be moving slower, with reduced stress on larger,

stronger tires. Consequently, we believe that these new regulations will mean safer highway driving conditions for other motorists, and ensure more reliable delivery of our products to customers. That's a win, win for everyone involved.

Jim Tim, Inc., a transporter of manufactured housing units, believes that the proposed standards will "create a safer situation, due to the fact that this will make it mandatory for the factories to increase the number of axles they install on a manufactured home."

B. FHWA and HUD Response to Commenters Supporting the Rulemaking

In response to comments requesting that the FHWA and HUD expand the scope of the rulemaking to address issues such as axle and braking requirements, the agencies will work together to determine whether there is a need for a rulemaking(s) on these issues.

Currently Subpart J of the Manufactured Home Construction and Safety Standards requires that the braking systems on the manufactured home and the towing vehicle must be capable of stopping the home traveling at 32.2 km/hour (20 mph) in a distance of 12.2 meters (40 feet). The number of braking axles necessary to meet this performance standard must be documented by engineering analysis, transportation tests, or by acceptable documented transportation experience.

The HUD-approved Design Approval Primary Inspection Agencies (DAPIAs) make the final determination of the adequacy of the manufacturer's compliance with these sections of the HUD standards. After discussion with the DAPIAs and other interested parties, HUD will assess if further changes are needed to address the percentage of axles that must be equipped with brakes.

With regard to the MHI's request that the agencies allow 18 percent overloading of tires to continue beyond the proposed two-year period, the FHWA and HUD believe the proposed automatic expiration date is appropriate. The automatic expiration date will impose upon the regulated industry and both Federal agencies a deadline that will force all parties to move quickly toward the collection and analysis of relevant data. The FHWA and HUD will work closely with the MHI and, if warranted by technical data submitted well in advance of the expiration date, consider publishing in the **Federal Register** a notice proposing the extension of the current expiration date.

C. Comments in Opposition to the Proposed Changes

The Advocates for Highway and Auto Safety (Advocates), Association for Regulatory Reform (ARR), Kevin Edens, Robert Evans, Titan Homes, and Wisconsin DOT opposed the proposed changes to the FMCSRs and the interpretative bulletin. The opposition was divided among those who supported the continuation of 50 percent tire overloading and those who advocated no tire overloading.

Advocates expressed concern that the FHWA and HUD do not have sufficient data to support allowing 18 percent overloading of the tires. The AHAS stated:

Although Advocates recognizes that the goals of this rulemaking are well-intentioned, the amendments as proposed fail to meet minimum informal rulemaking burdens pursuant to the Administrative Procedure Act and prevailing case law. Neither the FHWA nor HUD has marshalled adequate evidence in the rulemaking record to justify the proposed amendments and, further, they have argued a two-year trial period for the use of overloaded manufactured home tires that unwarrantedly experiments with the safety of the travelling public.

The agencies have not carried their burdens of supplying an administrative record which properly ventilates the prime issue behind their joint action, *viz.*, whether overinflated tires on manufactured homes present an unacceptable accident risk, whether in the past they have resulted in untoward frequencies and numbers of crashes, and whether both the operators of commercial vehicles transporting manufactured homes as well as other members of the travelling public, have been injured or killed by unacceptable industry practices.

[T]he FHWA/HUD proposal of an 18 percent overload ceiling is also not supported by any data or information on what the expected rate of failures may be despite the fact that this level of overloading is lower than many of the excessive levels prevalent in the manufactured home industry. Given the advent of increasingly higher speed limits posted on both Interstate and other state arterial and collector highways, it is evident that the agencies really have no capability of accurately predicting the failure rates and the associated increased probability of accidents of an 18 percent overload ceiling. Indeed nothing in the preamble of this proposed rule nor in the docket file in the offices of the FHWA indicate why the FHWA and HUD have selected 18 percent as a tolerable overloading level or, in fact, why any overloading is acceptable. This need to justify why an 18 percent figure was arrived at is especially acute given the assertion of the preamble that because of concerns about the safety of the travelling public on increasingly crowded highways, HUD has concluded that the current overloading of manufactured home tires is no long[er] defensible. *Id.* 18020 [61 FR 18020]. Yet, the preoccupation of the agencies is not with the projected failure rates and consequent accident risks of an 18 percent tire overload threshold, but with the cost burdens to the industry that result from changing tire types and axles in order to avoid the acute problem of excessive overloading, sometimes 50 to 60 percent.

The ARR also expressed concerns that the FHWA and HUD do not have sufficient data to support the proposed revisions to the FMCSRs and the interpretative bulletin. However, the ARR opposed lowering the present 50-percent limit on tire overloading.

The ARR expressed concern about the economic impacts that the rulemaking would have on consumers and small businesses. The ARR stated:

ARR's members are primarily small to medium-sized manufacturers. Due to their smaller size and correspondingly lower levels of capitalization, such businesses are disproportionately affected by excessive and/or inappropriate regulation and related compliance costs. Indeed, in a federally-regulated industry such as manufactured housing, the financial health of producers and other industry participants is directly dependent upon sensible, practical and cost-effective administrative standards.

Cost-effective regulation is also important for consumers. Although manufactured housing now accounts for more than 30% of all new single-family home starts, and the industry generates some $23 billion in economic activity annually, manufactured home-buyers tend to be either lower or middle-income families or persons living on a fixed income. For such purchasers, the difference of only a few dollars in the final sale price of a home (especially when compounded by higher taxes and higher fees) could spell the difference between obtaining a mortgage and not qualifying for financing. Accordingly, it is particularly important, in the case of manufactured homes, for proposed rules to be both objectively justifiable, in terms of their substance, and cost-justifiable, in the sense that the rule returns more in benefits than it costs, and does not unduly burden manufactured home purchasers.

[T]he rule change contemplated by the Joint Docket does not appear to be justified by the minimal available data regarding the failures. Moreover, the proposed change is substantive, rather than interpretative, and would, in effect, convert the relevant portion of the HUD Code from a performance standard to a prescriptive standard. In addition, there is no concrete evidence to support the change sought by the issuing agencies, and inadequate consideration has been given by HUD to the cost impact of the rule upon manufactured home purchasers—particularly when combined with the effects of other recent changes to the standards.

Titan Homes opposed the rulemaking because it believes "there is no objective, empirical reason to make a change." Titan Homes stated:

The 50% rule has been in effect since 1976 and has worked to reduce costs while not compromising the safety of the toter [towing unit] with the manufactured home, or the other vehicles they interface on the road. It has been my experience that the transporters of manufactured housing have an exemplary safety record when compared with other types of transporters and/or four wheeled vehicles. Your [FHWA and HUD's] own statistics should verify these facts quite easily.

The Wisconsin DOT also opposed the proposed changes to the FMCSRs and the interpretative bulletin. The Wisconsin DOT stated:

Although it is a two year study the major concern remains the safe operation of the manufactured homes. Every effort should be made to use tires whose manufactured weight rating is not exceeded. Although the proposed weight limit increase does not seem to be large (18%), when operated at reduced speeds, there is really no justification other than the cost factor per unit.

Wisconsin oversize permits do not require reduced speeds to transport manufactured homes; therefore, there is no real way to assure operation at a reduced speed as proposed. Recent changes to federal and state laws have increased speed limits; therefore creating the possibility of these units being operated at higher speeds rather than the lower speed, putting more stress on the tires.

The Wisconsin Department of Transportation has some real safety concerns about the operation of these units on tires that are rated at less than the weight of the unit.

D. FHWA and HUD Response to Commenters Opposed to the Rulemaking

In response to concerns expressed by AHAS and ARR regarding a lack of data to support this rulemaking, the FHWA and HUD emphasize that this more stringent standard, reducing the amount of permissible overloading from 50 percent to 18 percent and establishing a speed restriction of 80 km/hour (50 mph) when the tires are overloaded, was developed based on technical data reviewed by the FHWA and HUD and information provided by commenters which suggest that most tire failures attributable, in whole or in part, to tire overloading are associated with overloading in excess of 18 percent. Consequently, the FHWA and HUD have concluded that tire failures attributed to overloading will be substantially reduced when transporters of manufactured homes are required to comply with the new restrictions.

As part of the effort to gather data on the number of reported failures of new and used tires during the transportation of manufactured homes, HUD obtained information from three companies which transport large numbers of manufactured homes. The three companies collectively transport more than 30 percent of the manufactured homes produced in the United States and in the case of the largest transporter, nearly 50,000 manufactured homes per year.

The three companies differed in the reported overall rate of tire failure for shipment of manufactured homes. The failure rate for new tires ranged from 4 percent to 7 percent. The used tire failure rate was 9 percent. According to the MHI, roughly 55 percent of the tires sold to manufactured housing producers in 1994 were used tires.

Since the data from one company represented a large share of the market and transportation experience in a large number of States, HUD believes that the company's failure rate of 7 percent is the most representative of actual conditions. Therefore, the FHWA and HUD used a failure rate of 7 percent for new tires and 9 percent for used tires with an overall average failure rate of 8 percent in the notice of proposed rulemaking. Since each section of a manufactured home usually contains 6 tires, a tire will fail on about 40 percent of the sections shipped each year. Multiple failures of tires are less common but are known to occur.

There was also substantial variability among these three companies concerning the causes of tire failure. One company indicated that foreign objects were the cause of 99 percent of tire failures, while the other companies indicated that substandard tires and tire overloading were the chief causes of tire failure. The other companies also noted that operating at excessive speed and other causes were less significant factors in tire failure.

There are no separate data as to the rate of failure due to tire overloading in relation to other factors, such as substandard tires, improper inflation, excessive heat, etc. The risk of tire failure due to overloading can be increased by operating the tire at reduced inflation, the heat of the pavement, high speeds, mounting procedures and other practices which, if combined, may virtually assure tire failure. Hence, determining the percentage of failures attributable solely to tire overloading is difficult.

Data from one tire recycler, however, indicated that up to 70 percent of tires which are damaged can be recycled and reused after repair. This would suggest that foreign objects may have been the principal cause of tire failure rather than blow-outs due to overloading or other causes. The damage associated with blow-outs or causes other than foreign objects is generally too extensive to be repaired.

Based on the available information, the FHWA and HUD estimate that 25 percent of reported failures can be attributed partly to tire overloading. The FHWA and HUD reduced this estimate by half to account for failures due in part to aggravating factors, such as improper inflation or mounting. At the time the NPRM was published, the agencies assumed that 450,000 sections of manufactured homes would be shipped in 1996 and that the tire overloading would be responsible for at least 22,500 blowouts (450,000 shipments × 0.40 (factor for shipments with at least one tire failure) × 0.125 (percentage attributable to tire overloading)). The FHWA and HUD have increased the estimate of the number of manufactured home shipments to 500,000 per year. As a result, tire overloading is now believed to be responsible for at least 25,000 blow-outs.

The estimate of 500,000 shipments was derived by assuming an annual estimate of 340,000 manufactured homes produced, with a 53 percent distribution, or 180,200 shipments, of single sections and a 47 percent distribution, or 319,600 shipments, of multiple sections. The total number of shipments calculated in this manner is 499,800, or about 500,000. The actual 1997 projections are expected to be somewhat higher.

The conflicting claims from State governments and manufacturers concerning the incidence of tire failure varied from a conclusion that it is a relatively uncommon occurrence (1–2 percent of trips) to an estimate by one State official that many transporters are suffering tire failures on most trips. None of the State agencies contacted while the FHWA and HUD were developing the NPRM, and none of the commenters responding to the NPRM, provided information indicating that tire failures during the transportation of manufactured homes have resulted in collisions between the transported unit and other vehicles, or collisions between the manufactured housing unit and fixed objects. However, the FHWA and HUD believe that the current level of tire failures must be substantially reduced to prevent potential accidents.

With regard to Advocates' uncertainty about how the FHWA and HUD selected the 18-percent overloading limit, this decision making process was explained in the April 23, 1996, NPRM. Pages 18018 through 18020 discuss the regulatory options that the FHWA and HUD considered.

The FHWA and HUD examined the cost-effectiveness of four alternatives in the NPRM that would substantially alleviate or eliminate the problem of tire overloading. All of the alternatives used the 3,000-pound-per-tire load limit in HUD's Interpretative Bulletin J–1–76. The first two options involved limiting the amount of tire overloading and would have the net effect of requiring the use of specific upgraded tires corresponding to the amount of overloading. The other options involved prohibiting tire overloading. Compliance with the prohibition on overloading would have required the use of either upgraded tires, or upgraded tires and an additional axle(s).

The first option involved limiting the amount of overloading to 18 percent which corresponds to the amount of overloading that would occur if manufactured home transporters switched from 7–14.5, 8 ply tires (Series D) to 8–14.5, 10 ply tires (Series E). The 8–14.5, 10 ply tires have a load rating of 1,152 kg (2,540 pounds). The notice indicated that this option would have resulted in an average wholesale cost increase of approximately $60 per manufactured home.

The second option the agencies considered was to reduce the amount of overloading to 8 percent which corresponds to the amount of overloading if 8–14.5, 12 ply tires (Series F) are used. The 8–14.5, 12 ply tires have a load rating of 1,266 kg (2,790 pounds). This option would have resulted in an average wholesale cost increase of $84 per manufactured home transported.

The third option was the elimination of tire overloading. Manufacturers could accomplish this by adding an axle and using 8–14.5, 10 ply tires (Series E). The average wholesale cost increase for this option would have been $287 per manufactured home transported.

The fourth option was to eliminate overloading through the use of 9–14.5, 12 ply tires (Series E or F). These tires have a load rating of 1,334 kg and 1,465 kg (2,940 pounds and 3,230 pounds), respectively. The average wholesale cost increase for this option was estimated to be $265 per manufactured home transported.

The FHWA and HUD proposed using the first option because, based upon the available information, it appeared to be the most cost effective way to substantially reduce the number of tire failures. After reviewing the public comments received in response to the NPRM, the FHWA and HUD have concluded that the first option continues to represent the most cost effective approach.

The FHWA and HUD disagree with Advocates' assertion that the agencies have not fulfilled the requirements of the Administrative Procedure Act. The agencies have reviewed information and data currently available and comments from all interested parties. Because FHWA and HUD have sufficient data indicating that overloading is potentially unsafe, they are reducing the amount of tire overloading allowed to 18 percent and phasing out overloading up to 18 percent within two years unless both agencies are persuaded that the 18 percent overloading is safe. The information contained in the rulemaking docket supports the actions taken by the agencies. The interim 18-percent tire overloading established through this process represents a reasonable compromise among the possible alternatives. Furthermore, the period during which 18 percent overloading will be permitted is limited to 2 years. Unless both agencies are persuaded that 18 percent overloading does not pose a risk to the traveling public or adversely impact the safe transportation of manufactured homes, overloading of tires would be prohibited.

In response to the ARR's comments about the economic impact of this rulemaking, HUD obtained its cost information directly from tire suppliers and from the MHI Transportation Task Force which includes transporters, manufacturers, and tire suppliers. The cost information obtained from all sources was very similar and the FHWA and HUD believe the cost information is reasonably accurate.

The number of additional tires and/or axles required to satisfy this rule is a function of the size and weight of the home. Because of this, manufacturers will have differing cost impacts. Also, some manufacturers may already be using additional axles or upgraded tires, so the cost impact may be negligible.

In order to obtain current information and to fully evaluate the economic impact of this rule, HUD has examined a number of current manufactured housing designs. The financial impact of the final rule has been determined to be approximately $17 million per year. This amounts to $50 for each of the approximately 340,000 manufactured homes shipped each year. The FHWA and HUD do not consider this cost to be unreasonable or to adversely affect low and moderate-income consumers' ability to purchase manufactured homes.

The MHI provided HUD and the FHWA with a copy of a report on the life-cycle costs and benefits of various manufactured home transportation systems. The report included an analysis of the benefits and costs of upgrading the tires used in the transportation of manufactured homes. A copy of the report, "Manufactured Home Transportation Systems Research," prepared by the Trucking Research Institute under contract to the MHI, is included in the docket. The report indicates that $3,207,634 in "accident costs" per year could be saved by upgrading tires. The authors believe that tire failure costs (e.g., repairing the flat tire and repairing other components damaged as a result of the flat tire) would be reduced by $21,447,115 per year. Complications experienced by site installers would be reduced and result in an additional savings of $2,866,500 per year. The total benefits of upgrading tires were estimated to be $27,521,249.

The FHWA and HUD consider the estimates in the MHI's report to be reasonable. The information was gathered from producers of manufactured homes, transporters, axle manufacturers, axle and tire recyclers, manufactured home retailers and site installers. The MHI estimates that the rulemaking will save the industry and consumers more than $2.5 million per year while improving highway safety. A more detailed discussion of the economic impact of this rulemaking is provided in section VI of this document.

In response to the ARR's argument that the changes to Interpretative Bulletin J–1–76 would convert the relevant portion of HUD's regulations

from a performance-based standard to a prescriptive requirement, both agencies disagree. The new requirements are performance-based in that transporters of manufactured homes may use any type of manufactured home tire as long as the amount of overloading does not exceed 18 percent. If the tires are loaded in excess of the manufacturers' load ratings by 9 percent or more, the speed at which the manufactured home may be transported is limited to 80 km/hour (50 mph). The FHWA and HUD have established safety performance criteria and left to the discretion of the manufacturers and transporters of manufactured homes the choice of tire types and sizes, and the number of axles needed to meet the performance criteria.

IV. Discussion of Additional Issues Raised by Commenters

A. Speed Restriction

The New York DOT expressed concerns about the proposed speed restrictions for manufactured homes transported on tires overloaded by 9 percent or more of the load rating. The New York DOT stated:

Enforcement of a speed restriction on any vehicle with overloaded tires would be difficult. Most law enforcement agencies have dedicated staff for weight enforcement. This staff is a minor part of agency manpower and is usually not involved in speed enforcement. The standard officer on road patrol would not stop a manufactured home if it was within the speed limit. If a manufactured home did reduce its speed to less than 50 MPH, it would create a speed differential hazard, especially on interstate highways. It is the speed differential, not just the pure speed, which creates unsafe conditions.

Given the two above observations about speeds, please consider them. That is, speed restrictions that are just set to be cautious may be counter productive. Speed restrictions should be made only where there is good data indicating real safety benefits outweighing their costs.

The FHWA and HUD have concluded that the 80 km/hour (50 mph) speed restriction proposed for 49 CFR 393.75 is necessary for cases in which the amount of overloading is 9 percent or more of the load rating for the tire. The FHWA and HUD have reviewed the Tire and Rim Association, Inc., Year Book, an authoritative source concerning tire loading. The Year Book indicates that the speed at which a tire is operated should not exceed 80 km/hour (50 mph) for tires overloaded by up to 9 percent.

The Tire and Rim Year Book does not encourage the overloading of tires but the recommended limitation of the speed to 80 km/hour (50 mph) suggests that the operation of the manufactured home at the reduced speed will improve the safety of operation of manufactured homes transported on overloaded tires. Based upon the agencies' experience with the transportation of manufactured homes, the FHWA and HUD have concluded that the 80 km/hour (50 mph) speed restriction is necessary.

The FHWA and HUD are aware that many States have increased the speed limits on their highways and that traffic may move at speeds up to 120 km/hour (75 mph). Transporters of manufactured homes that operate on such high-speed routes are strongly encouraged to select tires and axles so that overloading is not necessary. The speed restriction does not apply to the movement of all manufactured homes, only those that are operated on tires overloaded by 9 percent or more.

B. Availability of 8–14.5 Tires

Only one tire manufacturer provided comments in response to the NPRM. Goodyear stated:

The NPRM notes a 1994 letter from Goodyear to the Florida Manufactured Housing Association which stated that for an expected demand at that time of 2.4 million tires, Goodyear could only supply 20 % of that demand in the 8–14.5MH LR–E size. That situation has changed. There is or will be enough capacity in the industry to supply the 8–14.5MH LR–E [tires] by the time this rulemaking is issued as a final rule with an effective date set for nine months thereafter.

Based upon the information provided by Goodyear, the FHWA and HUD believe the supply of tires necessary to comply with the requirements of this rule is presently, or soon will be, sufficient to meet the needs of manufactured home producers and transporters. The agencies do not expect that motor carriers will have difficulty obtaining the 8–14.5 MH tires or that cost for such tires will escalate as a result of the increased demand. However, the agencies believe that the 9-month delay in the effective date will minimize the short-term economic impact on the affected parties.

V. Discussion of Implementation Schedule and Final Rule

After reviewing all of the comments received in response to the NPRM, the FHWA and HUD have determined that limiting the overloading of manufactured home tires to 18 percent is the most cost-effective approach to substantially reduce the number of tire failures attributed to tire overloading. Shipments of manufactured homes continue to increase and both agencies will work together to ensure highway safety and prevent disruptions of the delivery of manufactured homes, and adverse economic impacts on consumers and producers of manufactured homes.

A. Implementation Schedule

Based upon the public comments and other information, the FHWA and HUD are following the proposed phase-in schedule which will result in the final rule and interpretative bulletin taking effect 9 months after publication in the **Federal Register**. The purpose of the 9-month period is to minimize the possibility of tire shortages and cost distortions due to the changeover to higher load rated tires.

For the purposes of HUD requirements, the revised interpretative bulletin is applicable to manufactured homes which are labeled on or after the effective date. HUD's authority to prescribe construction standards is limited to the first sale of the manufactured home. HUD does not have the authority to prescribe how homes previously built and certified to the HUD standards should be retrofitted with tires and axles if they are subsequently moved after the first sale of the unit. Also, since there is no current mechanism for the purchaser to complete an engineering analysis or other acceptable method of complying with the law, the FHWA and HUD believe that this final rule should be mandatory only for homes manufactured on or after the effective date of the final rule.

For the purposes of the FHWA's regulations, the tires on any manufactured home, new or used, transported in interstate commerce on or after the effective date of this rule must meet the requirements of 49 CFR 393.75.

B. Revisions to the Wording of the Final Rule and Interpretative Bulletin

In response to the public comments, the FHWA and HUD are using information from the latest edition (1997) of the Tire and Rim Association, Inc. Year Book—the tire load limits for manufactured (mobile) homes have not been changed from the 1994 Year Book used in developing the proposed rule. The Year Book also provides that the load and cold inflation pressure on the wheels and rims should not exceed the manufacturer's recommendation even if the tire has been approved for a higher loading. The FHWA and HUD agree with this recommendation and this requirement has been included in the

amended Interpretative Bulletin and in 49 CFR 393.75.

The FHWA and HUD note that the MHI recommended that the FHWA include in its regulations a definition of the term "special permit." However, the FHWA and HUD have concluded that there is no readily apparent need to define the term. The term is not used with regard to the transportation of manufactured homes, and is only used in relation to allowing overloading of tires on commercial motor vehicles other than manufactured housing units. In addition, the States are responsible for issuing permits for oversize and overweight vehicles. The States have the latitude to establish permitting and other requirements appropriate for the traffic conditions present in their State. If the meaning of the term special permit becomes a significant issue in the future, the FHWA will consider proposing a definition at that time.

Both the interpretative bulletin and 49 CFR 393.75 reference 49 CFR 571.119, paragraph S5.1(b), which lists the Tire and Rim Association, Inc., Year Book along with several technical references recognized in other countries. Given the production of tires in other countries, FHWA/HUD have concluded that the final rule should be consistent with this section.

Finally, the FHWA has revised the regulatory language that is to be included in 49 CFR 393.75(g). Section 393.75(g) now includes a clause indicating that the FHWA and HUD will review industry and other data submitted concerning this matter.

C. Changes to Interpretative Bulletin J–1–76 of the Manufactured Housing Standards

The Department of Housing and Urban Development's authority to issue interpretative bulletins is provided by 42 U.S.C. 3535(d) and 5424. HUD has determined that the following changes should be made to Interpretative Bulletin J–1–76:

1. Section C—"Axles" is deleted in its entirety.

2. Section D—"Tires, Wheels, and Rims" is revised in its entirety to reflect the preceding discussions in the preamble.

D. Amendments to the FMCSRs

The FHWA is amending 49 CFR 393.75 to make the FMCSRs consistent with HUD's amendments to Interpretative Bulletin J–1–76. Section 393.75(f)(1)(i) and (ii) have been redesignated as § 393.75(f)(1) and (2), respectively. The redesignated paragraphs would address all commercial motor vehicles with the exception of manufactured homes. Section 393.75(f)(2) establishes a speed restriction of 80 km/hour (50 mph) on commercial motor vehicles operated on overloaded tires.

Section 393.75(g) allows 18 percent overloading of manufactured home tires for a period of two years after the effective date of the final rule. Manufactured homes operating on tires overloaded by 9 percent or more would be restricted to a maximum speed of 80 km/hr (50 mph).

Tire pressure and inflation requirements currently found at § 393.75(f)(2) and (3), are included in a new paragraph, § 393.75(h).

VI. Cost Analysis of Regulation

The Administration's policy in Executive Order 12866, Regulatory Planning and Review, provides that "Agencies should assess costs and benefits, both quantifiable and non-quantifiable and choose the approach with the maximum net benefits." As discussed in the NPRM (pages 18018 through 18020, and repeated, in part, in Section III, D of this document), the FHWA and HUD estimated the costs of various alternatives, ranging from 18 percent overloading to no tire overloading, and estimated the cost per manufactured home transported for each of the alternatives.

A. Examination of the "Cost Impact" of Upgraded Tires and Axles

HUD has obtained updated cost information for the various types of tires used on manufactured homes. The cost estimates assume that each transportable section uses 6 tires; the cost information is shown in Table A:

TABLE A

Type of tire	Wholesale cost of 8–14.5 10 ply (Series E)	Wholesale cost of 7–14.5 8 ply (Series D)	Increase in wholesale cost	Total incremental cost per section
NEW	$43	$35	$8	$48
USED	30	26	4	24

As shown in Table A, the cost for upgraded tires is relatively modest. It results in an average wholesale cost increase of approximately $50 per manufactured home shipped. The determination of the average cost per home is based on the usage patterns of new versus used tires (45 percent new, 55 percent used); the relative percentage of single section (53 percent) and multi-section (47 percent) homes; and the use of 6 tires per section; and is calculated as follows:

$(0.45)[\$8\times6\times(.53)+2\times\$8\times6(.47)]+$

$(0.55)[\$6\times6\times(.53)+2\times\$6\times6\times(.47)]=\$51.15$

or about $50.

B. Examination of Manufacturer Approved Designs

Manufactured home designs have substantially changed in the last several years due to consumer demand, changes in the HUD construction standards and the evolution of manufactured housing. For manufacturers already using additional axles or upgraded tires, the cost impact of this final rule would be reduced.

The information gathered at the time of preparation of the proposed rule did not reflect these new designs. Accordingly, HUD has undertaken a technical review of manufacturer design packages to see the changes in weight due to heavier exterior coverings, additional framing and shear wall requirement, and other changes.

Based upon a review of design packages, HUD has estimated that approximately 25 percent of all homes produced were affected by the 1994 standards changes and that the increase in weight for those homes was estimated at 5 percent. Therefore, there will be some manufacturers which have already upgraded their transportation systems through the addition of axles, upgraded tires or both.

Also, in reviewing the design packages, HUD has determined that many manufacturers design their axles for weights substantially greater than the actual gross weight of the home. For example, a manufacturer may be using

4 axles when an engineering analysis of the design indicates that only 3 axles are actually needed. Engineering review of several packages indicated that the decrease in the permissible level of tire overloading would not necessarily require an additional axle, since the number of axles is already in excess of what is required to handle the dead load.

Furthermore, the use of 8–14.5 Series E tires with a load rating of 2,540 lbs. could even reduce manufacturer costs as the upgraded load capacity of the tires may reduce the number of axles needed. In several cases, the reduction in the number of axles would more than offset the differential cost for upgraded tires, thus reducing the manufacturer's overall cost. Manufacturers have indicated that they expect that the use of upgraded tires would reduce the number of blowouts and the expenses and damage to the home that might result.

The financial impact of the final rule has been determined to be approximately $17 million per year. This amounts to $50 for each of the approximately 340,000 manufactured homes shipped each year.

C. Examination of the Costs of Service Calls and Tire Failure

The research report submitted by the MHI indicates that transporters reported an average of one tire failure for every 2.038 sections moved from the home manufacturer to the retailer. Site installers reported an average of one tire failure for every 11.182 sections moved from retailer to home site. Using these tire failure rates, and HUD's revised estimate of 500,000 shipments per year, there are approximately 245,338 tire failures per year for movements between the manufacturer and the retailer and 44,714 tire failures per year for movements between the retailer and the home site. The authors of the report believe that the tire failure rate could be reduced by ⅔ (193,174) if the 8–14.5 MH tires are used. This does not, however, mean that there are 193,174 failures caused by tire overloading.

A cost of $123.36 per failure was calculated. The decrease in the transporters' costs could be more than $23 million per year based upon the estimates in the MHI's report. Preventing tire blowouts would also reduce site installation problems associated with damage to the running gear and chassis. The benefits for reducing site installation problems are estimated by the MHI to be $2.8 million.

The MHI also estimates that using upgraded tires would result in a reduction in damage claims (i.e., transportation shock and vibration damage to the manufactured home structure caused by tire failures) and traffic congestion caused when manufactured homes break down. Those benefits are estimated to be approximately $4.3 million and $5.2 million, respectively.

In the FHWA and HUD's joint NPRM the agencies estimated (based upon 450,000 shipments per year) the number of tire failures caused by tire overloading is at least 22,500. The agencies used a failure rate of 7 percent for new tires and 9 percent for used tires with an overall average failure rate of 8 percent. The agencies estimated that a tire will fail on about 40 percent of the sections shipped each year. Using current figures on the number of manufactured home shipments, the FHWA and HUD estimate that tire overloading causes approximately 25,000 tire blowouts per year. This represents a conservative estimate.

In a number of cases, the tire failure is corrected by the transporter and therefore, the associated costs are included in the per mile cost or other charges assessed by the transporters. Where the manufacturer has to send service personnel, the data obtained from manufactured home service managers indicates that the average repair cost is $180.

If 25 percent of the tire blowouts require road site service, the costs to manufacturers would be approximately $1.1 million to 1.3 million per year. Therefore, the total estimated costs of tire failures caused by overloading is more than $36 million per year and it is likely that much of this cost, disruption of transportation and even damage to the home can be abated through the use of upgraded tires.

Other potential benefits from the adoption of this final rule include increased safety on the nation's highways and a decreased likelihood of accidents, injuries, and property damage losses resulting from tire failures. In addition, the FHWA and HUD expect benefits in the form of reduced insurance costs, more on-time deliveries and reduced likelihood of injuries that can occur because of changing blown tires.

In summary, it is expected that there will be substantial cost savings by reducing the number of tire failures through the use of upgraded tires and axles. While there are some manufacturers that may have to increase the number of axles, a review of manufactured home designs indicates that existing number of axles in the approved designs may be adequate, despite the reduction in tire overloading.

Other manufacturers may actually reduce their overall costs by using upgraded tires in conjunction with fewer axles. Finally, this reduction in tire overloading will increase highway safety, and the final rule provides the maximum benefits at the least additional cost of all of the alternatives included in the proposed rule.

VII. Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA and HUD have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because it involves a significant amount of public interest. In addition, the FHWA has determined that this action is significant within the meaning of Department of Transportation regulatory policies and procedures. This action has undergone a formal review by the Office of Management and Budget. Any changes to the rule resulting from this review are available for public inspection in the docket referenced at the beginning of this document.

This rule establishes tire loading limitations for manufactured homes transported in interstate commerce and eliminates the inconsistency between the FHWA and HUD requirements for manufactured homes. The FHWA and HUD have evaluated the economic impact of the changes to the regulatory requirements concerning the safe transportation of manufactured homes and determined that the standard is reasonable, appropriate, and the least costly and intrusive approach for the resolution of this issue (see section VII of this notice). The financial impact of the final rule has been determined to be approximately $17 million per year. This amounts to $50 for each of the approximately 340,000 manufactured homes shipped each year. The total economic benefits are estimated to be more than $36 million per year. Therefore, the FHWA and HUD estimate that the final rule has a net benefit of approximately $19 million per year. Other options examined by the FHWA would have significant increases in the costs while providing only a marginal increase in the estimated benefits.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA and HUD have evaluated the potential effects of this final rule on small entities and determined that the proposed standard is reasonable, appropriate, and the least costly and

intrusive approach for the resolution of this issue. The FHWA and HUD certify that this rulemaking does not have a significant economic impact on a substantial number of small entities.

The FHWA and HUD obtained cost information directly from tire suppliers and from the MHI Task Force which includes transporters, manufacturers, and tire suppliers. The cost information obtained from all sources was very similar and the FHWA and HUD believe the data are reasonably accurate.

The number of additional tires and/or axles required to satisfy this rule is a function of the size and weight of the manufactured home. Because of this, manufacturers will have differing cost impacts. Also, some manufacturers may already be using additional axles or upgraded tires thereby greatly reducing the costs.

Based upon the information reviewed by the FHWA and HUD, and the information provided by commenters, the agencies do not believe the costs per manufactured home for small entities to comply with this rule will be significantly greater than the costs per manufactured home for larger manufacturers and transporters. Therefore, the costs per manufactured home for small entities to comply with this rule are not expected to exceed $50.

A small manufacturer, for example, producing 5 manufactured homes per week, would have to spend approximately $250 per week or $13,000 annually. However, most, if not all, of the costs would be factored into the prices of the manufactured homes produced. If all of the costs are factored into the manufactured homes produced, the price for a new manufactured home would increase by approximately $50, plus any additional mark-up by the manufacturers and retailers.

The FHWA and HUD note that the AAR stated that it believes "the action contemplated by the NPRM could cost consumers $600 per home or more." The FHWA and HUD have carefully reviewed the estimates of the economic impact of this rulemaking and the information provided by other commenters to the docket and believe the AAR's estimate of the impact on small entities and consumers is far in excess of the cost estimates presented by the MHI. According to the MHI, its members produce 65 percent of the manufactured homes built each year in the United States. The MHI indicated that approximately 339,601 manufactured homes were produced by 92 member companies in 285 plants. The FHWA and HUD believe the experiences of the MHI's members provide a sound basis for estimating the costs for small entities and consumers and consider the estimates presented by the FHWA and HUD in the final rule to be consistent with the MHI's.

Executive Order 12612 (Federalism Assessment)

The FHWA has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, Federalism, and determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under this rule, certain commercial motor vehicles will be prohibited from traveling at speeds exceeding 80 km/hour (50 mph), but the FHWA does not believe this requirement preempts State law nor does the agency believe this requirement will significantly affect the States' ability to discharge traditional State governmental functions. The FHWA also notes that several State agencies commented to the docket in support of this rulemaking.

The General Counsel of HUD, as the Designated Official under Section 6(a) of Executive Order 12612, has determined that the policies contained in this final rule are covered by section 604(d) of the National Manufactured Housing Construction and Safety Standards Act of 1974, which provides: "Whenever a Federal manufactured home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard."

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk to children.

Unfunded Mandates Reform Act

This rule does not impose a Federal mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined that this action would not have any effect on the quality of the environment.

A Finding of No Significant Impact with respect to the environment was prepared for the proposed rule in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. Because the proposed rule is adopted by this final rule without significant change, the initial Finding of No Significant Impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Regulation Identification Numbers

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RINs contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Manufactured homes.

49 CFR Part 393

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

In consideration of the forgoing, the Department of Housing and Urban Development, under 42 U.S.C. 3535(d), is amending Interpretative Bulletin J–1–76, and the Department of Transportation, Federal Highway Administration is amending title 49, Code of Federal Regulations, Chapter III, part 393 as follows:

Department of Housing and Urban Development

Note: HUD Interpretative Bulletin J–1–76 does not and the amendments to it will not appear in the Code of Federal Regulations.

1. HUD Interpretative Bulletin J–1–76 is amended by removing and reserving Section C and by revising Section D, as follows:

Interpretative Bulletin J–1–76, Transportation—Subpart J of Part 3280

* * * * *

C. [Reserved]

D. Section 3280.904(b)(8)—Tires, Wheels, and Rims

[This Section D is effective November 16, 1998.] Manufactured homes that are labeled on or after the effective date must comply with this Section D. This provision will expire November 20, 2000, unless extended by mutual consent of the Federal Highway Administration and HUD during any subsequent rulemaking.]

Tires and rims shall be sized and fitted to axles in accordance with the gross axle weight rating determined by the manufactured home manufacturer. The permissible tire loading may be increased up to a maximum of 18 percent over the rated load capacity of the manufactured home tire marked on the sidewall of the tire or increased up to a maximum of 18 percent over the rated load capacity specified for the tire in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard (FMVSS) No. 119 (49 CFR 571.119, S5.1(b)).

Used tires may also be sized in accordance with the above criteria whenever the tread depth is at least 2/32 of an inch as determined by a tread wear indicator. The determination as to whether a particular used tire is acceptable shall also include a visual inspection of thermal and structural defects (e.g., dry rotting, excessive tire sidewall splitting, etc.). Wheels and rims shall be sized in accordance with the tire manufacturer's recommendations as suitable for use with the tires selected.

The load and cold inflation pressure imposed on the rim or wheel must not exceed the rim and wheel manufacturer's instructions even if the tire has been approved for a higher load or inflation. Tire cold inflation pressure limitations and the inflation pressure measurement correction for heat shall be as specified in 49 CFR 393.75(h).

* * * * *

Federal Highway Administration

49 CFR CHAPTER III

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

2. The authority citation at the end of § 393.75 is removed and the authority citation for 49 CFR Part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991), 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

3. Section 393.5 is amended by adding the definitions of "manufactured home," "length of a manufactured home," and "width of a manufactured home," placing them in alphabetical order, to read as follows:

§ 393.5 Definitions.

* * * * *

Length of a manufactured home. The largest exterior length in the traveling mode, including any projections which contain interior space. Length does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space, nor does it include drawbars, couplings or hitches.

* * * * *

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. This term includes all structures which meet the *above* requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to 24 CFR 3282.13 and complies with the standards set forth in 24 CFR part 3280.

* * * * *

Width of a manufactured home. The largest exterior width in the traveling mode, including any projections which contain interior space. Width does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space.

4. Section 393.75 is amended by revising paragraph (f), and by adding paragraphs (g) and (h) to read as follows:

§ 393.75 Tires.

* * * * *

(f) *Tire loading restrictions.* With the exception of manufactured homes, no motor vehicle shall be operated with tires that carry a weight greater than that marked on the sidewall of the tire or, in the absence of such a marking, a weight greater than that specified for the tires in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard No. 119 (49 CFR 571.119, S5.1(b)) unless:

(1) The vehicle is being operated under the terms of a special permit issued by the State; and

(2) The vehicle is being operated at a reduced speed to compensate for the tire loading in excess of the manufacturer's rated capacity for the tire. In no case shall the speed exceed 80 km/hr (50 mph).

(g) *Tire loading restrictions for manufactured homes.* Effective November 16, 1998, tires used for the transportation of manufactured homes (i.e., tires marked or labeled 7–14.5MH and 8–14.5MH) may be loaded up to 18 percent over the load rating marked on the sidewall of the tire or, in the absence of such a marking, 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)). Manufactured homes which are labeled (24 CFR 3282.7(r)) on or after November 16, 1998 shall comply with this section. Manufactured homes transported on tires overloaded by 9 percent or more must not be operated at speeds exceeding 80 km/hr (50 mph). This provision will expire November 20, 2000 unless extended by mutual consent of the FHWA and the Department of Housing and Urban Development after review of appropriate tests or other data submitted by the industry or other interested parties.

(h) *Tire inflation pressure.* (1) No motor vehicle shall be operated on a tire which has a cold inflation pressure less than that specified for the load being carried.

(2) If the inflation pressure of the tire has been increased by heat because of the recent operation of the vehicle, the cold inflation pressure shall be estimated by subtracting the inflation buildup factor shown in Table 1 from the measured inflation pressure.

TABLE 1.—INFLATION PRESSURE MEASUREMENT CORRECTION FOR HEAT

Average speed of vehicle in the previous hour	Minimum inflation pressure buildup	
	Tires with 1,814 kg (4,000 lbs.) maximum load rating or less	Tires with over 1,814 kg (4,000 lbs.) load rating
66–88.5 km/hr (41–55 mph)	34.5 kPa (5 psi)	103.4 kPa (15 psi).

Issued on: February 11, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–4038 Filed 2–17–98; 8:45 am]

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  - Isoflurane; published 2-18-98

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  - Health claims; soluble fiber from certain foods and coronary heart disease; published 2-18-98

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LABOR DEPARTMENT

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H.R. 1271/P.L. 105–155

FAA Research, Engineering, and Development Authorization Act of 1998 (Feb. 11, 1998; 112 Stat. 5)

H.R. 3042/P.L. 105–156

Environmental Policy and Conflict Resolution Act of 1998 (Feb. 11, 1998; 112 Stat. 8)

S. 1349/P.L. 105–157

To authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel PRINCE NOVA, and for other purposes. (Feb. 11, 1998; 112 Stat. 13)

Last List February 9, 1998

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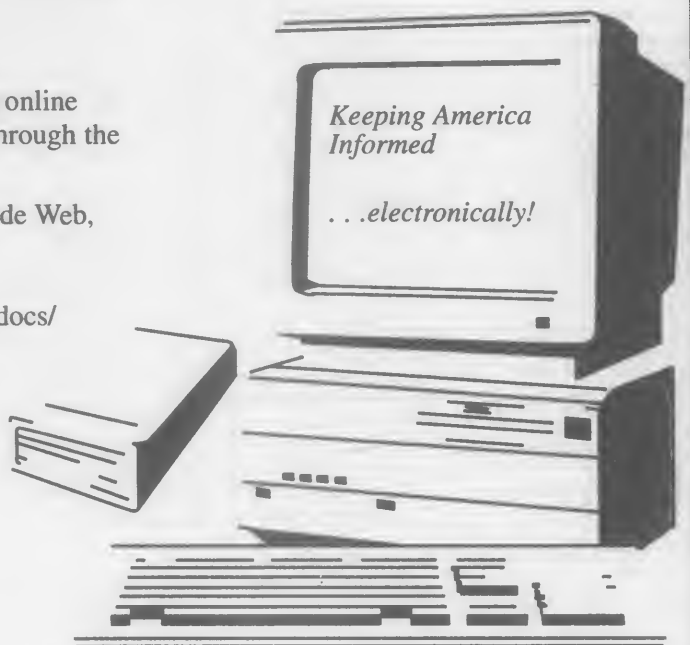

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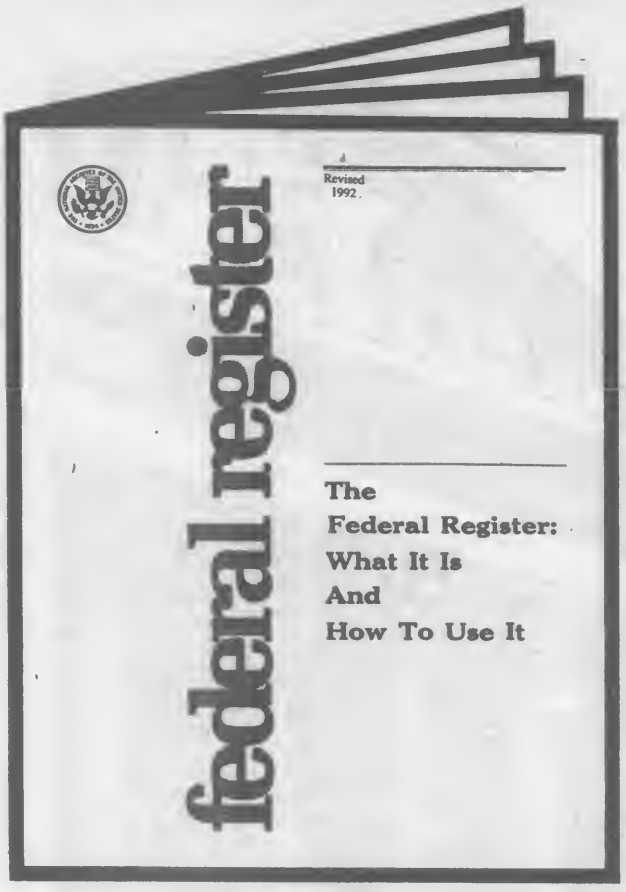

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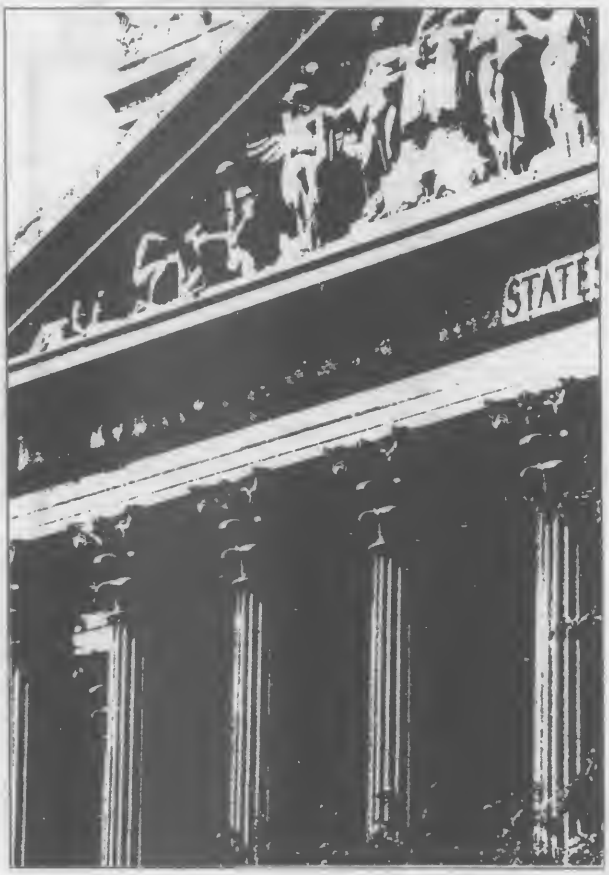

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